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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL T. KNIGHT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 88A05-0602-CR-77
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Robert L. Bennett, Judge
Cause No. 88C01-9909-CF-221

November 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Michael T. Knight appeals the sentence imposed following his plea of guilty to sexual misconduct with a minor as a class C felony.[1]

We affirm.

ISSUE

Whether the trial court abused its discretion in failing to find mitigating circumstances.

FACTS

In May of 1998, then-twenty-one year old Knight invited then-fifteen year old A.H., a family friend, and another girl to his home, where he provided them with alcohol. Knight then performed oral sex on A.H. and had her perform oral sex on him.

On September 9, 1999, the State charged Knight with sexual misconduct with a minor, as a class B felony; child exploitation, as a class D felony; and two counts of contributing to the delinquency of a minor, as class A misdemeanors. On February 26, 2004, Knight and the State entered into a plea agreement, whereby Knight agreed to plead guilty to sexual misconduct with a minor, as a class C felony. The plea agreement left Knight's sentence within the trial court's discretion.

On April 22, 2004, the parties filed the plea agreement, and the trial court held a guilty plea hearing. The trial court took the plea under advisement and ordered a presentence investigation report ("PSI"). The PSI indicated that Knight had a juvenile adjudication for battery and mischief in 1994 and was placed on probation for one year.

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[1] Ind. Code § 35-42-4-9.

The trial court conducted the sentencing hearing on December 15, 2005. Prior to sentencing Knight, the trial court made the following statement:

> These cases always impose a hardship . . . on the family of the victim, the victim himself, hardship on the family of the defendant and in some ways the defendant himself. One of the hardest things a judge has to do is decide what's an appropriate sentence in a particular case. Now [Knight] has testified that he was twenty-one (21) at the time, that's been highlighted by Mr. Smith. [A.H.] was fifteen (15) at the time . . . . There is one mitigating factor here that nobody has mentioned that if those birth dates are true and the time is right, this would have been a B felony, presumptive sentence ten years, six to twenty but that's not what we have a judgment for or a plea to I should clarify. One of the things that I always see and I have continued to see while I have been on the bench is that these types of offenses have long term consequences for everyone involved, everyone. Everyone is affected.

(Tr. 53-54). The trial court then imposed a sentence of four years in the Department of Correction.

DECISION

Knight asserts that the trial court ignored five mitigating circumstances when it sentenced him to the presumptive term of four years.[2] Specifically, Knight argues the trial court overlooked the following mitigating circumstances:

> 1. The Defendant had never been on probation before as an adult.
>
> 2. The Defendant had been a law abiding citizen for a substantial period of time.
>
> 3. The Defendant provided proof that the crime was a result of circumstances unlikely to recur.

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[2] The statutory sentencing range for a class C felony is two to eight years, with the presumptive sentence being a fixed term of four years. I.C. § 35-50-2-6. Subsequent to the date of Knight's offense and prior to the date of his sentencing, the legislature amended Indiana Code section 35-50-2-6 to provide for an "advisory" rather than a "presumptive" sentence. *See* P.L. 71-2005, § 7 (eff. Apr. 25, 2005).

> 4. Incarceration would result in undue hardship on the dependents of the Defendant.
>
> 5. The Defendant himself was only 21 years of age at the time of the commission of the crime.

Knight's Br. 9-10.

The finding of mitigating circumstances rests within the sound discretion of the trial court. *Sipple v. State*, 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), *trans. denied*. "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." *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999). The failure to find a mitigating circumstance clearly supported by the record may imply that the trial court overlooked the circumstance. *Sipple*, 788 N.E.2d at 480. The trial court, however, is not obligated to consider "alleged mitigating factors that are highly disputable in nature, weight, or significance." *Id.* Furthermore, the trial court need not agree with the defendant as to the weight or value to be given to proffered mitigating circumstances. *Id.* The trial court need enumerate only those mitigating circumstances it finds to be significant. *Battles v. State*, 688 N.E.2d 1230, 1236 (Ind. 1997).

1. Criminal History

Knight contends that the trial court overlooked the fact that he had not been on probation as an adult and had been "a law abiding citizen for a substantial period of time." Knight's Br. 9. A trial court need not give significant weight to a defendant's lack of criminal history. *Bunch v. State*, 697 N.E.2d 1255, 1258 (Ind. 1998), *reh'g denied*. This is especially so when a defendant's record, while felony-free, is blemished. *See*

Bostick v. State, 804 N.E.2d 218, 225 (Ind. Ct. App. 2004). Because Knight had a juvenile adjudication for battery and criminal mischief, we find no abuse of discretion in failing to either identify or find Knight's lack of significant criminal history to be a mitigating circumstance.

2. Circumstances Unlikely to Recur

Knight also contends the trial court abused its discretion in not addressing whether the crime was a result of circumstances unlikely to recur and finding it to be a mitigating circumstance. *See* I.C. § 35-38-1-7.1(b)(2). We disagree.

During the sentencing hearing, Knight offered the following testimony:

> [Knight's Counsel] [T]he circumstances that led to your apprehension and arrest here were the result of having young girls in your home while alcohol was being served. Have any such circumstances recurred like that at all since the time of your arrest in this case?
>
> [Knight] No.
>
> [Knight's Counsel] Do you foresee any circumstances where that would ever occur again?
>
> [Knight] No.

Tr. 22-23.

We fail to see how this testimony establishes that the circumstances that led to Knight's sexual misconduct with a minor are unlikely to recur. Thus, we find the trial court did not abuse its discretion in failing to identify this as a mitigating circumstance.

3. Hardship

Knight next contends the trial court abused its discretion in failing to consider the hardship his incarceration would cause to his family. Again, we disagree.

The trial court noted that "[t]hese cases always impose a hardship, hardship on the family of the victim, the victim himself, hardship on the family of the defendant and in some ways the defendant himself." Tr. 53. Thus, it appears that the trial court considered the hardship on Knight's family but chose not to give it any weight. Furthermore, even the minimum executed prison term would inflict some financial hardship on Knight's family. Accordingly, we find that the trial court properly declined to give weight to this proffered mitigating circumstance. *See Battles v. State*, 688 N.E.2d 1230, 1237 (Ind. 1997) (declining to attach any significant weight to proffered mitigating circumstance where an enhanced sentence would not impose much, if any, additional hardship).

4. Age

Knight further contends the trial court should have considered that he "was only 21 years of age (a young man) at the time of the commission of the offense" a mitigating circumstance. Knight's Br. 9. We disagree as "[a]ge is neither a statutory nor a per se mitigating factor." *Monegan v. State*, 756 N.E.2d 499, 504 (Ind. 2001). Furthermore, the record shows that Knight was twenty-one when he committed the offense, well past the age that our courts have afforded special consideration. *See Corcoran v. State*, 774 N.E.2d 495, 500 (Ind. 2002) (holding that twenty-two was "well past the age of sixteen where the law requires special treatment"), *reh'g denied*. Moreover, we note that the State originally charged Knight with sexual misconduct with a minor, as a class B felony, because Knight was "at least twenty-one (21) years of age" when he committed the offense. I.C. § 35-42-4-9(a)(1). Given that Knight's age constituted an element that

could have resulted in a conviction for a B felony, we cannot say the trial court's failure to consider Knight's age a mitigating factor was an abuse of discretion.

Affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.