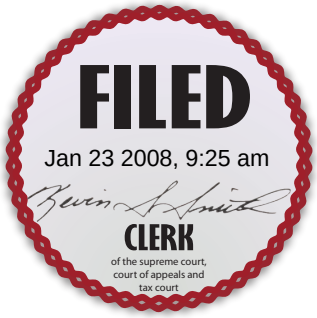

ATTORNEY FOR APPELLANT:

BRUCE W. GRAHAM
Graham Law Firm P.C.
Lafayette, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

J.T. WHITEHEAD
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

WILLIAM HEARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0710-CR-847
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0612-FC-115

January 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant William Heard ("Heard") appeals the aggregate ten-year sentence imposed following his pleas of guilty to four counts of Fraud, Class D felonies.[1] We revise and remand to the trial court to enter a sentence of an aggregate term of six years, with four years executed.

Issues

Heard presents two issues for review:

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

II. Whether the sentence is inappropriate.

Facts and Procedural History

On September 10, 2006, Heard took possession of a credit card that David Opey had left behind at Cajun Connection, Heard's place of employment. Heard used the credit card to make a $21.00 purchase of alcohol from Zulegger's Nightclub. On the following day, Heard used Opey's credit card to purchase $105.23 in goods from K-Mart.

On October 18, 2006, Heard purchased a pizza with a credit card that he had taken from his roommate Debra White without her permission. On the following day, again without permission, Heard used the same credit card to obtain a phone card at Vesta Cingular.

On December 5, 2006, the State filed a nineteen-count information against Heard, alleging that Heard committed the foregoing four offenses and other unrelated offenses. On May 11, 2007, the trial court accepted a plea agreement between Heard and the State. Heard

pleaded guilty to the four counts of Fraud involving Oprey's and White's cards, and the State moved to dismiss the remaining charges. Sentencing was left to the discretion of the trial court.

On June 8, 2007, the trial court sentenced Heard to consecutive sentences of three years each on two counts of Fraud, and two years each on the other two counts of Fraud, providing for an aggregate sentence of ten years. Three years were suspended to probation, and seven years were to be executed. Heard was ordered to pay restitution in the amount of $378.00. He now appeals.

Discussion and Decision

I. Abuse of Discretion in Sentencing Statement

Heard contends that the trial court abused its discretion by failing to enter a properly detailed sentencing statement and that the sentencing statement omitted mitigating factors submitted for the trial court's consideration.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d at 218 (Ind. 2007), our Supreme Court determined that trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Id. If the recitation includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. So long as it is within the statutory range, a sentencing decision is subject

[1] Ind. Code § 35-43-5-4.

to review on appeal for an abuse of discretion. Id. One way in which a trial court may abuse its discretion is to fail to enter a sentencing statement at all. Id. Another is to enter a sentencing statement that explains reasons for imposing a sentence and the record does not support the reasons, the statement omits reasons clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

Here, the Sentencing Order provided in relevant part:

> The Court finds the following aggravating factors: The defendant's lengthy criminal history which includes a pattern of dishonesty. Prior attempts at rehabilitation have been made without success.
>
> The Court finds the following mitigating factors: That the report filed by Dr. Wendt informs the Court that defendant is an alcoholic.

(App. 13.) Accordingly, the trial court did not fail to enter a sentencing statement or fail to explain reasons for the sentence imposed. Moreover, the sentencing record supports the factors identified by the trial court.

Heard essentially complains that the trial court should have recognized additional mitigators, specifically his college attendance, the lack of serious harm to the victims, and his "low risk" status. Appellant's Brief at 9. However, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. Id. The sentencing transcript indicates that Heard attended college, but flunked out. Moreover, he cannot prevail upon his bald assertion that his victims were not seriously

harmed, and his assertion that he is a low-risk offender is clearly contradicted by his recidivism. Heard has failed to demonstrate that the trial court abused its discretion by omitting certain mitigating factors advanced by him.

II. Appropriateness of the Ten-Year Aggregate Sentence

Indiana Code Section 35-50-2-7 provides in relevant part: "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years." Heard received two maximum sentences and two sentences of six months above the advisory term, each consecutive to the other. As such, Heard received an aggregate sentence near the statutory maximum.

Heard requests that we reduce his aggregate sentence in accordance with Indiana Appellate Rule 7(B), which provides that 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 particular, Heard emphasizes that his offenses involved very small amounts of money and his judgment was clouded by his alcoholism.

The character of the offender is such that he had failed to benefit from prior rehabilitative efforts. He had a history of multiple property offenses commencing in 1996, when he was eighteen years old. He had also been convicted of Resisting Law Enforcement and Battery. His probation was thrice revoked. Although Heard suffered from alcoholism, he failed to avail himself of substance abuse treatment.

The nature of the offenses is that they involved very small amounts of money. However, there were multiple victims. Our Supreme Court has observed, "consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person." Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003).

In sum, the character of the offender does not suggest that leniency is appropriate while the nature of the offenses militates toward leniency. In light of the fact that there were two victims, an order for consecutive sentences to vindicate the separate harm to each victim is appropriate. Accordingly, we revise the sentence and direct the trial court to enter an order providing that the two terms of two years will be served concurrent with the two three-year terms, which shall remain consecutive. Heard's aggregate sentence will be six years, with four years executed and two years suspended to probation.

Conclusion

Heard has not demonstrated that the trial court abused its discretion in compiling its statement of reasons supporting the sentence imposed. However, our independent review of the nature of the offenses and the character of the offender has led to a revision of Heard's aggregate sentence to six years, with two years suspended to probation.

Revised and remanded.

NAJAM, J., and CRONE, J., concur.