

Steven Puckett appeals his sentences for two counts of child exploitation as class C felonies.¹ Puckett raises two issues, which we restate as:

- I. Whether the trial court abused its discretion in sentencing Puckett; and
- II. Whether Puckett's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. On January 20, 2005, fifty-nine-year-old Puckett was communicating with an individual in a chat room. Although Puckett thought the individual was an adult woman with a six-year-old child, the individual was actually a police officer. During the chat, Puckett asked the police officer if she engaged in sexual activity with her daughter, if she would take pictures of such activity, and if she would let Puckett engage in sexual activity with her daughter. Puckett sent the officer three pictures of nude females under the age of eighteen in sexually suggestive poses. The communication was traced back to Puckett's work computer at Purdue University. A search warrant of Puckett's work computer, home, and vehicle revealed numerous floppy disks and zip drives containing child pornography. The State charged Puckett with three counts of child exploitation as class C felonies, forty-five counts of possession of child

¹ Ind. Code § 35-42-4-4(b) (2004).

pornography as class D felonies,² and one count of possession of a schedule IV controlled substance as a class D felony.³

Puckett pleaded guilty to two counts of child exploitation as class C felonies, consented “to judicial fact-finding regarding aggravating and mitigating factors to determine the appropriate sentence and [waived] his right for a jury to determine aggravating factors pursuant to Blakely v. Washington,” and agreed that the statutory maximum sentence was ten years. Appellant’s Appendix at 24. At the sentencing hearing, the trial court found one aggravating factor, the repetitive nature of the offense, and one mitigating factor, Puckett’s lack of a prior criminal history. The trial court sentenced Puckett to five years in the Indiana Department of Correction on each conviction with the sentences to be served consecutively for an aggregate sentence of ten years. The trial court then suspended four of the ten years to probation.

I.

The first issue is whether the trial court abused its discretion in sentencing Puckett.⁴ Sentencing decisions rest within the discretion of the trial court and are

² Ind. Code § 35-42-4-4(c) (2004).

³ Ind. Code § 35-48-4-7 (2004).

⁴ Indiana’s sentencing scheme was amended effective April 25, 2005, to incorporate advisory sentences rather than presumptive sentences. See Ind. Code §§ 35-38-1-7.1, 35-50-2-1.3. Puckett committed his offense prior to the effective date and was sentenced on September 13, 2005. Neither party argued to the trial court or on appeal that the amended sentencing statutes should be applied. Consequently, we will apply the version of the sentencing statutes in effect at the time Puckett committed his offense. Moreover, the application of the amended sentencing statute would not change the result here.

reviewed on appeal only for an abuse of discretion. Smallwood v. State, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” Pierce v. State, 705 N.E.2d 173, 175 (Ind. 1998). In order for a trial court to impose an enhanced sentence, it must: (1) identify the significant aggravating factors and mitigating factors; (2) relate the specific facts and reasons that the court found to those aggravators and mitigators; and (3) demonstrate that the court has balanced the aggravators with the mitigators. Veal v. State, 784 N.E.2d 490, 494 (Ind. 2003). Puckett argues that the trial court abused its discretion by considering the repetitive nature of the offense as an aggravating factor and by failing to consider several mitigating circumstances.

A. Aggravator.

The trial court found the repetitive nature of the offenses to be an aggravating factor. We have held that the serial nature of the offenses committed against a victim is a valid aggravating circumstance. Brown v. State, 760 N.E.2d 243, 246 (Ind. Ct. App. 2002), trans. denied; Singer v. State, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996); Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), trans. denied. Puckett argues that there was only one instance of misconduct here. However, in a psychosocial and psychosexual assessment performed for sentencing, Puckett revealed that he had been accessing pornography on the Internet for several years and that he had been viewing child pornography on the Internet for approximately six months prior to his arrest. Numerous files of child pornography were found at his work, home, and in his vehicle. Given the

apparent ongoing nature of his activities, we cannot say that the trial court abused its discretion by considering the repetitive nature of Puckett's offenses as an aggravating factor. See, e.g., Stout, 834 N.E.2d at 711 (holding that the repetitive nature of the defendant's offense was a proper aggravating factor).

