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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTONIO MOORE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0605-CR-388

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Thomas Newman, Jr., Judge  
Cause No. 48D03-0407-FA-348

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**December 8, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Antonio Moore appeals the sentence imposed after his pleas of guilty to dealing in cocaine, a Class A felony;<sup>1</sup> dealing in marijuana, a Class D felony;<sup>2</sup> and maintaining a common nuisance, a Class D felony.<sup>3</sup> We find the trial court was within its discretion to determine that the hardship on Moore's dependents was not a mitigating circumstance and Moore's guilty plea was only marginally mitigating. We cannot say Moore's sentence is inappropriate in light of his extensive criminal history and the amount of drugs recovered from his house. We accordingly affirm.

### **PROCEDURAL HISTORY**

Moore was charged on July 2, 2004. On November 21, 2005, the day before his jury trial was to commence, Moore pled guilty as charged. The plea agreement provided certain new charges would be dismissed. The parties could argue sentencing, but the sentences would be served concurrently. Moore received a sentence of fifty years for the Class A felony, with the sentences for the other charges to be served concurrently.

### **DISCUSSION AND DECISION**

Moore argues the trial court did not give proper mitigating weight to his guilty plea and the hardship his imprisonment would cause his dependents. He also argues the maximum sentence was inappropriate.

The trial court noted Moore's guilty plea, but gave it little weight as a mitigating circumstance as the plea came the day before trial and the State was ready to proceed. A trial court need not give a possible mitigating circumstance the weight urged by the

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<sup>1</sup> Ind. Code § 35-48-4-1.

<sup>2</sup> Ind. Code § 35-48-4-10.

<sup>3</sup> Ind. Code § 35-48-4-14.

defendant. *Scott v. State*, 840 N.E.2d 376, 382 (Ind. Ct. App. 2006), *trans. denied*. A guilty plea is generally entitled to some mitigating weight, but it is not automatically a significant mitigating circumstance. *Green v. State*, 850 N.E.2d 977, 992 (Ind. Ct. App. 2006).

Moore asserts his guilty plea should have been given greater weight as a mitigating circumstance because cases “require considerable preparation in advance of trial. There is still considerable time and expense of calling and empanelling a jury.” (Br. of Appellant at 10.) The guilty plea, he asserts, “relieved the State of the time required to bring this case before a jury and the taxpayers of the associated costs.” (*Id.*) Moore does not acknowledge the plea came the day before trial was to begin and only after his motion to suppress was denied. His plea therefore did not have the effect of relieving the State’s burden of preparing for trial. Moore also benefited from the State’s agreement not to pursue new charges that had arisen. The trial court did not err in giving Moore’s guilty plea only minimal weight as a mitigating circumstance.

The trial court did not address hardship to Moore’s dependents, but a trial court is not obliged to find a circumstance is mitigating just because a defendant thinks it is. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied* 812 N.E.2d 792 (Ind. 2004). Given Moore’s extensive criminal history, which surely would have already caused a long-term separation from his dependents, the trial court did not err in declining to consider this a mitigating circumstance.

Moore also argues his sentence is inappropriate in light of his character and the nature of his offense. *See* Ind. Appellate Rule 7(B). He contends his “guilty plea

combined with the undue hardship on his dependents are significant mitigating circumstances which render the fifty (50) year enhanced sentence inappropriate.” (Br. of Appellant at 11.)

Moore’s character does not suggest his sentence is inappropriate. He committed numerous juvenile offenses since 1995 and has numerous adult convictions including two counts of theft as Class D felonies and several counts of domestic battery. He has also been convicted of possession of marijuana and driving while intoxicated.

Nor does the nature of the offense ameliorate Moore’s sentence. The police found 423 grams of cocaine, 1,321 grams of marijuana, two handguns, and over \$12,500 in Moore’s residence. This suggests Moore was involved in a large-scale drug operation.

Affirmed.

RILEY, J., and BAILEY, J., concur.