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IN THE
COURT OF APPEALS OF INDIANA

DANIEL COLVIN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0604-CR-173
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0508-FA-398

October 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Daniel Colvin appeals his sentence after pleading guilty to one count of Child Molesting, as a Class A felony, and two counts of Child Molesting, as Class C felonies. He presents two issues for our review, namely:

1. Whether the trial court abused its discretion when it identified and weighed aggravating and mitigating circumstances.

2. Whether his sentence is inappropriate under Indiana Appellate Rule 7(B).

We affirm.

FACTS AND PROCEDURAL HISTORY

Between March 1, 2005, and May 31, 2005, Teresa Eldridge, her seven-year-old son K.E., and her boyfriend lived with Colvin. K.E. slept with Eldridge in the bedroom. In August 2005, K.E. reported that twice during that time period Colvin had exposed K.E.'s penis while K.E. was sleeping, and once during that time period Colvin had performed anal intercourse on K.E. When questioned by police, Colvin confessed to the alleged conduct.

The State charged Colvin with one count of child molesting, as a Class A felony, and two counts of child molesting, as Class C felonies. In January 2006, Colvin pleaded guilty as charged. At the sentencing hearing in February 2006, the trial court imposed sentence as follows:

> Matter comes before the court for sentencing. Defendant having previously pled guilty to count I, child molesting, Class C felony, to which the court finds aggravating circumstances being his prior criminal history of similar offenses and repeated offenses and other offenses. Finds that the aggravating circumstances herein override the mitigating circumstances, which would be that [he] pled guilty and saved the child the trauma of

> having to testify. Six years on count I, six years on count II, child molesting, C felony; and the normal – advisory sentence of thirty years on count III, a class A felony, is enhanced by twenty years, to a fifty-year executed sentence, all concurrent, all in the Department of Correction.

Transcript at 34-35. The sentencing order provided, in relevant part, as follows:

> The Court, having entered Judgment of conviction against the defendant following the guilty plea in Count I, Child Molesting, Class C felony; Count II, Child Molesting, Class C felony; Count II, Child Molesting, Class A felony, considers the pre-sentence investigation report, the arguments and evidence of counsel, and now finds the following aggravating circumstances to exist: Defendant's prior criminal history; the repetitive nature of the defendant's offenses. The court finds mitigating circumstances to be the defendant pleading guilty to the instant offense; saved the child trauma of testifying. Therefore, the Court finds aggravating circumstances outweigh mitigating to enhance the sentences herein.

Appellant's App. at 55. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Aggravators and Mitigators

Colvin contends that the trial court abused its discretion when it identified aggravators and mitigators to support the enhancement of his sentence. We review a trial court's sentencing decisions for an abuse of discretion.[1] Plummer v. State, 851 N.E.2d 387, 390 (Ind. Ct. App. 2006). When the trial court imposes an enhanced sentence, it must state the reasons underlying the sentencing decision. Ind. Code § 35-38-1-3; Edwards v. State, 842 N.E.2d 849, 854 (Ind. Ct. App. 2006). The trial court's statement

[1] The sentencing statutes were amended in April 2005 to provide for an advisory sentence within a range. Colvin committed the instant offenses between March 1 and May 31, 2005, but exactly when cannot be determined on this record. Thus, the offenses may have been committed when the presumptive sentencing scheme was in effect. The law that was in effect at the time of the commission of the crime controls the resolution of sentencing issues. Peace v. State, 736 N.E.2d 1261, 1267 (Ind. Ct. App. 2000), trans. denied. Therefore, we analyze the sentencing issues using the presumptive sentencing scheme in effect in 2003.

of reasons must include the following components: (1) identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that led the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances were evaluated and balanced in determining the sentence. Edwards, 842 N.E.2d at 854.

