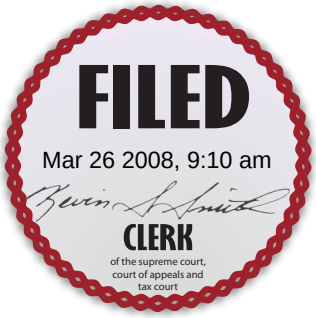

ATTORNEY FOR APPELLANT:

T. EDWARD PAGE
Cohen & Thiros, PC
Merrillville, 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

ROBERT DESHAWN McCOLLUM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0708-CR-395
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Clarence D. Murray, Judge
The Honorable Charles Graddick, Judge Pro Tempore
Cause No. 45G02-0603-FB-32

March 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Robert D. McCollum appeals the sentence imposed following his plea of guilty to two counts of class B felony robbery.[1]

We affirm.

ISSUE

Whether the trial court abused its discretion in ordering that McCollum's concurrent ten-year sentences be served consecutively to a forty-year sentence previously imposed upon him in the State of Illinois.

FACTS

On March 6, 2006, McCollum and Corey Shaw entered the GameStop store in Dyer. While pointing a gun at the two employees, McCollum demanded money and two video games, which the employees gave to him.

On March 14, 2006, the State charged McCollum with two counts of class B felony robbery and two counts of class B felony confinement. On the same day, the trial court issued an arrest warrant for McCollum.

In January of 2007, an Illinois court sentenced McCollum to forty years for murder. In March of 2007, the State of Illinois extradited McCollum to Indiana, which agreed to return McCollum to Illinois immediately after trial.

On June 13, 2007, McCollum and the State entered into a plea agreement. Pursuant to the plea agreement, McCollum agreed to plead guilty to two counts of class B

[1] Ind. Code § 35-42-5-1.

felony robbery, in exchange for which the State agreed to dismiss both counts of class B felony confinement. In addition, the parties agreed to the following:

> The parties agree that the defendant will be sentenced to ten (10) years in the Department of Corrections [sic] on Count I and ten (10) years in the Department of Corrections [sic] on Count II; the parties agree that the sentences for Count I and Count II will be served concurrently to one another. Additionally, the parties agree that both sides are free to argue whether the sentences imposed on Count I and Count II will be served consecutively or concurrently to the sentence the defendant is currently serving in Illinois.

(App. 31).

On July 16, 2007, the trial court sentenced McCollum to two concurrent ten-year sentences. The trial court further ordered the sentences be served consecutively to the forty-year sentence imposed in Illinois. On July 26, 2007, the trial court ordered that McCollum be transported back to Illinois.

DECISION

McCollum asserts that the trial court abused its discretion in ordering his concurrent ten-year sentences be served consecutively to his forty-year sentence. Specifically, McCollum contends that the trial court failed to adequately explain its reasons for imposing consecutive sentences.

Indiana Code section 35-50-1-2 provides, in relevant part, as follows:

> [T]he court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:
>
> (1) aggravating circumstances in IC 35-38-1-7.1(a); and
> (2) mitigating circumstances in IC 35-38-1-7.1(b);

> in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time.

Generally, whether to impose consecutive sentences is within the discretion of the trial court. *Creekmore v. State*, 853 N.E.2d 523, 529 (Ind. Ct. App. 2006), *clarified on reh'g*, 858 N.E.2d 230 (Ind. Ct. App. 2006). When imposing a consecutive sentence, the trial court must find at least one aggravating circumstance. *Plummer v. State*, 851 N.E.2d 387, 390 (Ind. Ct. App. 2006).

> Moreover, if a trial court imposes consecutive sentences when not required to do so by statute, the trial court must explain its reasons for selecting the sentence imposed, including: (1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence.

Id.

In this case, the trial court did find McCollum's guilty plea and the unlikely reoccurrence of a crime—due to McCollum's lengthy incarceration—to be mitigating circumstances. After reviewing the presentence investigation report, the trial court found that McCollum had "considerable contact with the law, however only one conviction."[2] (App. 75). The trial court, however, did not specifically identify McCollum's criminal history as an aggravating circumstance.[3]

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[2] We note that McCollum had two convictions, one for possession of marijuana in Illinois and one for murder. Presumably, the trial court was referring to McCollum's murder conviction.

[3] The trial court made the following statement:

Although the trial court failed to adequately explain its basis for consecutive sentencing, we find no abuse of discretion because defendants "are not entitled to credit on an Indiana sentence while incarcerated in another state." *Penick v. State*, 659 N.E.2d 484, 489 (Ind. 1995). Furthermore, "[s]entences to penal institutions of different jurisdictions are cumulative and not concurrent." *Carrion v. State*, 619 N.E.2d 972, 974 (Ind. Ct. App. 1993), *trans. denied*. We therefore find that the trial court properly ordered the sentences imposed in the present case to run consecutive to the sentence imposed in Illinois.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.

> I've had an opportunity to review the presentence investigation report . . . . Let the record show that the defendant is twenty-two years of age, has considerable contact with the law, however, only one conviction.
>
> The Court is going to accept the plea agreement and sentences the defendant as follows: The defendant is sentenced to a term of ten years on Counts I and II, which term is to be served concurrently. The Court is not of the opinion that this time would be appropriate to set these matters consecutively—oh, I'm sorry, concurrently, that they should be served consecutively to the Illinois conviction. Based upon the fact that the mitigators are . . . that the defendant has plead guilty to this charge and I agree with counsel this is an offense not likely to reoccur because, as this Court sees it, he not only will be sixty-two, he'll be sixty-seven when he's completed with his service of time. The Court orders that the time be served consecutive to the Illinois sentence.

(App. 74-75).