

In this consolidated appeal, Andrea Wallace challenges the aggregate ten-year sentence imposed after she pleaded guilty to false informing as a class B misdemeanor and attempted obtaining a controlled substance as a class D felony in Cause No. 48D01-0606-FD-179 (FD-179) and forgery as a class C felony and theft as a class D felony in Cause No. 48D01-0608-FC-281 (FC-281). Wallace presents two issues for review:

1. Is Wallace's aggregate ten-year sentence inappropriate?
2. Does the abstract of judgment improperly fail to set forth the trial court's recommendation that Wallace receive forensic treatment while incarcerated?

We affirm.

On June 14, 2006, Wallace called a pharmacy in Anderson, Indiana and, while posing as a representative from a local physician's office, dictated a prescription for a controlled substance. After Wallace called back thirty minutes later to check on the status of the prescription, personnel at the pharmacy became suspicious and contacted the police. When Wallace came to the pharmacy to pick up the prescription, she provided police with what was later determined to be a false name and date of birth. The police further determined that Wallace participated in the process of calling in the alleged prescription. The following day, the State charged Wallace with false informing as a class B misdemeanor and attempted obtaining a controlled substance by fraud as a class D felony under FD-179.

A few weeks later, while released on her own recognizance in FD-179, Wallace took several bank checks belonging to Mary T. Vaughn without Vaughn's permission. Then, on or between July 7 and July 11, 2006, Wallace negotiated those checks at a

Meijer store in Anderson for sums totaling \$928.50. Vaughn was “like a foster mother” to Wallace, and Wallace admitted that she violated her trust. *Transcript* at 21. On August 17, 2006, the State charged Wallace with forgery as a class C felony and theft as a class D felony under FC-281.

Pursuant to a written plea agreement, Wallace pleaded guilty as charged under both FD-179 and FC-281. In exchange for Wallace’s plea, the State agreed to not file a habitual substance offender allegation. Additionally, the plea agreement provided that sentencing was left to the trial court’s discretion, except for an eight-year cap on executed time, and that Wallace waived her *Blakely* rights. Wallace was also advised that because she committed the offenses in FC-281 while released on her own recognizance in FD-179, the sentences under the separate causes were statutorily required to be served consecutively. *See* Ind. Code Ann. § 35-50-1-2(d) (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007).

After accepting Wallace’s guilty plea, the trial court sentenced Wallace under FD-179 to the maximum terms of 180 days for false informing¹ and three years for attempted obtaining a controlled substance,² with the sentences to be served concurrently; under FC-281, the trial court sentenced Wallace to seven years, with three years suspended, for forgery³ and the maximum term of three years for theft,⁴ with the sentences to be served

¹ I.C. § 35-50-3-3 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (term of imprisonment for class B misdemeanor shall not exceed 180 days).

² I.C. § 35-50-2-7 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (maximum term of imprisonment for class D felony is three years).

³ I.C. § 35-50-2-6 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007) (the sentencing range for a class C felony is two to eight years).

concurrent to each other but consecutive to the sentence imposed in FD-179. Between the two causes, the trial court sentenced Wallace to an aggregate term of ten years with three years suspended.

In explaining the sentence imposed, the trial court identified as aggravating factors Wallace's criminal history, that Wallace had violated conditions of bond and/or probation, and Wallace's repetitive behavior. As mitigating, the court noted that Wallace pleaded guilty and expressed remorse, and also noted her mental health and medical status. The trial court further addressed Wallace as follows:

COURT: Despite the fact that you have repeatedly failed to escape this addiction and despite the fact that it's going to be my responsibility to send you off to prison, as a part of the sentence today, I have some optimism that this may be the last time we have to do this. One of the reasons for that is, we're sometimes misled by what we hear and what we see, but I think I recognize insight in the comments that you make that isn't often the case with people with addiction. One of the biggest problems that people have to overcoming their addictions is they totally lack insight into what the problems are and how to get out of the fix they're in and so forth. You have said some things that illustrate some insight. You said, "It's time for me to stop using my mental illness and my addictions as excuses for my behavior. I'm 40 some years old, I've got to move on and deal with this." You articulate very well, as an educated, as a sophisticated person, despite all these diagnosis [sic] you have, you are very good at articulating what's going on and what needs to be done. And you[r] insight is that . . . this is not about watching a couple of movies about addiction and sitting with a group for a couple of weeks. What you need is to be in a program that will change your life. And after 40 some years, that's not going to happen in a week or two, it's going to be a major change and one of the things we're going to do as part of the total sentence is recommend long-term inpatient program, the dual diagnosis program that you described. Obviously, you've got a ways to go before that, because of your history, you've got some time you're going to have to do. But, I'm very impressed with your insight and I think your insight may be the saving grace for [you] this time, so that you are able to kick this problem once and for all.

⁴ See footnote 2, *supra*.

Transcript at 33-34.

1.

