ATTORNEY FOR APPELLANT:

LARRY DON GALLAWAY
Marion, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

BENNIE A. WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A02-0704-CR-344
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey Todd, Judge
Cause No. 27D01-0611-FB-230

December 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Bennie A. Williams appeals his sentence following his guilty plea to battery[1] as a Class C felony, strangulation[2] as a Class D felony, and intimidation[3] as a Class A misdemeanor. On appeal, he raises two issues, which we restate as:

I. Whether the trial court abused its sentencing discretion; and

II. Whether his sentence was inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

Williams pled guilty to battery resulting in serious bodily injury, strangulation, and intimidation. The trial court found that Williams's extensive and violent criminal history was an aggravating factor that strongly outweighed his remorse as a mitigating factor. The trial court sentenced Williams to eight years, two suspended, with two years probation for the battery, three years for the strangulation, and one year for the intimidation with all terms of imprisonment running concurrently. Williams now appeals.

DISCUSSION AND DECISION

A sentencing decision is within the sound discretion of the trial court. *Edwards v. State*, 842 N.E.2d 849, 854 (Ind. Ct. App. 2006), *trans. denied* (citing *Jones v. State*, 790 N.E.2d 536, 539 (Ind. Ct. App. 2003)). Whenever a sentencing range is available to a trial court, this court may review the trial court's exercise of its discretion. *Childress v. State*, 848 N.E.2d 1073, 1078 (Ind. Ct. App. 2006).

---

[1] *See* IC 35-45-2-1.

[2] *See* IC 35-42-2-9.

[3] *See* IC 35-42-2-1.

Our Supreme Court detailed how appellate courts should review sentencing:

> 1. The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.
>
> 2. The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.
>
> 3. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse.
>
> 4. Appellate review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B).

Anglemyer v. State, 868 N.E.2d 482, 491 (2007), *reh'g granted on other grounds*. We, thus, review accordingly.

I. Mitigating Factors

Williams contends first that the trial court abused its discretion in failing to acknowledge his guilty plea as a mitigating factor. Our Supreme Court ruled on rehearing in *Anglemyer v. State*, 875 N.E.2d 218, 220-221 (Ind. 2007), that a defendant may raise the issue of his guilty plea as a mitigating factor for the first time on appeal, which Williams does here. However, the trial court does not necessarily abuse its discretion for failing to list it as a mitigating factor. *Id.* at 221. Instead, the mitigating factor must be significant and supported by the record, and its significance "varies from case to case." *Id.* at 221. For example, a guilty plea is not significant when the defendant receives a substantial benefit from it and there is considerable evidence of guilt. *Id.*

In this case, Williams was charged with three felonies and a misdemeanor. Under the terms of the plea agreement, the State dropped his most serious offense – criminal confinement as a Class B felony, which reduced his maximum possible sentence by

twenty years. Further, there was direct evidence to support Williams's guilt. Williams received a significant benefit from his guilty plea, and the trial court was within its discretion to not list it as a mitigating factor.

Also, Williams argues that the trial court abused its discretion in failing to acknowledge as a mitigating factor the hardship the victim stated his incarceration would create. Williams contends that he and I.R. had been in a relationship since his release from prison in 2000. Until February of this year, I.R. lived in Chicago with her daughter. Since February, I.R. moved to Marion to live with Williams, and Williams supported I.R. through odd jobs, made sure she took her medication, and served as a father figure to her children and grandfather figure to her grandchildren.

Under our standard of review, this court must determine that Williams's incarceration will create an undue hardship to I.R. and her family so great that the trial court's failure to include it as a mitigating factor was against the logic and effect of the facts and circumstances. *Rose v. State*, 810 N.E.2d 361, 365 (Ind. Ct. App. 2004). In *Abel v. State*, 773 N.E.2d 276, 280 (Ind. 2002), our Supreme Court found that the defendant was not entitled to mitigating weight for the hardship to his dependent because the defendant's sentence enhancement for his murder conviction was not going to create a hardship greater than the presumptive sentence. Similarly in *Gray v. State*, 790 N.E.2d 174, 178 (Ind. Ct. App. 2003), this court held that the defendant was not entitled to mitigating weight in part because even the minimum sentence would financially affect the defendant's daughter.

Here, Williams, with good time, will serve three years of incarceration. For the seventeen years prior to meeting I.R., Williams was imprisoned in the Illinois Department of Correction, and, at the end of that term, I.R. lived with her daughter. Williams and I.R. were never married. And, most significant, Williams was incarcerated for beating, choking, and threatening I.R. The trial court was within its discretion when it did not determine that his incarceration would create an undue hardship to a dependent.

II. 7(B) Review

Williams contends that his six-year executed sentence and two years of probation was inappropriate based on his character and the nature of the offense. If the sentence imposed is lawful, this court will not reverse unless the sentence is inappropriate based on the character of the offender and the nature of the offense. Ind. Appellate Rule 7(B); *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003). We, therefore, analyze Williams's character and the nature of the offense.

Williams's character is reflected in his criminal history. While Williams expressed remorse for his actions, Williams has been convicted and incarcerated for robbery, possession of a controlled substance, criminal trespass, a probation violation, and murder. Although, Williams originally received the death penalty for his murder conviction, it was later modified to thirty-three years executed, and he was released in 2000.

The nature of the offense is equally troubling. Williams brutalized I.R., injured her, and threatened to kill her. We find that the trial court's imposition of a six-year

executed sentence for a convicted murder's beating, strangling, and threatening of his significant other was not inappropriate.

Affirmed.

RILEY, J., and MAY, J., concur.