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ATTORNEY FOR APPELLANT:

CHARLES E. STEWART, JR.
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

J. T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

QUATERRIS FRANKLIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0903-CR-129
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0808-FB-64

November 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Quaterris Franklin appeals his sentence following his conviction for Attempted Robbery, as a Class C felony. He presents two issues for our review:

1. Whether the trial court abused its discretion when it sentenced him.

2. Whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 5, 2008, the State charged Franklin with attempted robbery, as a Class B felony, after he was arrested for attempting to rob a gas station in Merrillville. The State subsequently filed an amended information charging Franklin with attempted robbery, as a Class C felony, and Franklin pleaded guilty to that charge. The plea agreement left sentencing open to the trial court's discretion.

At sentencing, the trial court found a single mitigator, Franklin's guilty plea, and a single aggravator, Franklin's criminal history. The trial court stated that it also considered the pre-sentence investigation report and Franklin's mental health and sentenced Franklin to four years executed. The trial court ordered the Department of Correction to "evaluate the defendant and provide the defendant with whatever necessary treatment and medication they find to be necessary." Appellant's App. at 29. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Abuse of Discretion

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." Id. (quotation omitted).

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.

Id. at 490-91.

Franklin contends that the trial court abused its discretion when it did not give any mitigating weight to his mental illness. A finding of mitigating circumstances lies within the trial court's discretion. Widener v. State, 659 N.E.2d 529, 533 (Ind. 1995). The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). And the sentencing court is not required to place the same value on a mitigating circumstance as does the defendant. Beason v. State, 690 N.E.2d 277, 283-84 (Ind. 1998).

Our supreme court has identified four factors "that bear on the weight, if any, that should be given to mental illness in sentencing." Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998) (citing Archer v. State, 689 N.E.2d 678, 685 (Ind. 1997)). Those factors are: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. Id. In Archer, our supreme court held in part that:

> In a case where the court finds that defendant, who is mentally ill but able to distinguish right from wrong and therefore not legally insane, suffers from a serious mental illness, particularly a long-standing illness, or where that defendant's visions or voices led to bizarre behavior and played an integral part in the crime, the court may decide not to impose an enhanced sentence or may decide to otherwise accord significant weight to defendant's mental illness as a mitigating factor. On the other hand, where the mental illness is less severe and defendant appears to have more control over his thoughts and actions, or where the nexus between defendant's mental illness and the commission of the crime is less clear, the court may determine on the facts of a particular case that the mental illness warrants relatively little or no weight as a mitigating factor.

689 N.E.2d at 685 (footnotes omitted).

Here, the only evidence regarding Franklin's alleged mental illness is found in the pre-sentence investigation report, which states:

> [Franklin] was diagnosed around 6th or 7th grade with mental health deficits. A claim by a teacher that he suffers from hallucinations and delusions was investigated. Franklin was a child of various placement facilities such as Willow Glen Academy, Edgewater Systems for Balanced Living and another group home for mental[ly] impaired persons in Merrillville, Indiana.
>
> * * *
>
> The Defendant has a history of mental health issues. Trazadone was prescribed in the past because "others" stated that he sees and hears things

> that are not there. Franklin was prescribed medication about two (2) years ago for mental deficits, however, he was uncertain of the diagnosis. Currently, there are no medications prescribed while he is in the Lake County Jail.
>
> * * *
>
> There is a history of mental health deficits; however, he is uncertain of the diagnosis. In the past he was prescribed Trazadone for auditory and visual hallucination.

Presentence Investigation Report at 6-8.

While that evidence might support a determination that Franklin has a longstanding mental illness, there is no evidence regarding the extent of Franklin's inability to control his behavior due to his mental illness, overall limitations on functioning, or the extent of any nexus between his illness and the attempted robbery. As such, the evidence is insufficient to support a determination on appeal that Franklin's mental illness warrants a reduction in sentence. See Weeks, 697 N.E.2d at 30. Regardless, the trial court expressly considered Franklin's mental illness at sentencing and ordered the Department of Correction to provide appropriate treatment. The trial court did not abuse its discretion when it did not give any mitigating weight to Franklin's mental illness and sentenced Franklin to the advisory sentence of four years.

Issue Two: Indiana Appellate Rule 7(B)

Franklin also contends that his sentence is inappropriate under Indiana Appellate Rule 7(B). But Franklin does not support this contention with cogent argument demonstrating that his sentence is inappropriate in light of both the nature of his offense and his character. Franklin merely asserts that his sentence is inappropriate in light of the trial court's "failure . . . to consider [Franklin's] illness and long-standing history of

mental illness[.]" Brief of Appellant at 12. Franklin does not make a separate argument regarding the inappropriateness of his sentence in light of the nature of the offense. As such, the issue is waived. See Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008).

Waiver notwithstanding, Franklin's argument under Indiana Appellate Rule 7(B) is substantially identical to his argument that the trial court abused its discretion in sentencing him. For the reasons set out in our discussion of Issue One, we conclude that Franklin's sentence is not inappropriate in light of the nature of the offense and his character.

Affirmed.

KIRSCH, J., and BARNES, J., concur.