Wallace first argues that the aggregate ten-year sentence is inappropriate. Pursuant to Indiana Appellate Rule 7(B), 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.” In reviewing the appropriateness of the sentence imposed, we recognize the special expertise of the trial courts in making sentencing decisions and thus, we exercise with great restraint our responsibility to review and revise sentences. *Scott v. State*, 840 N.E.2d 376 (Ind. Ct. App. 2006), *trans. denied*. We further note that on appeal, the burden is upon the defendant to persuade us that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

With respect to the nature of the offenses, we recognize, as urged by Wallace, that the offenses were non-violent in nature and did not cause physical injury to other persons. Nevertheless, we note that with regard to FC-281, the injury inflicted was a violation of a position of trust, the harm to which should not be diminished.

With respect to her character, we take note of the trial court’s comments commending Wallace for her insight into her problems and expressing hope that Wallace has finally seen the light and made the decision to change her life. We are not persuaded though that Wallace’s new-found insight into the reasons for her criminal behavior requires imposition of a lower term of imprisonment. To be sure, Wallace’s criminal

history is more telling of her character. As acknowledged by Wallace, she has an extensive criminal history, most of which is directly and indirectly related to substance abuse and/or mental health problems. Specifically, Wallace has accumulated felony convictions for dealing in a controlled substance, possession of cocaine, and aiding, inducing, or causing obtaining a controlled substance by fraud. Wallace also has misdemeanor convictions for possession of marijuana, public intoxication (on at least two separate occasions), operating while intoxicated, and resisting law enforcement. Her repeated encounters with the criminal justice system, however, have not abated her conduct.

Further, we note that Wallace has been afforded numerous opportunities through the imposition of lesser remedial measures that have ultimately proved unsuccessful in deterring her behavior. Wallace has received suspended sentences with probation, which was in turn revoked numerous times for various violations of probation. Wallace has also been ordered to seek treatment, which proved unsuccessful. Additionally, in-home detention privileges were terminated after Wallace was found consuming alcohol and charged with public intoxication. In light of Wallace's criminal history and what it reveals about her character, we cannot say that Wallace is deserving of a lesser sentence.

That Wallace pleaded guilty does not change our analysis. It is well established that a defendant who pleads guilty deserves to have some mitigating weight extended to the guilty plea in return. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005). While a trial court should make some acknowledgment of a guilty plea when sentencing a defendant, the extent to which a guilty plea is mitigating will vary from case to case. *See Hope v.*

State, 834 N.E.2d 713 (Ind. Ct. App. 2005). As has been frequently observed, “a plea is not necessarily a significant mitigating factor.” *Cotto v. State*, 829 N.E.2d at 525; *see also Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (“a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one”), *trans. denied*.

Here, as acknowledged by the trial court, Wallace clearly received a substantial benefit in return for her guilty plea. Not only was her aggregate executed sentence capped at eight years,⁵ but the State also agreed not to file a habitual substance offender allegation against her. Under these circumstances, while the guilty plea constituted a mitigating circumstance, as found by the trial court, it was not entitled to great weight.⁶ In summary, we cannot say that the aggregate ten-year sentence, with seven years executed and three years suspended, was inappropriate.

2.

Wallace argues that the abstracts of judgment for both FD-179 and FC-281 are deficient in that they do not set forth the trial court’s recommendation to the Department of Correction that Wallace be placed in a forensic unit where Wallace could receive

⁵ Because the sentences in the two causes were statutorily required to be served consecutively, Wallace was facing a potential sentence of eleven years or more.

⁶ We further note that during the sentencing hearing, Wallace indicated that she felt that the eight-year cap on executed time provided for in her plea agreement was a “fair” sentence for the crimes she committed. *Transcript* at 23. Here, although the trial court sentenced Wallace to ten years, only seven years were ordered executed. Thus, Wallace received an executed sentence that was less than the maximum for which she bargained.

treatment or other rehabilitative services. Wallace requests that we remand to the trial court with orders to amend the abstracts to include such recommendation.

We first note that Wallace cites no authority for the proposition that a trial court is required to include a specific recommendation in the judgment of conviction or on the abstract of judgment. Indeed, Indiana Code Ann. § 35-38-3-2 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007), which sets forth the requirements for a judgment of conviction, does not require a trial court to make recommendations regarding placement in the Department of Correction.⁷ In any event, it is clear that the trial court can only recommend a particular placement or treatment program because the Department of Correction is provided with the authority to determine the proper placement of a convicted person. *See* I.C. § 35-38-3-5 (West, PREMISE through 2007 Public Laws approved and effective through April 8, 2007). Thus, Wallace's claim of error with regard to the abstract of judgment must be considered harmless.

We further note that our Supreme Court has declared that it is the trial court's judgment of conviction imposing the sentence, not the abstract of judgment, that is the official trial court record and the controlling authority. *See Robinson v. State*, 805 N.E.2d 783 (Ind. 2004). The abstract of judgment is simply a form used by the Department of Correction. Thus, no effective relief can be obtained by ordering the trial court to correct

⁷ The statute provides that the court “*may* specify the degree of security recommended by the court.” I.C. § 35-38-3-2(c) (emphasis supplied).

the abstract of judgment to reflect its recommendation to the Department of Correction as to Wallace's placement.

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.