

Appellant-defendant Woody E. Sinclair appeals his conviction for Burglary,¹ a class C felony, challenging the sufficiency of the evidence. Sinclair further maintains that the trial court abused its discretion in sentencing him and argues that an eight-year sentence is inappropriate in light of the nature of the offense and his character. Finding the evidence sufficient, and concluding that Sinclair was properly sentenced, we affirm the judgment of the trial court.

FACTS

On February 25, 2010, Sinclair entered Molly and Paul Deane's (collectively, the Deanes) garage in Fort Wayne. The Deanes' property is enclosed with a fence, and the garage is detached from the house and is accessible through a side door that is inside the privacy fence. The gate to the fence is always closed. The side door of the garage was deteriorated and "slightly ajar" to the point where "you could . . . stick your hand in. . . ." Tr. p. 99-100, 109. The bay door to the garage was closed that night.

At approximately midnight, Molly noticed that the gate to the fence was open. She saw Sinclair in the garage, walked back into the house, and told Paul about the incident. Paul called 911 and observed that the gate to the yard and the side door to the garage were both open. Paul also observed Sinclair in the building.

Sinclair opened the garage door, ran down the alley, and got into a truck. Several Fort Wayne police officers responded to the 911 call and approached Sinclair. When

¹ Ind. Code § 35-43-2-1.

Paul arrived at the scene, he identified items in the truck that belonged to him, including a baby stroller, some free weights, and a lawn mower.

As a result of the incident, Sinclair was charged with burglary, a class C felony, and receiving stolen property, a class D felony. A jury found Sinclair guilty as charged on June 30, 2010. Thereafter, on July 29, 2010, the trial court vacated Sinclair's conviction for receiving stolen property and sentenced him to eight years of incarceration on the burglary charge.

In arriving at that sentence, the trial court found no mitigating circumstances and identified Sinclair's lengthy criminal history and his parole and probation revocations as aggravating factors. As a result, the trial court determined that the "miserably failed efforts at [Sinclair's] rehabilitation justify a significant executed term of imprisonment." Sent. Tr. p. 10-13. Sinclair now appeals.

DISCUSSION AND DECISION

I. Sufficiency of the Evidence

Sinclair claims that the evidence was insufficient to support his conviction for burglary. Specifically, Sinclair maintains that the State failed to prove beyond a reasonable doubt that a "breaking" occurred as is required under the burglary statute. Appellant's Br. p. 10-11.

When reviewing sufficiency of the evidence claims, we must consider only the probative evidence and reasonable inferences that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). It is the fact-finder's role, not that of appellate courts,

to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. Id. We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. Id.

Indiana Code Section 35-43-2-1 provides that “[a] person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a class C felony.” Thus, the State was required to prove beyond a reasonable doubt that Sinclair broke and entered the Deanes’ garage, with the intent to commit a felony in it.

This court has previously determined that the “slightest force” used to push aside a door and gain entry represents a breaking for purposes of the burglary statute. McKinney v. State, 653 N.E.2d 115, 117 (Ind. Ct. App. 1995). And pushing a door that is slightly ajar constitutes a “breaking” within the meaning of the statute. Davis v. State, 770 N.E.2d 319, 322 (Ind. 2002). The element of breaking may be established by circumstantial evidence alone. Payne v. State, 777 N.E.2d 63, 66 (Ind. Ct. App. 2002).

In this case, the evidence established that Sinclair entered the garage by entering their property through the Deanes’ privacy fence and then opening a side door to the structure. Tr. p. 93-97, 99, 108-11. Both of the Deanes testified that the bay door to the garage was closed. Id. at 97, 99, 110. Sinclair was found in possession of various items from the garage only moments after the offense had been committed. Id. at 111-13. Although Sinclair maintains that the door was open when he entered the garage, this

claim is merely a request to reweigh the evidence, which we cannot do. As a result, we conclude that the evidence was sufficient to support Sinclair's conviction for burglary.

II. Sentencing—Abuse of Discretion

Sinclair next claims that the trial court abused its discretion when sentencing him. Specifically, Sinclair argues that the trial court erred in refusing to assign any weight to his proffered mitigating factors.

We initially observe that sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference. Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). A sentence that is within the statutory range is subject to review only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218. 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.

