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IN THE
COURT OF APPEALS OF INDIANA

KEVIN INGRAM,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0801-CR-59
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Amy Barbar, Magistrate
Cause No. 49G22-0707-FB-132126

August 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After being charged with ten counts of criminal conduct, Kevin Ingram pled guilty to robbery as a Class B felony and resisting law enforcement as a Class D felony, and the trial court imposed an aggregate sentence of twelve years with four years suspended. Ingram now appeals his sentence, arguing that the trial court abused its discretion by failing to identify several mitigators and that the trial court's imposition of the maximum executed sentence under the plea agreement for his robbery conviction is inappropriate. Concluding that the trial court did not abuse its discretion in sentencing Ingram and that Ingram's eight-year executed sentence is not inappropriate, we affirm.

Facts and Procedural History

On July 5, 2007, Ingram and Calvin Lewis approached Donna Saylor as she returned to her home at Woodruff Place in Indianapolis. Ingram—who was seventeen years old and had just been released from the Indiana Boys School one month before—pulled out a handgun, placed it against Saylor's head, and demanded money. Ingram and Lewis took Saylor's purse, cash, and car keys and then drove off in Saylor's car. While in Saylor's car, Ingram ignored a stop sign, slid into an intersection, and almost ran into a police vehicle. The police officer attempted to initiate a traffic stop, but Ingram ignored the officer's lights and siren and led the officer on a four-block pursuit. When Ingram stopped the car, he fled on foot but was detained by police.

The State charged Ingram with: Count I, robbery as a Class B felony; Count II, carjacking, a Class B felony; Count III, criminal recklessness as a Class D felony; Count IV, pointing a firearm, a Class D felony; Count V, battery as a Class A misdemeanor;

Count VI, resisting law enforcement as a Class D felony; Count VII, resisting law enforcement, a Class A misdemeanor; Count VIII, pointing a firearm, a Class D felony; Count IX, carrying a handgun without a license, a Class A misdemeanor; and Count X, dangerous possession of a firearm, a Class A misdemeanor.

In November 2007, Ingram entered into a plea agreement, wherein he agreed to plead guilty to Counts I and VI—Class B felony robbery and Class D felony resisting law enforcement—in exchange for the State's dismissal of the remaining eight counts. The plea agreement placed a cap of eight years on the executed portion of the robbery conviction but left the remainder of sentencing open to the trial court's discretion.

When sentencing Ingram, the trial court discussed the following aggravating and mitigating factors:

> Mr. Ingram, I have looked at your pre-sentence report and also the statement that you made as well as the evidence that I have heard here today. I find as mitigating, in your case, that this is your first adult conviction, that you have expressed remorse, I also find as mitigating that your PSI indicates that you are emotionally handicapped and have a pretty low level IQ. I find as aggravating that you have had thirteen referrals to juvenile court, which resulted in three D felony true findings and four misdemeanor true findings. Going through some of them: November 1, 2001, which I calculate you would have been about eleven years old at the time, trespass as a D felony; auto theft as a D, February 23, 2004. Trespass on March 14, [20]05 and battery, March 14, [20]05; trespass, June 20, [20]05; auto theft and mischief, May 17, 2006; and battery as a misdemeanor. Those are some of the true findings in your juvenile history. I also find as aggravating that you were just out of Boys School May 30, 2007, and this offense was committed July 6, 2007. Clearly, previous times to rehabilitate you have failed, totally. You have been on home detention and various options through the juvenile court already many times and have not been able to comply. Therefore, I find that the aggravating circumstances outweigh the mitigating circumstances[.]

Tr. p. 41. The trial court sentenced Ingram to twelve years with four years suspended to probation for his robbery conviction to be served concurrently to one year for his resisting law enforcement conviction. Ingram now appeals his sentence.

Discussion and Decision

Ingram argues that: (1) the trial court abused its discretion in sentencing him when it failed to identify the following as mitigators: (a) hardship to his family, specifically his two-year-old child; (b) his youthful age; and (c) his acceptance of responsibility by pleading guilty; and (2) the executed sentence for his robbery conviction is inappropriate.

