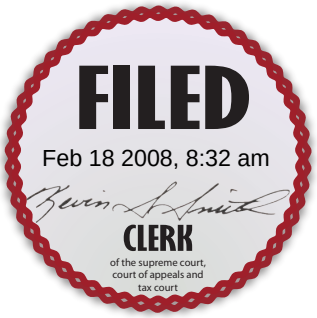

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IN THE COURT OF APPEALS OF INDIANA

AMBER E. LAYNE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0710-CR-869
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0509-FD-424
Cause No. 48D03-0703-FD-00074

February 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Amber Layne appeals the three-year sentence that was imposed following her conviction for Receiving Stolen Property,[1] a class D felony. Specifically, Lane argues that the trial erroneously court failed to find that her limited criminal history and her guilty plea were significant mitigating circumstances. Layne also maintains that her sentence is inappropriate in light of the nature of the offense and her character because the trial court should have concluded that she would respond favorably to an alternative to incarceration. Moreover, Layne claims that she was denied equal protection of the law because women—unlike men—cannot serve their sentence on work release in Madison County. Finding no error, we affirm the judgment of the trial court.

FACTS

On September 9, 2005, Layne was charged with public intoxication and possession of a controlled substance (collectively referred to as the FD-424 charges). On March 27, 2006, Layne pleaded guilty to both offenses. The trial court took the matter under advisement and referred Layne to the Madison County Drug Court program. Thereafter, on April 20, 2006, the trial court was informed that Layne had failed to comply with the drug court's rules. As a result, a warrant was issued for Layne's arrest. On November 2, 2006, the trial court ordered Layne to complete a drug treatment program at Richmond State Hospital (the Hospital). However, the Hospital subsequently informed the trial court that Layne had not complied with its order.

On January 17, 2007, the trial court sentenced Layne on the FD-424 charges. Specifically, Layne was sentenced to thirty months of incarceration with twelve months

[1] Ind. Code § 35-43-4-2(b).

executed on the controlled substance count. Layne was also sentenced to 180 days for public intoxication, which was ordered to run concurrently with the controlled substance count. The trial court also ordered Layne to probation for eighteen months.

In March 2007, Patty Ellis's home in Anderson was burglarized and several items, including jewelry, were stolen. At some point, the Anderson police obtained a search warrant for the house next door where Curtis Crawford and Layne lived. Many of the items that had been stolen from Ellis's home were found in Layne's residence. In fact, Layne was wearing some of the stolen jewelry. Layne admitted to police that she knew the jewelry was stolen and that she had assisted Crawford in determining which items she should keep.

On March 30, 2007, the State charged Layne with receiving stolen property, a class D felony, and disorderly conduct, a class B misdemeanor (collectively referred to as the FD-74 charges). Five days later, the probation department filed a notice of violation of probation with regard to the FD-424 charges. On April 30, 2007, Layne entered into a plea agreement, which provided that she would admit the probation violation on the FD-424 charges and plead guilty to receiving stolen property under FD-74. It was also agreed that Layne's executed sentence under each cause number would be capped at eighteen months.

At a sentencing hearing that was conducted on May 21, 2007, the trial court ordered Layne to serve the previously suspended sentence on the FD-424 charges for the probation violation. Layne was then sentenced to three years with eighteen months suspended and eighteen months of probation on the FD-74 charge. The trial court ordered this sentence to run consecutively to the FD-424 sentence. The trial court's order also provided that Layne

could serve her sentence on the FD-74 charge on work release if she obtained her GED. Layne now appeals.

DISCUSSION AND DECISION

I. Mitigating Circumstances

Layne first contends that her sentence must be set aside because the trial court did not identify her decision to plead guilty to receiving stolen property as a mitigating factor. Moreover, Layne asserts that the trial court should have considered her "limited criminal history" as a mitigating circumstance. Appellant's Br. p. 15.