A trial court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). When sentencing a defendant for a felony, the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence. Anglemyer, 868 N.E.2d at 490-91. A trial court abuses its discretion if it fails "to enter a sentencing statement at all." Id. at 490; see also Cardwell, 895 N.E.2d at 1222-23. The relative weight or value assignable to reasons properly found or to those that should have

been found is not subject to review for abuse of discretion. Anglemyer, 868 N.E.2d at 490.

In this case, Sinclair claimed that the trial court improperly overlooked the following mitigating circumstances: (1) acceptance of responsibility for his actions; (2) remorse; (3) the undue hardship that incarceration would have on Sinclair and his dependents; and (4) the willingness to make restitution. The trial court rejected Sinclair's arguments and refused to accept any of these proposed mitigators.

Notwithstanding Sinclair's claims, we note that the trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Page v. State, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007). An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Id.

We note that Sinclair has maintained his innocence throughout the proceedings and insists that he did not "break in" to the garage. Appellant's Br. p. 12. Sinclair's acknowledgment that he entered the garage and took the items, while still denying a key element of the offense, is not an acceptance of responsibility to the charged offense. See Bonds v. State, 721 N.E.2d 1238, 1243 (Ind. 1999) (finding that the defendant's statement that he was "involved in the victim's death" fell short of a full acceptance of responsibility for the crime). Additionally, while the trial court noted that Sinclair expressed some remorse, it determined that Sinclair was not sincere. As this court observed in Gibson v. State, 856 N.E.2d 142, 148 (Ind. Ct. App. 2006), "remorse, or lack

thereof, by a defendant often is something that is better gauged by a trial judge who views and hears a defendant's apology and demeanor first hand and determines the defendant's credibility." Here, the trial court was in the best position to judge whether Sinclair was remorseful, and it found otherwise. We decline to set that determination aside.

Although Sinclair claims that his incarceration would result in a hardship to his family and should have been identified as a mitigating factor, a trial court "is not required to find a defendant's incarceration would result in undue hardship on his dependents." Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005) (emphasis added). Indeed, many individuals convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship. Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999).

In this case, although defense counsel stated at sentencing that Sinclair pays child support, he presented no evidence that he makes such payments. PSI at 5. See Thompson v. State, 875 N.E.2d 403, 407 (Ind. Ct. App. 2007) (recognizing that arguments and comments of counsel are not evidence). Moreover, the trial court remarked at the sentencing hearing that there was no information in the presentence investigation report as to whether Sinclair's children were dependent upon him for support. Tr. p. 11. In light of these circumstances, we cannot say that the trial court abused its discretion in not identifying the hardship that Sinclair's incarceration would have on his family as a mitigating factor.

Finally, although Sinclair maintains that the trial court should have identified his willingness to make restitution as a mitigating factor, the record demonstrates that Sinclair was unemployed. Sinclair also did not present any evidence as to how he would make restitution to the Deanes. PSI at 2. In our view, Sinclair’s statement regarding a willingness to make restitution, without more, is not sufficient to require the trial court to assign mitigating weight to this proffered circumstance.

In sum, we conclude that the trial court did not abuse its discretion when it expressly refused to identify any of the factors that Sinclair advanced as mitigating.

III. Appropriate Sentence

Sinclair also claims that the eight-year sentence is inappropriate in light of the nature of the offense and his character. Specifically, Sinclair asserts that the offense was not “significant” and he should not be viewed as the “worst of the worst” offenders. Appellant’s Br. p. 16. Thus, Sinclair maintains that the imposition of the maximum eight-year sentence for class C felony burglary was not warranted in this instance.

Indiana Appellate Rule 7(B) provides that this court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The sentencing range for a class C felony is between two years and eight years with an advisory sentence of four years. Ind. Code § 35-50-2-6. With regard to the nature of the offense, the record shows that Sinclair broke into the Deanes' garage and stole a number of items. As for Sinclair's character, the record demonstrates that he committed this offense while on parole for another burglary. Sinclair has a criminal history that spans nearly twenty-three years. He has convictions for receiving stolen property, conversion, residential entry, and burglary, to name a few. PSI at 3-4. Sinclair's probation has been revoked three times and his parole has been revoked on two occasions.

In short, Sinclair has amassed a lengthy criminal history that demonstrates his refusal to lead a law abiding life and the likelihood that he will continue committing criminal offenses. Sinclair has been afforded numerous chances over the past twenty-three years and has refused to rehabilitate. As a result, we conclude that Sinclair has failed to demonstrate that the eight-year sentence is inappropriate.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.

