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IN THE
COURT OF APPEALS OF INDIANA

ANTONIO TUTSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0508-CR-756
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT 2
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0410-FA-24

August 25, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SULLIVAN, Judge

Appellant, Antonio Tutson, pleaded guilty to one count of Possession of Cocaine, a Class B felony,[1] and one count of Criminal Confinement Resulting in Serious Bodily Injury, also a Class B felony.[2] Upon appeal, Tutson challenges the sentence imposed by the trial court, arguing that the trial court improperly relied upon aggravating circumstances and failed to give sufficient weight to various mitigating factors.

We affirm.

On October 12, 2004, Tutson met with Patricia Lynn to sell her cocaine.[3] Lynn entered Tutson's vehicle to complete the transaction. Instead of paying Tutson, Lynn took the cocaine and put it in her mouth. Tutson beat Lynn in an attempt to recover the cocaine. Tutson then physically restrained Lynn when she attempted to exit his vehicle. Lynn sustained multiple serious injuries to her right eye in the incident.

On October 20, 2004, Tutson was arrested and charged with Count I, dealing in cocaine, a Class A felony; Count II, possession of cocaine, a Class C felony; Count III, dealing in cocaine, a Class A felony; Count IV, possession of cocaine, a Class B felony; Count V, conspiring to commit dealing in cocaine, a Class A felony; Count VI, criminal confinement resulting in serious bodily injury, a Class B felony; and, Count VII, battery resulting in serious bodily injury, a Class C felony. Tutson subsequently entered into a plea agreement whereby he agreed to plead guilty to possession of cocaine, a Class B felony, and to criminal confinement resulting in serious bodily injury, a Class B felony.

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[1] Ind. Code § 35-48-4-6(b)(2) (Burns Code Ed. Supp. 2006).

[2] Ind. Code § 35-42-3-3(b)(2) (Burns Code Ed. Repl. 2004).

[3] Tutson met with Lynn at a location within 1,000 feet of St. James Elementary School in Lafayette, Indiana.

The State agreed to drop all of the other charges and stipulated that sentencing would be left to the discretion of the trial court after an evidentiary hearing. The State additionally agreed that any imposed sentences would be served concurrently.

At Tutson's sentencing hearing, the trial court identified his juvenile history[4] and his high likelihood to re-offend as aggravating factors. The trial court found as mitigating factors Tutson's family support and his young age but concluded that the aggravators carried more weight. The trial court then sentenced Tutson to an enhanced sentence of fifteen years on each count, to be served concurrently.

Upon appeal, Tutson claims that the trial court did not give appropriate mitigating weight to his background, including his work history, church affiliation, and the fact that he grew up in an economically disadvantaged community. Tutson also maintains that the trial court did not adequately consider his guilty plea and, finally, that his victim "facilitated" the criminal act.

The determination that a circumstance is mitigating is within the trial court's discretion. Taylor v. State, 681 N.E.2d 1105, 1112 (Ind. 1997). The trial court is not required to give the same weight to proffered mitigating circumstances as the defendant does. Thacker v. State, 709 N.E.2d 3, 10 (Ind. 1999). The trial court's determination of the proper weight to be given aggravating and mitigating circumstances and the appropriateness of the sentence as a whole is entitled to great deference and will be set aside only upon a showing of a manifest abuse of discretion. Id.

[4] Tutson admitted to attempted robbery and was placed on five years probation and ordered to perform community service on November 8, 2000. Prior to that, Tutson was ordered by a juvenile court to complete "Drug School" for possession of a controlled substance on November 28, 1999.

While the fact that Tutson grew up in an economically disadvantaged location is unfortunate, a difficult childhood carries little mitigating weight. Coleman v. State, 741 N.E.2d 697, 703 (Ind. 2000), cert. denied, 534 U.S. 1057 (2001). Similarly, Tutson's work history is of minimal mitigating weight given that he was unemployed for eight months prior to committing these offenses.