We initially observe that sentencing decisions are within the sound discretion of the trial court. Jones v. State, 790 N.E.2d 536, 539 (Ind. Ct. App. 2003). It is within the trial court's discretion to determine the existence of a significant mitigating circumstance. Creager v. State, 737 N.E.2d 771, 782 (Ind. Ct. App. 2000). An allegation that the trial court failed to identify a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer v. State, 868 N.E.2d 482, 493 (Ind. 2007). In other words, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000). However, when a trial court fails to find a mitigator that is clearly supported by the record, a reasonable belief arises that the trial court improperly overlooked this factor. Banks v. State, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), trans. denied.

Our Supreme Court has determined that a guilty plea demonstrates acceptance of responsibility for a crime and must be considered a mitigating factor. Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995). However, a plea bargain does not constitute a substantial mitigating factor when the defendant has already received a significant benefit from the plea agreement. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). Moreover, a guilty plea may not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plea guilty is merely a pragmatic one. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005).

In this case, the evidence showed that the State dismissed Layne's disorderly conduct charge and capped the executed portion of her sentence at eighteen months on the receiving stolen property charge. Although Layne received the advisory sentence for this offense, she could have received up to three years. Ind. Code § 35-50-2-7. Moreover, Layne could have been sentenced to a maximum term of 180 days on the disorderly conduct charge had that offense not been dismissed. I.C. § 35-50-3-3. Thus, it is apparent that Layne received significant benefits from her guilty plea. Moreover, as discussed above, Layne was apprehended wearing some of the victim's stolen jewelry, and she made incriminating statements to the police officers. Tr. p. 41-42. As a result, it was reasonable for the trial court to conclude that Layne's decision to plead guilty was merely a pragmatic one. For these reasons, we conclude that the trial court did not abuse its discretion when it did not identify Layne's guilty plea as a significant mitigating factor.

With regard to Layne's "limited" criminal history, we note that a trial court is under no obligation to afford mitigating weight to a defendant's prior criminal actions. Robinson v. State, 775 N.E.2d 316, 321 (Ind. 2002). The record shows that Layne has prior juvenile adjudications for theft, criminal mischief, and battery. Appellant's App. 23-24. Layne had also recently been convicted of the FD-424 offenses. In short, Layne's claim that the trial court should have considered her limited criminal activity as a mitigating factor fails. Robinson, 775 N.E.2d at 321.

II. Appropriateness

Layne argues that her sentence is inappropriate in light of the nature of the offenses and her character because the trial court should have considered alternatives to incarceration such as probation or work release. Layne also claims that she was denied "equal protection . . . because Madison County does not have a work release facility for women." Appellant's Br. p. 16.

Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence 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." We defer to the trial court during appropriateness review, and we refrain from merely substituting our judgment for that of the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that the sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

We note that the location where a sentence is to be served is an appropriate focus for sentence review. Biddinger v. State, 868 N.E.2d 407, 414 (Ind. 2007). Nonetheless, it will be quite difficult for a defendant to prevail on a claim that the placement of his or her sentence is inappropriate. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). Consideration of alternatives to incarceration is a "matter of grace" left to the trial court's discretion. Wolf v. State, 793 N.E.2d 328, 330 (Ind. Ct. App. 2003). Finally, "the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate." Id. at 344 (emphasis in original).

In this case, the record does not reflect that Layne would respond favorably to probation, short term imprisonment, or an alternative to incarceration. As the trial court observed, Layne was referred to drug court after her first class D felony conviction, but she was "unable to complete" that program. Tr. p. 54. Thereafter, Layne was sent to the Hospital, and she failed to complete that drug treatment program. Id. Moreover, Layne violated her probation in another case in 2003, and she again violated her probation by committing the instant offense. As a result, Layne has failed to establish that the trial court's decision to order a term of incarceration was inappropriate.

In a related issue, Layne claims that her sentence was inappropriate because she was denied equal protection of the laws. In essence, Layne asserts that women, unlike men, are not permitted to serve a sentence in a work release facility in Madison County. Appellant's

Br. p. 16. Notwithstanding this contention, the trial court's sentencing order specifically provides that Layne may serve her sentence on work release if she completes her GED. Appellant's App. p. 59. As a result, Layne's claim fails.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.