B. Proposed Mitigators.

Puckett argues that the trial court abused its discretion by failing to consider his work history, honorable discharge from the military, hardship on his family, and guilty plea as mitigating factors. "The finding of mitigating factors is not mandatory and rests within the discretion of the trial court." Ellis v. State, 736 N.E.2d 731, 736 (Ind. 2000). The trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. Gross v. State, 769 N.E.2d 1136, 1140 (Ind. 2002). "Nor is the court required to give the same weight to proffered mitigating factors as the defendant does." Id. Further, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Sherwood v. State, 749 N.E.2d 36, 38 (Ind. 2001). However, the trial court may "not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to properly consider them." Id. An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Carter v. State, 711 N.E.2d 835, 838 (Ind. 1999).

We begin by discussing Puckett's guilty plea. The Indiana Supreme Court has recognized that "[a] guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial." Francis v. State, 817 N.E.2d 235, 237-238 (Ind. 2004). "[A] defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return." Id. at 237-238. Here, Puckett received a substantial benefit from his guilty plea. Specifically, the State dismissed one count of child exploitation as a class C felony, forty-five counts of possession of child pornography as class D felonies, and one count of possession of a schedule controlled substance as a class D felony. Under these circumstances, we cannot say that Puckett's guilty plea was a significant mitigating factor and conclude that the trial court did not abuse its discretion. See, e.g., Sensback v. State, 720 N.E.2d 1160, 1165, 1165 n. 4 (Ind. 1999) (holding that the trial court did not abuse its discretion where the defendant received a significant benefit from her guilty plea).

As for Puckett's work history, although Puckett had a steady work history at Purdue University, we note that he was using his work computer to access and send child pornography. We cannot say that Puckett's work history was a significant mitigator. See, e.g., Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (holding that the trial court properly did not find that defendant's employment was a significant mitigating circumstance where defendant did not present a specific work history, performance reviews, or attendance records), trans. denied.

As for Puckett's hardship to his family and family support, we note that "[m]any persons 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). Puckett points to no special circumstances that would make the hardship to his family or his family support significant mitigating factors.

Lastly, as for Puckett's military history, Puckett's sole argument is that he "served on active duty in Vietnam" and was honorably discharged. This argument is simply insufficient to show that the proposed mitigator was both significant and clearly supported in the record. See, e.g., Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005) ("Pennington's argument on this issue in his brief to this Court consists merely of the statement that the trial court overlooked these proposed mitigating factors. This does not rise to the level of proof needed to show that the proposed mitigating circumstance is both significant and clearly supported in the record.").

II.

The next issue is whether Puckett's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "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."

Our review of the nature of the offenses to which Puckett pleaded guilty reveals that, while at work, Puckett sent pictures of a naked minor female in sexual poses to an undercover police officer. Our review of the character of the offender reveals that fifty-nine-year-old Puckett does not have a criminal history and worked at Purdue University for twenty-four years. Additionally, he was honorably discharged from the military. However, Puckett's character is also revealed by the fact that, during the Internet chat with the undercover police officer, Puckett believed he was talking to an adult woman with a six-year-old child. Puckett asked the police officer if she engaged in sexual activity with her daughter, if she would take pictures of such activity, and if she would let Puckett engage in sexual activity with her daughter. After Puckett's arrest, police found numerous files of child pornography on his work computer, at his home, and in his vehicle. After due consideration of the trial court's decision, we find nothing in the above to make Puckett's ten-year sentence for two counts of child exploitation as class C felonies inappropriate. See, e.g., Leffingwell v. State, 810 N.E.2d 369, 372 (Ind. Ct. App. 2004) (holding that the defendant's maximum eight-year sentence for child molesting was not inappropriate).

For the foregoing reasons, we affirm Puckett's sentence for two counts of child exploitation as class C felonies.

Affirmed.

NAJAM, J. and ROBB, J. concur