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IN THE COURT OF APPEALS OF INDIANA

GAYLON C. WASHINGTON, JR.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0906-CR-252
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0809-MR-5

December 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Gaylon C. Washington, Jr., pled guilty to Class A felony voluntary manslaughter, and the trial court sentenced him to fifty years. He now appeals, arguing that the trial court abused its discretion in failing to consider his mental illness as a mitigator. We conclude that the trial court folded Washington's mental illness into the mitigator that he lived a horrible life. But even assuming that the trial court abused its discretion by failing to separately identify Washington's mental illness as a mitigator, given Washington's criminal history, including a 2001 conviction for reckless homicide, we conclude that the trial court would have imposed the same sentence had it properly considered the mitigator. We therefore affirm.

Facts and Procedural History

The stipulated factual basis for Washington's plea of guilty to Class A felony voluntary manslaughter provides that around 3:00 a.m. on August 31, 2008, Washington left a residence in Gary, Indiana, and drove to another residence in the 3400 block of Pennsylvania Avenue in East Chicago, Indiana. There, he encountered Candie Worthman, and the two began arguing. Washington became upset and fired one shot at Candie's head, killing her. Washington then fled the scene. While Washington intentionally and without legal justification killed Candie, the offense occurred while he was acting under sudden heat.

The State charged Washington with murder, Class C felony intimidation, and Class D felony pointing a firearm. The State also alleged that he was a habitual offender. Pursuant to a written plea agreement, Washington agreed to plead guilty to Class A

felony voluntary manslaughter, and the State agreed to dismiss all of the other counts. The parties were "free to fully argue their respective positions as to the sentence to be imposed by the Court." Appellant's App. p. 48.

At the sentencing hearing, Washington submitted his records from Gary Community School Corporation and Edgewater Systems for Balanced Living. Washington's attorney then asked the court "to consider in mitigation for Mr. Washington . . . his history . . . from childhood to how he became the person that he is today." Tr. p. 30-31. His attorney's argument focused on his terrible childhood, his difficulties in school, and his mental health diagnoses of psychotic disorder NOS and depression. The State did not dispute that Washington "had many obstacles growing up," but instead argued that he was to the point where he had developed into a "massive threat to society." *Id.* at 40. The State highlighted that Washington was convicted of killing someone in 2001 (he was charged with murder but pled guilty to reckless homicide) and was sentenced in 2003 to seven years. The State argued, "So with this second killing now, he is a two-time convicted killer. And I think that in and of itself would justify the imposition of the full 50 years." *Id.* at 41. The State further argued:

> What really jumps out at me even beyond that is that in the relatively short period of time since Mr. Washington has been released from prison on the reckless homicide case, he's been arrested three other times. And from those three cases, two resulted in convictions which I think are both relatively significant aggravators because one of them, the misdemeanor battery from 2006, is a crime of violence like the other cases that we've been talking about and then the felony charge that was in this court in 2007 to which he went to prison. He was still on parole for that when he committed this crime, and I think his being on parole for any case should be considered a significant aggravator . . . .

Id. at 41-42.

Washington testified at the sentencing hearing that he is not a violent person. He also testified in great detail about his childhood. As for his mental illness, he said that "[t]he mental doctor I'm seeing in jail got me on the highest medication there is and it's not working. I need physical and mental help to stop my anger problems and to stop [the images from my childhood] from replaying in my head every day." *Id.* at 46. In an apology letter to Candie's family, Washington apologized for his "unthinkable actions," explained that at the time of the killing he had mixed Ecstasy with cocaine and alcohol, which caused him to "do something this stupid," and portrayed himself as someone "in need of mental help." *Id.* at 47, 48.

In an extremely detailed oral sentencing statement, the trial court first noted that Washington faced a ninety-five-year sentence had he been convicted of murder and the habitual offender enhancement. The court then noted that it was "difficult for me to almost accept the idea that this case would be pled given the fact that you've killed someone in the past and you pled to reckless homicide and you did it while I've been a judge, and I've only been here for six years." *Id.* at 50. In any event, the court continued:

> Mr. Washington, I will look at aggravating factors, and I'll try to find anything that's in mitigation to try to determine an appropriate sentence for you. I think that's my job and certainly all defendants are – should have the benefit of knowing why a particular judge sentences that person the way they do. Even though state law doesn't necessarily require that I weigh these factors, but I will do that and I try to do that in every single case I have because I believe that it's fair to do so. I've read your letter. It's a long letter. It certainly shows a lot of reflection, and I don't doubt for a moment that this is your life, a horrible one at that. If this information is correct, and I have no reason to dispute or to say that it's not correct, then it would certainly seem to me that you're here because of your past. . . . And it's – it's almost incredible to believe what you've been through, but the