Indiana courts have long recognized that a guilty plea is a significant mitigating circumstance in some instances. Trueblood v. State, 715 N.E.2d 1242, 1257 (Ind. 1999), cert. denied, 531 U.S. 858 (2000). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165. Although in pleading guilty Tutson saved the State the expense of a trial, he nevertheless received the considerable benefit of the State dropping three Class A felonies and three Class C felonies, along with an agreement for concurrent sentences. When the State agrees to dismiss charges in exchange for a plea of guilty, a trial court may choose to disregard the guilty plea as a significant mitigating factor. See id. at 1165. Clearly, Tutson received a significant benefit from his guilty plea. The trial court was therefore not obligated to consider the plea as a significant mitigating factor.

Tutson also argues that Lynn facilitated her confinement and that this facilitation should mitigate his sentence. During the sentencing hearing, the trial court directly addressed this argument by correctly noting that simply because Tutson was engaged in an illegal business, he did not have the right to batter customers who did not pay. We

further note that Tutson, who apparently traveled from Chicago to Lafayette for the express purpose of selling cocaine, must have been aware of his "business" risks. Regardless, for obvious reasons, Lynn's conduct is not justification for Tutson's decision to strike her. We decline to entertain Tutson's claim that his sentence should be mitigated because the victim "facilitated" the serious injuries she sustained by taking the drugs Tutson was preparing to deal to her without paying for them.

Tutson finally contends that the trial court improperly relied upon his history of juvenile delinquency and his likelihood to re-offend as aggravating factors. Specifically, Tutson claims that because there is no specific record of an adjudication for either of the juvenile offenses found in his pre-sentence investigation report, such offenses may not be used to establish a criminal history.

In Jordan v. State, 512 N.E.2d 407, 410 (Ind. 1987), our Supreme Court held the following:

> "[a] sentencing court may consider prior criminal conduct or history of criminal activity as an aggravating factor. A juvenile history detailed in a pre-sentence report filed with the trial court may suffice as evidence of a criminal history, and thus constitute an aggravating circumstance . . . . It is . . . not a particular adjudication of delinquency that subjects a defendant to an aggravated sentence, but rather, [it] is any conduct tending to show a criminal pattern."

Tutson's pre-sentence investigation report clearly reflects criminal behavior from juvenile proceedings. On November 28, 1999, Tutson was ordered to complete "Drug School" because he was found to be in possession of a controlled substance. On November 8, 2000, Tutson received five years of probation and ordered to perform community service for an attempted robbery. Not only does Tutson's juvenile record

evince a criminal history for purposes of sentencing, it also indicates a "criminal pattern" given that both juvenile offenses occurred within five years of the current offense. The trial court properly treated Tutson's juvenile history as an aggravating circumstance.

Tutson also objects to the "LSIR" as an objective tool used to determine his likelihood to re-offend. Tutson argues that the "LSIR" evaluation is an arbitrary report used simply to amplify pre-sentence investigation reports. The "LSIR," however, is based on factors such as the defendant's employment history, the defendant's connection to the community in which he committed an offense, and the defendant's social circles. All of these factors have a logical connection to a defendant's likelihood to re-offend, and these factors, not a raw score on the "LSIR," are what ultimately may serve to aggravate a sentence.

The trial court had a statutory obligation to consider Tutson's likelihood to re-offend, see Ind. Code § 35-38-1-7.1(a)(1) (Burns Code Ed. Repl. 2004), and here the trial court simply used the "LSIR" as a means to examine factors relevant to Tutson's propensity to re-offend or not to re-offend. At the sentencing hearing, the trial court explained that Tutson's "LSIR" determined that he is unemployed, his only connection to Lafayette was to sell drugs, and that his friends are drug dealers. These factors, not Tutson's "LSIR" score of 48, are what, in part, led the trial court to aggravate his sentence, and we cannot say the trial court erred in doing so.

The judgment of the trial court is affirmed.

BAKER, J., and MAY, J., concur.