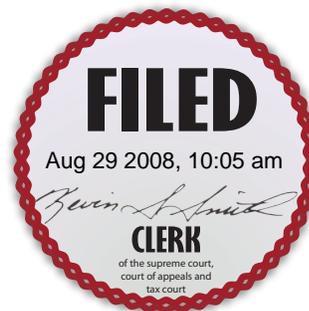


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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STEPHEN CLARK,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A02-0712-CR-1034

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Mark Stoner, Judge  
Cause Nos. 49G06-0703-FB-037867 & 49G06-0706-FB-101922

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**August 29, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Stephen Clark appeals his concurrent twelve-year sentences following his guilty plea to two charges of robbery as a Class B felony. Specifically, Clark argues that the trial court abused its discretion by overlooking his youth as a significant mitigating circumstance. Concluding that Clark's youth is not a significant mitigating circumstance in light of his criminal history, we affirm.

## Facts and Procedural History

In March 2007, the State charged Clark with one count of robbery as a Class B felony under cause number 49G06-0703-FB-037867 ("Cause No. 37867"). In June 2007, the State charged Clark with one count of robbery as a Class B felony under cause number 49G06-0706-FB-101922 ("Cause No. 101922"). Thereafter, Clark pled guilty to both counts. In exchange, the State recommended a sentence of six to fifteen years executed on each count with time on each count to run concurrently.

The factual basis for Cause No. 37867 is as follows:

[O]n February 27, 2007, John Jackson was arrested for a robbery at a Steak N' Shake. In the subsequent statement that he gave to the police involving that he also confessed to a robbery at Village Pantry that had occurred on February 22nd, 2007, that Village Pantry located at 5190 North Franklin Road [in Marion County]. When the detective looked into that he spoke to Mr. Richard Wilson who indicated that he had in fact been robbed on February 22nd and that during the robbery the individual Mr. Jackson had stuck the gun directly in his face as Mr. Stephen Clark reached in and took the money out of the drawer totaling two hundred and fifty dollars.<sup>[1]</sup>

Tr. p. 18. The factual basis for Cause No. 101922 is as follows:

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<sup>1</sup> Counsel for Clark informs us that the February 22, 2007, robbery involving Clark occurred at a Steak 'n Shake. Appellant's Br. p. 3. However, the record clearly reflects that it occurred at a Village Pantry. Tr. p. 18; Appellant's App. p. 40-42.

[O]n February 23, 2007, [Clark] entered the Walgreen's drugstore located at 6191 North Keystone [in Marion County]. [Clark] went around with another still unidentified male. [Clark] got a card out of the greeting card aisle. [Clark] walked up to the cash register. The cash register person rang it up as three dollars and ninety cents. [Clark] handed her four dollars and when she hit the button to open the cash register, [Clark] opened [his] jacket displaying a black semi-automatic handgun. [Clark] told her to put the card, the four dollars and all the rest of the money that was in the register into [his] bag. She did that at which time [Clark] left.

*Id.* at 19. Clark was nineteen years old at the time of both offenses.

At the sentencing hearing, the trial court identified Clark's guilty plea as the only significant mitigating circumstance, *id.* at 52, and his prior criminal history as an aggravating circumstance, *id.* at 52-53. The trial court then sentenced Clark to concurrent twelve-year sentences. *Id.* at 56; Appellant's App. p. 11, 38. Clark now appeals.

### **Discussion and Decision**

Clark raises a single issue on appeal. He contends that the trial court abused its discretion by overlooking his youth as a significant mitigating circumstance. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal 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 (Ind. 2007). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* In order for the trial court to find or identify mitigating factors, the defendant must establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)). If the trial court does not find a mitigating factor after it has been argued by

counsel, it is not obligated to provide its reasoning. *Id.* (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)).

Although a defendant's youth is a significant mitigating circumstance in some cases, *Smith v. State*, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007) (citing *Brown v. State*, 720 N.E.2d 1157, 1159 (Ind. 1999)), *trans. denied*, it is not automatically a significant mitigating circumstance. *Id.* (citing *Gross v. State*, 769 N.E.2d 1136, 1141 n.4 (Ind. 2002)). Our Supreme Court has observed, "There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful." *Id.* (quoting *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2000)). Whether a defendant's age constitutes a significant mitigating circumstance is a decision that lies within the trial court's discretion. *Id.*

Here, counsel for Clark argued that at the time of the instant offenses, Clark did not understand the significance of his actions because of his immaturity. Tr. p. 47. However, the trial court did not find Clark's youth to be a mitigating circumstance. It is clear from the trial court's review of Clark's criminal history that his youth is not significant given his criminal history:

[T]he Defendant does have prior criminal history, convicted of a gun offense in April of 2005, given an opportunity to change his behavior. He was given the opportunity and placed on probation. He was violated from probation on that offense by committing a felony offense of auto theft. He then was convicted of that auto theft in September of 2006. Despite being on probation at that time, when he committed that auto theft, he was again given the opportunity of a plea for alternative misdemeanor sentencing and given the opportunity again to be placed on probation. Then despite that opportunity, did not report to the Probation Department and more seriously committed these two offenses for which he was – for which he has pled guilty. So there were two prior opportunities for probation, this being the

Defendant's second felony conviction and he's now habitual eligible because it is his second felony conviction.

*Id.* at 52-53. Thus, the trial court did not abuse its discretion in failing to recognize Clark's age as a significant mitigating circumstance. Even if we were to conclude that the trial court improperly overlooked Clark's age as a significant mitigating circumstance, given Clark's criminal history, we are confident that the trial court would have imposed the same sentence had it found his age mitigating.

Affirmed.

KIRSCH, J., and CRONE, J., concur.