In regard to Ingram's argument that the trial court abused its discretion in failing to identify several mitigators, we note that an allegation that the trial court failed to identify or find 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), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Id.* (quotation omitted).

With regard to the hardship imposed on Ingram's family, a trial court "is not required to find a defendant's incarceration would result in undue hardship on his dependents." *Davis v. State*, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), *trans. denied*. Indeed, "[m]any persons convicted of serious crimes have one or more children and,

absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship." *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999).

Ingram's attorney mentioned that Ingram has a two-year-old child that he supports, but the presentence investigation report indicates that Ingram is not subject to a child support order. Ingram has failed to establish that the mitigating evidence is both significant and clearly supported by the record. Prison is always a hardship on dependents, and Ingram fails to explain how his eight-year executed sentence is more of a hardship on his family than the nonsupendable six-year sentence that he is required to serve. *See* Ind. Code § 35-50-2-2(b)(4)(I) (explaining that a sentence for Class B felony robbery with a deadly weapon may be suspended only in excess of the minimum six-year sentence). Accordingly, the trial court did not abuse its discretion by failing to identify hardship to Ingram's family as a mitigator.

As to Ingram's youthful age, we note that the trial court did, indirectly, find Ingram's age to be mitigating when it found the fact that this was Ingram's first adult conviction. Nevertheless, the Indiana Supreme Court has explained:

> Age is neither a statutory nor a per se mitigating factor. There are cunning children and there are naïve adults. In other words, focusing on chronological age, while often a shorthand for measuring culpability, is frequently not the end of the inquiry for people in their teens and early twenties. There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.

Monegan v. State, 756 N.E.2d 499, 504 (Ind. 2001) (citations and internal quotations omitted). Given Ingram's lengthy juvenile history and his actions in this case, which are indicative of a relatively young offender who appears hardened and purposeful, we

cannot say that the trial court abused its discretion by failing to specifically find Ingram's youth as a mitigating factor.

Turning to Ingram's argument that the trial court abused its discretion by failing to find his acceptance of responsibility by pleading guilty to be mitigating, we observe that a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). "[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one." *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*.

Here, Ingram did plead guilty to two offenses; however, the State dismissed the eight remaining charges, including a Class B felony, three Class D felonies, and four Class A misdemeanors and agreed to an executed cap of eight years on Ingram's Class B felony robbery conviction where the maximum sentence for such a crime is twenty years. As such, Ingram derived a significant benefit from the plea. Furthermore, Ingram pled guilty merely three days before his scheduled jury trial, resulting in little or no benefit to the State. Thus, the trial court did not abuse its discretion by rejecting this mitigating circumstance.

Finally, we address Ingram's argument that the executed sentence for his robbery conviction is inappropriate. Here, the trial court—in accordance with the terms of the plea agreement—imposed an eight-year executed sentence for Ingram's robbery conviction.

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offense, Ingram approached the victim in front of her home, pulled out a gun, held the gun to the victim's head, and demanded money. During the sentencing hearing, the victim testified that when Ingram pulled out the gun, he put it in her face, pushed her against the wall with the gun, and said, "Bi***, I can blow you all over this hallway." Tr. p. 28. Ingram took the victim's money and car keys and drove off in her car. Ingram then failed to stop for the police and led them on a chase, both by car and later by foot.

As for Ingram's character, the record reveals that Ingram—who was seventeen years old at the time he robbed the victim and fled from police—began engaging in criminal behavior when he was eleven years old. As the trial court noted during sentencing, Ingram has amassed three Class D felony true findings and four misdemeanor true findings during his relatively short life. In addition, Ingram was released from Boys School only one month before he committed these crimes. Ingram has failed to persuade

us that his aggregate eight-year executed sentence for Class B felony robbery is inappropriate.

Affirmed.

KIRSCH, J., and CRONE, J., concur.