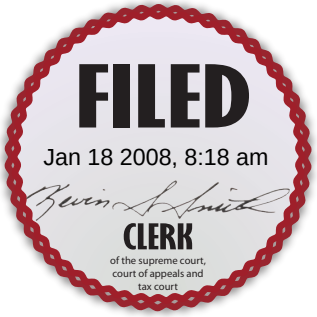

ATTORNEY FOR APPELLANT:

MARIELENA LINDKE
South Bend, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

JAMES R. BULLOCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0707-CR-310
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0008-CF-00069

January 18, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

In this belated appeal, James R. Bullock appeals his sentence for burglary as a Class B felony. Specifically, Bullock contends that *Blakely v. Washington*, 542 U.S. 296 (2004), retroactively applies to him, that his sentence is inappropriate, and that the trial court erred in calculating his credit time. Concluding that *Blakely* does not apply to Bullock, that his sentence is appropriate in light of his criminal history, and that the trial court properly calculated his credit time, we affirm the trial court.

Facts and Procedural History

On August 31, 2000, the State charged Bullock with two counts of burglary as a Class B felony. On October 19, the State and Bullock entered into a plea agreement whereby Bullock pled guilty to one count of burglary as a Class B felony and agreed to pay "any and all restitution due and owing on all matters charged and uncharged, burglaries, forgeries, receiving stolen properties, and theft cases," and the State agreed to dismiss the other count of burglary, dismiss three other cases pending against him, and "file no additional matters against [him]." Appellant's App. p. 14. Sentencing was left to the trial court.

The trial court held a sentencing hearing on December 14, 2000. At the conclusion of this hearing, the trial court identified the following aggravators: (1) Bullock has three prior felony convictions and admitted that he is unable to be rehabilitated by the penal system, (2) Bullock has used marijuana since he was six years old without seeking treatment, (3) Bullock has "a multitude" of cases pending in Elkhart County and has committed approximately twenty burglaries in Elkhart County, (4) a less

than maximum sentence would depreciate the seriousness of an offense such as this, (5) Bullock involved his children in his crimes by having them wear jewelry he had stolen and may have threatened to kill his wife to keep her from talking to the police, (6) Bullock committed this offense while on parole, and (7) Bullock took advantage of a relationship of trust by burglarizing the home of an individual known to him. *Id.* at 17-18; *see also* Sent. Tr. p. 16. The court identified the following mitigators: (1) Bullock's addiction problems and (2) his willingness to accept responsibility for his actions. Finding that the aggravators substantially outweighed the mitigators, the trial court sentenced Bullock to eighteen years.[1] The court gave Bullock "88 days credit towards the sentence of imprisonment for time spent in confinement as a result of his charge." Appellant's App. p. 18. Bullock immediately requested recalculation of his credit time, and the trial court referred the matter to the probation department for recalculation. On January 12, 2001, the trial court received a memo from the probation department confirming that Bullock had credit time of eighty-eight days. Accordingly, the court declined to modify his credit time.

From 2001 to 2006, Bullock filed numerous *pro se* motions asking the trial court to modify his credit time, all of which the court denied. On May 30, 2007, Bullock filed a Petition for Leave to File Belated Notice of Appeal pursuant to Post-Conviction Rule 2, which the trial court granted, and this belated appeal now ensues.

Discussion and Decision

[1] Bullock committed this offense in 2000, which was before the Indiana General Assembly replaced the presumptive sentencing scheme with the advisory sentencing scheme. *See* P.L. 71-2005 (eff. Apr. 25, 2005).

Bullock raises three issues on appeal. First, he contends that *Blakely* retroactively applies to him. Second, he contends that his sentence is inappropriate. Last, he contends that the trial court erred in calculating his credit time. We address each issue in turn.

I. *Blakely*

First, Bullock argues that his filing of a belated appeal "should allow for the retroactive application of *Blakely* protections." Appellant's Br. p. 2. The Indiana Supreme Court recently resolved this very issue in *Gutermuth v. State*, 868 N.E.2d 427 (Ind. 2007). In *Gutermuth*, our Supreme Court held that "belated appeals of sentences entered before *Blakely v. Washington*, 542 U.S. 296, 124 S. Ct. 2531, 159 L.Ed.2d 403 (2004)[,] are not subject to the holding in that case." *Id.* at 428; *see also id.* at 435 ("In sum, we conclude that *Blakely* is not retroactive for Post-Conviction Rule 2 belated appeals because such appeals are neither 'pending on direct review' nor 'not yet final' under *Griffith*."). Because Bullock's appeal was neither pending on direct review nor not yet final at the time *Blakely* was decided in 2004, *Blakely* does not apply to Bullock.

II. Inappropriate Sentence and Mitigators

Next, Bullock contends that his eighteen-year sentence is "inappropriate based on the nature of the offense and the character of the offender." Appellant's Br. p. 4. Indiana Appellate Rule 7(B) provides: "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v.*

State, 848 N.E.2d 1073, 1080 (Ind. 2006). After due consideration of the trial court's decision, we cannot say that Bullock's sentence is inappropriate.