Colvin argues that the trial court accorded too little weight to his guilty plea as a mitigator. We cannot agree. Determining mitigating circumstances is within the discretion of the trial court. Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005) (quoting Corbett v. State, 764 N.E.2d 622, 630-31 (Ind. 2002) (citations omitted)), trans. denied. A trial court is not obligated to weigh a mitigating factor as heavily as the defendant requests. Field v. State, 843 N.E.2d 1008, 1010 (Ind. Ct. App. 2006), trans. denied. A guilty plea is a significant mitigating factor in some circumstances. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). And guilty pleas may be accorded significant mitigating weight because they save judicial resources and spare the victim from a lengthy trial. Id. However, as the supreme court has frequently observed, a plea is not necessarily a significant mitigating factor. Id. (holding that trial court's failure to accord substantial weight to defendant's guilty plea was not abuse of discretion where defendant's statements after pleading "undermined his acceptance of responsibility for the crime").

Here, Colvin pleaded guilty as charged. But, when asked about the offenses, Colvin told the probation officer who was preparing the pre-sentence investigation report, "I should have taken it to trial, but I didn't." Appellant's App. at 14. In the same

conversation, he also said, "I probably touched [K.E.] by accident in my sleep." Id. at 15. Colvin's statements undermine his claim on appeal that he accepted responsibility for the crime. Thus, Colvin has not shown that the trial court abused its discretion when it did not give greater weight to his guilty plea.

Colvin also argues that the trial court "erred by failing to recognize his mental illness as a mitigating circumstance." Appellant's Brief at 10. As noted above, a finding of mitigating circumstances lies within the trial court's discretion. Davis, 835 N.E.2d at 1116. The trial court is not obligated to explain why it did not find a factor to be significantly mitigating. Chambliss v. State, 746 N.E.2d 73, 78 (Ind. 2001). And only those mitigators found to be significant must be enumerated. Battles v. State, 688 N.E.2d 1230, 1236 (Ind. 1997). The allegation that the trial court failed to find a mitigating circumstance requires Colvin to establish that the mitigating evidence is both significant and clearly supported by the record. See Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999).

The American Psychiatric Association's definitions of mental illness, contained in the Diagnostic and Statistical Manual of Mental Disorders (presently "DSM-IV-TR") have continued to expand to the point that a recent study declared that about half of Americans become mentally ill. Covington v. State, 842 N.E.2d 345, 349 (Ind. 2006). This suggests the need for a high level of discernment when assessing a claim that mental illness warrants mitigating weight. Id. The supreme court has laid out several factors to consider in weighing the mitigating force of a mental health issue. Those factors include the extent of the inability to control behavior, the overall limit on function, the duration

of the illness, and the nexus between the illness and the crime. Covington, 842 N.E.2d at 349.

Here, Colvin has not satisfied his burden of showing that the mitigating evidence is both significant and clearly supported by the record. Specifically, all of the medical documentation of Colvin's mental illness is dated 1977 or earlier. There was evidence that Colvin was confused at the sentencing hearing because he testified that he had served in the Marines when, in fact, he had not. But evidence of his confusion at the sentencing hearing combined with nearly thirty-year-old medical records does not show Colvin's inability to control his behavior, the overall limit on his function, the duration of his illness, or the nexus between the illness and the crime. See Covington, 842 N.E.2d at 349. Thus, Colvin has not shown that the trial court abused its discretion when it failed to identify his mental illness as a significant mitigating circumstance.

Issue Two: Indiana Appellate Rule 7(B)

Colvin also contends that his sentence is inappropriate in light of the nature of the offense and his character. If the sentence imposed is authorized by statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. App. R. 7(B). But Colvin does not support his argument on this issue with citation to authority. As such, the issue is waived. See Ind. App. R. 46(A)(8). Waiver notwithstanding, we note that Colvin's argument under Rule 7(B) is based solely on his contentions that the trial court should have accorded more weight to his guilty plea and should have considered his mental illness to be a significant mitigating circumstance. Because we have determined that the

trial court did not abuse its discretion as Colvin alleges, his argument under Rule 7(B) also must fail.

Affirmed.

BAKER, J., and DARDEN, J., concur.