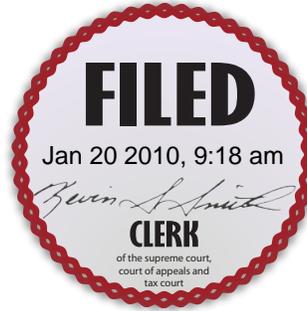


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CHAD BUTTERY,)

Appellant-Defendant,)

vs.)

No. 67A01-0907-CR-352

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE PUTNAM CIRCUIT COURT
The Honorable Matthew L. Headley, Judge
Cause No. 67C01-0810-FB-231

January 20, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Chad Buttery appeals his sentence following his convictions for class B felony dealing in methamphetamine;¹ class C felony possession of anhydrous ammonia or ammonia solution with intent to manufacture methamphetamine;² and class C felony possession of chemical reagents or precursors with intent to manufacture a controlled substance;³ and his adjudication as an habitual offender.⁴

We affirm.

ISSUE

Whether the trial court erred in sentencing Buttery.

FACTS

At approximately 3:00 a.m. on October 3, 2008, Greencastle Police Officer Christopher Helmer observed a Toyota lacking a properly illuminated license plate. After following the vehicle a short distance, Officer Helmer activated his patrol vehicle's emergency lights in order to conduct a traffic stop. At that time, the vehicle came to a stop, and "[b]oth doors flew open." (Tr. 82). The vehicle's passenger exited and "ran south holding a bucket" (Tr. 82). The driver ran north. Officer Helmer believed the

¹ Ind. Code § 35-48-4-1.1.

² I.C. § 35-48-4-14.5(c).

³ I.C. § 35-48-4-14.5(e).

⁴ I.C. § 35-50-2-8.

driver to be Brandon Buttery, Buttery's brother. Officer Helmer chased the driver on foot but lost him.

After the foot chase, Officer Helmer returned to the Toyota. Finding that the vehicle was running, he "got into the driver's area and tried to turn the vehicle off." (Tr. 86). Once inside the vehicle, he noticed a chemical smell emanating from the vehicle. Looking in the back of the vehicle, he observed a "tin can that had camp fuel"; and a "rubber tube that was in the back seat that was also leading to the front of the vehicle and into the engine area." (Tr. 86; 86-87). Another rubber tube led into the vehicle's trunk. Upon opening the trunk, he located a bucket "and a cooking devise [sic] next to the bucket" (Tr. 87). A subsequent search of the vehicle revealed another bucket in the back seat, empty battery packages, a bottle of drain cleaner, coffee filters, starter fluid, and a cooler, which contained anhydrous ammonia.

Officer Helmer ran a check of the vehicle's license plate, which revealed that the vehicle was registered to Frederick and Carla Buttery, Buttery's parents. Officer Helmer informed assisting officers that a third Buttery-brother, Frederick, "lived right down the street," approximately three houses to the east. (Tr. 87).

Officers eventually located a bucket matching the one carried by the vehicle's passenger "just to the east at a vacant house directly next door to the Frederick Buttery residence." (Tr. 94). The bucket contained methamphetamine.

After officers observed "a shadow run" to Frederick's residence, officers obtained Frederick's consent to search the residence. (Tr. 97). Officers located Buttery in the

kitchen. A coat matching the one worn by the Toyota's passenger hung from a dining room chair.

On October 6, 2008, the State charged Buttery with Count I, class B felony dealing in methamphetamine; Count III, class C felony possession of anhydrous ammonia or ammonia solution with intent to manufacture methamphetamine; and Count IV, class C felony possession of chemical reagents or precursors with intent to manufacture a controlled substance. The State also filed an information against Buttery, alleging him to be an habitual offender.⁵

The trial court conducted a jury trial on January 14, 2009. The jury convicted Buttery of all counts and found him to be an habitual offender.

The trial court held a sentencing hearing on March 2, 2009. The trial court found Buttery to "have quite a bit" of a criminal history, with "nineteen different cases," including "maybe eight . . . driving while suspended, . . . burglary as a juvenile, burglary as an adult, theft as an adult, . . . reckless driving," and possession of marijuana.⁶ (Tr. 277). Accordingly, the trial court sentenced Buttery to fourteen years on Count I and enhanced that sentence by fifteen years based on Buttery's habitual offender status. As to Counts III and IV, the trial court sentenced Buttery to concurrent sentences of six years, with two years suspended. The trial court ordered that the sentences for Counts III and

⁵ The State filed the habitual offender allegation as Count II.

⁶ Neither the State nor Buttery has provided this court with a copy of the pre-sentence investigation report.

IV run consecutive to the sentence for Count I, for a total executed sentence of thirty-three years.

DECISION

Buttery asserts that the trial court erred in sentencing him. Specifically, he contends that the trial court failed to consider the undue hardship on him and his family that his imprisonment will impose.

A sentence that is within the statutory range is subject to review 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). A trial court may abuse its discretion if the sentencing statement omits reasons for imposing a sentence “that are clearly supported by the record and advanced for consideration” *Id.* at 491.

The failure to find a mitigating circumstance clearly supported by the record may imply that the trial court overlooked the circumstance. The trial court, however, is not obligated to consider “alleged mitigating factors that are highly disputable in nature, weight, or significance.” The trial court need enumerate only those mitigating circumstances it finds to be significant. On appeal, a defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record.

Rawson v. State, 865 N.E.2d 1049, 1056 (Ind. Ct. App. 2007) (internal citations omitted), *trans. denied*.

A trial court is not required to find that a defendant’s incarceration would result in an undue hardship on his dependents. *Benefield v. State*, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009), *trans. denied*. “Many persons convicted of crimes have dependents and,

absent special circumstances showing that the hardship to them is ‘undue,’ a trial court does not abuse its discretion by not finding this to be a mitigating factor.” *Id.*

During the sentencing hearing, Buttery testified that he was ordered to pay child support in the amount of sixty-two dollars per week; he believed, however, that he only “made a couple payments before [his] divorce was final in 2006” (Tr. 258). Buttery’s fiancée testified that Buttery had not maintained “formal” employment during their relationship of one and a half years. (Tr. 269). Given that Buttery presented no evidence of special circumstances, we find no abuse of discretion in not finding as a mitigating circumstance the undue hardship his incarceration will impose on him or his family. *See Teeters v. State*, 817 N.E.2d 275, 280 (Ind. Ct. App. 2004) (finding no undue hardship where the defendant had been ordered to pay child support but had been unwilling or unable to do so), *trans. denied*.

As to Buttery, “any imprisonment is a hardship on the person being imprisoned.” *Rose v. State*, 810 N.E.2d 361, 367 (Ind. Ct. App. 2004). Thus, we cannot say that a trial court abuses its discretion in failing to take this into account as a mitigating circumstance. *Id.*

Affirmed.

MAY, J., and KIRSCH, J., concur.