As for the nature of the offense, Bullock—who was under the influence of drugs—broke into the Elkhart County home of Brenda Beckwith while she was gone and took jewelry, a shotgun, a television, and a VCR. There is nothing particularly egregious about the nature of the offense. Bullock's character, however, is a different story. The record shows that at the time of the burglary in this case, Bullock was on parole in Texas for a thirty-year sentence for burglary of a habitation and on probation in Indiana for OWI and domestic battery. In addition, Bullock had other convictions in Texas and had ten charges in Elkhart County pending against him. Bullock, who was thirty-one years old at the time of sentencing, started using marijuana when he was six years old, had previously used cocaine, and was currently using crack cocaine. Bullock agreed that the penal system would not be able to rehabilitate him and admitted to committing "[a]t least twenty" burglaries in Elkhart County. Sent. Tr. p. 15. Near the end of the sentencing hearing, Bullock himself told the trial court, "If you gave me the whole twenty years, if you gave me a life sentence, I deserve it." *Id.* at 16. Bullock's eighteen-year sentence is not inappropriate.

To the extent that Bullock makes a separate argument that the trial court erred by not giving more mitigating weight to his acceptance of responsibility and drug addiction and by refusing to recognize his remorse as a mitigator, we note that the trial court need not accept a defendant's argument as to what constitutes a mitigating circumstance, nor is the court required to give the same weight to proffered mitigating factors as the defendant

does. *Gross v. State*, 769 N.E.2d 1136, 1140 (Ind. 2002). As for Bullock's acceptance of responsibility, "[w]here the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned." *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). However, "when a defendant has already received a benefit in exchange for the guilty plea, the weight of a defendant's guilty plea is reduced." *Roney v. State*, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007) (citing *Sensback*, 720 N.E.2d at 1165), *trans. denied*; *see also McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007). Here, in exchange for Bullock's plea of guilty to one count of burglary, the State agreed to dismiss the other count of burglary, dismiss three other cases pending against him, and not file any additional charges against him. Although Bullock claims his acceptance of responsibility extended past his plea of guilty and included things such as writing apology letters to the victims, it is apparent that Bullock received a substantial benefit. We find no error in the trial court's weighing of Bullock's acceptance of responsibility.

As for Bullock's addiction problems, the trial court remarked at the sentencing hearing, "Clearly, your drug problem, your addictions, are a mitigating circumstance." Sent. Tr. p. 13. And as part of his sentence, the court ordered him to "submit to addictions treatment while incarcerated." Appellant's App. p. 18. However, the trial court also identified as an aggravator that Bullock has used marijuana since he was six years old without seeking treatment. Nevertheless, on appeal, Bullock does not explain the nexus between his drug problems and this offense and why his addiction problems should even be mitigating, especially considering Bullock's own statement that he has

never received addictions counseling. The trial court did not err in failing to accord more mitigating weight to Bullock's addiction problems.

As for the trial court's failure to identify Bullock's remorse as a mitigator, Bullock testified in part at the sentencing hearing: "I feel bad for what I did. It was a [sic] straight-up stupid." Sent. Tr. p. 11. The Indiana Supreme Court has stated that the trial court's determination regarding remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). In the absence of evidence of some impermissible consideration by the trial court, we accept its determination of credibility. *Id.* We find no impermissible considerations here and, therefore, no error in failing to consider this mitigator.

III. Credit Time

Last, Bullock contends that the trial court erred in calculating his credit time to be eighty-eight days. In calculating Bullock's credit time, the trial court counted from the day the bench warrant was served on Bullock, August 31, 2000, to the date of his sentencing, December 14, 2000. After referring the matter to the probation department for recalculation, it, too, came up with eighty-eight days. Nevertheless, Bullock asserts that he is entitled to an additional eighteen days of credit time.

Indiana Code § 35-50-6-3(a) provides that a person assigned to Class I "earns one (1) day of credit time for each day he is imprisoned for a crime or confined awaiting trial or sentencing." Determination of a defendant's pretrial credit is dependent upon (1) pretrial confinement and (2) the pretrial confinement being a result of the criminal charge

for which sentence is being imposed. *Stephens v. State*, 735 N.E.2d 278, 284 (Ind. Ct. App. 2000), *trans. denied*.

The record shows that the charging information in this case was filed on August 31, 2000, and a bench warrant was issued on that same date. Later on August 31, an initial hearing was held, at which Bullock was present "in person" and a public defender was appointed. Appellant's App. p. 13. However, the bench warrant was not served on Bullock until September 18. *Id.* at 4. Although it is unclear from the record before us on appeal, it appears that Bullock was already in custody on other matters at the time the charging information in this case was filed on August 31. As such, Bullock argues:

> To not allow for the credit time for the additional eighteen days from the date of the filing of the information and initial hearing on his matter (plus the eighteen days good time credit) appears to be inappropriate. As all other cases were disposed of by the plea in this matter, the jail time credit accumulated should have been applied to his sentence in the case in question.

Appellant's Br. p. 7. In essence, Bullock asserts that because the charges he was incarcerated on at the time the charging information was filed in this case were eventually disposed of by the plea agreement in this case, he is entitled to credit time for the days he served on those charges, that is, from August 31 to September 18. However, Bullock cites no authority in support of this proposition. Because the record is clear that the bench warrant for the burglary charge in this case was not served on Bullock until September 18, 2000, any days he was incarcerated before September 18 do not count toward his credit time in this case because those days were not the result of the charge for which the sentence was imposed.

Affirmed.

SHAPRNACK, J., and BARNES, J., concur.