> fact of the matter is that as a younger person, maybe not anymore now, but as a younger person, I can't imagine that there were opportunities where you could have [gone] a different direction. I can't imagine that as a younger person, say in your younger 20s, there were opportunities for you to have taken a different route. Maybe I'm wrong. . . . Maybe move out of town. . . . I don't know what. I mean, certainly your parents weren't really there for you. I don't know. But in the turn that you did take and the path that you did take, you've lived a criminal life. You've lived a life that when caught, you were mostly convicted and that goes all the way back to when you were a juvenile. All these charges as a juvenile, it is incredible. Even without even speaking of your adult record, all your juvenile cases back in the early '90s is just – where you were actually charged is just incredible. You have a robbery adjudication in '91, and then you have all these auto thefts, resisting, rape, robbery, another resisting and another robbery. Taking you up to right when you're 18 where you're essentially out of the juvenile system because you've aged out of it. . . . And then you're looking at possession of alcohol by a minor, reckless driving, a battery in '96. Now you're – talking about your early 20s now. Handgun, no license in '97. Another battery in '98. Public intoxication, intimidation, '99. Criminal recklessness, two years [DOC]. That's 10 years ago now. So at this point you're 22 years of age, still a relatively young guy. And then, of course, the murder occurs in 2001. Or the homicide I should say where you're charged with murder. You eventually pled guilty to reckless homicide in 2001. Now you're right around 25 years of age. You take a seven-year sentence back in . . . 2003. You eventually get out, having served time, and then I would imagine right soon thereafter, 2006, after you're released from prison, you commit the battery and you're found guilty . . . on a misdemeanor. Right around that same time period, you picked up another case of possession of cocaine, a felony, in this court here and this time you get an 18-month DOC sentence. And that occurred in March of '08. Five months later, this one occurs. So I've tracked your life o[f] criminal activity, and there's not a lot of gap between your charges or your convictions.

Id. at 51-55. In summation, the trial court said that Washington's "life is clearly headed in the wrong direction, and it's been headed in the wrong direction for a long period of time." *Id.* at 56. As for mitigators, the trial court identified Washington's guilty plea and his "hard life." *Id.* The court noted that Washington had been given the benefit of non-maximum sentences in the past, including by that very court. Thus, the court concluded

that "prior leniency has had no effect . . . in trying to deter [his] future criminal behavior" and found that to be aggravating. The court also found aggravating Washington's criminal history and his manipulative character. *Id.* at 57-58. The court then sentenced Washington as follows:

> I've taken a lot of time to try to explain to you the reasons why I'm giving you this sentence because you need to know this, and it's objective which means that it's not based on – I don't remember your other case, to tell you the truth, that occurred back in 2003. I don't remember it. I couldn't tell you a single fact about it, but I see a homicide and I see a reckless conduct and I see the current homicide now, the voluntary manslaughter. I have seen breaks that other courts have given you, including myself in the past, and you keep coming back. I really have no alternative in this case but to give you the maximum sentence [of fifty years] because that's appropriate given this lifestyle, given your record, given everything that's about you at this point in your life, at 32 years of age, everything about this suggests to me that giving you anything less than the maximum sentence would be beyond inappropriate. It would be a miscarriage as what I understand justice to be, and that is your sentence because the aggravating factors outweigh the mitigating factors.

Id. at 59-60. The trial court issued a written sentencing order in which it found the following mitigator, "through documentation presented by the defense, the defendant has lived a horrible life." Appellant's App. p. 52. The court found four aggravators: (1) Washington's "history of criminal convictions"; (2) he "is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penal facility"; (3) "[p]rior leniency by criminal courts has had no deterrent effect"; and (4) "[Washington's] character is highly manipulative." *Id.* at 52-53. The court then noted that "each aggravating factor, standing alone, outweighs the mitigating factor." *Id.* at 53. Washington now appeals his sentence.

Discussion and Decision

Washington contends that the trial court erred in failing to consider his mental illness as a mitigator. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491. When an allegation is made that the trial court failed to find a mitigating factor, the defendant is required to establish that the mitigating evidence is both significant and clearly supported by the record. *Id.* at 493. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

In response to Washington's argument that the trial court abused its discretion by failing to consider his mental illness as a mitigator, the State makes alternate arguments. First, the State argues that Washington included his mental illness within his argument that his terrible childhood made him the person that he is today. Thus, when the trial court found that Washington's horrible life was a mitigator, his mental illness was included within that mitigator. Alternately, the State argues that even if the trial court abused its discretion by failing to separately identify Washington's mental illness as a

mitigator, the trial court would have imposed the same sentence given his extensive criminal history.

As for the State's first argument, Washington argued at the sentencing hearing that his upbringing molded him into the person that he is today. As Washington points out in his brief, his childhood included a referral to the Gary Mental Health Department and has continued in that vein to his current diagnosis of psychotic disorder NOS and depression. According to his records, Washington was receiving treatment at Edgewater before committing the crime in this case. And according to Washington's testimony at the sentencing hearing, he was receiving treatment in jail while awaiting sentencing in this case. After receiving all of the evidence, the trial court identified the following mitigator: "through documentation presented by the defense, the defendant has lived a horrible life." Appellant's App. p. 52. Given the documentation Washington provided the trial court, which chronicled his mental health treatment and the difficulties Washington experienced growing up (which in all likelihood contributed to his current mental health problems), we conclude that the trial court folded Washington's mental illness into the "horrible life" mitigator.

But even assuming that the trial court abused its discretion by failing to separately identify Washington's mental illness as a mitigator as the State alternately argues, we can say with confidence that the trial court would have imposed the same sentence had it properly considered the mitigator. *See Anglemyer*, 868 N.E.2d at 491. The trial court made it abundantly clear in its oral sentencing statement that Washington's criminal history warranted the maximum sentence in this case given that he killed another person

in 2001 and committed at least two other crimes in between that killing and the 2008 killing of Candie in this case. Furthermore, the trial court concluded in its written sentencing order that each of the four aggravators, standing alone, outweighed the single mitigator of Washington's horrible life. Adding one more mitigator would not have tipped the scales of the trial court's understanding of justice. This is especially so since Washington blamed Candie's death—not on his mental illness—but on a combination of Ecstasy, cocaine, and alcohol, which caused him to do something "stupid." We therefore affirm Washington's fifty-year sentence for Class A felony voluntary manslaughter.

Affirmed.

RILEY, J., and CRONE, J., concur.