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FILED
Apr 15 2011, 8:30 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

LAWRENCE BARRETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A01-1010-CR-519
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Mary Margaret Lloyd, Judge
Cause Nos. 82D02-1002-FD-00168
82D02-1005-FD-00500

APRIL 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Lawrence Barrett appeals the sentence the trial court imposed for his two convictions of theft, both Class D felonies. Ind. Code § 35-43-4-2 (2009). We affirm.

ISSUE

Barrett raises one issue, which we restate as: whether the trial court abused its discretion in the course of sentencing Barrett.

FACTS AND PROCEDURAL HISTORY

On February 10, 2010, Barrett stole DVDs from a grocery store. The State charged him with theft under Cause Number 82D02-1002-FD-168 ("FD-168"). On May 14, 2010, while he was out on bond for FD-168, Barrett stole articles of clothing from a store. The State charged him with theft under Cause Number 82D02-1005-FD-500.

Barrett and the State reached an agreement, pursuant to which Barrett pleaded guilty as charged in both cases and the State refrained from filing a habitual offender enhancement. The trial court sentenced Barrett to two years in each case, to be served consecutively. Barrett now appeals.

DISCUSSION AND DECISION

Sentencing decisions rest within the sound discretion of the trial court and, if the sentence is within the statutory range, are reviewed on appeal for an abuse of discretion. *See Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic

and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. One way in which a trial court may abuse its discretion is by issuing a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration. *Id.* at 490-91.

Barrett argues that the trial court abused its discretion during sentencing because the trial court overlooked mitigators that are, in Barrett's view, clearly supported by the record. Mitigating circumstances can be found in any aspect of a defendant's character or record, or any circumstances of the offense, that the defendant proffers as a basis for a reduced sentence. *Smith v. State*, 929 N.E.2d 255, 259 (Ind. Ct. App. 2010), *trans. denied*. The trial court is not obligated to accept the defendant's assertions as to what constitutes a mitigating circumstance. *Shields v. State*, 699 N.E.2d 636, 639 (Ind. 1998). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is sufficient. *Anglemyer II*, 875 N.E.2d at 220-21.

Barrett first argues that the trial court erroneously overlooked his addictions to alcohol and drugs as a mitigating factor. We disagree. During the sentencing hearing, Barrett asserted that he has a brain tumor and stated that he "has a substance and alcohol problem." Tr. p. 44. Considering these factors together, Barrett argued that he needs "some kind of structured assistance." *Id.* After hearing the parties' arguments, the trial court found as mitigators that Barrett has a brain tumor and that he "probably does need more structure than what he's had." Tr. p. 47. We construe the trial court's identification of Barrett's need for structure as a reference to Barrett's struggles with drug and alcohol

addiction. Thus, the trial court did not overlook Barrett's drug and alcohol abuse, and we find no abuse of discretion.

Barrett also argues that the trial court failed to consider as mitigating factors that: (1) he is a veteran; (2) he has a young child; (3) he stole out of necessity because he needed clothes and money for medicine; and (4) he admitted his guilt to the theft charges. Barrett did not present these points at the sentencing hearing, but rather in letters he sent to the trial court prior to the hearing. In any event, Barrett was forty-six years old at the time of sentencing, and he failed to provide details on his past military service. He also failed to state whether he financially supported his child and whether the child would suffer undue hardship as a result of his incarceration. *See Benefield v. State*, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009), *trans. denied* (noting that a trial court does not abuse its discretion by failing to find hardship to dependents to be a mitigating factor unless the defendant demonstrates "special circumstances" showing that the hardship is undue). In addition, Barrett failed to state why poverty drove him to commit these thefts instead of seeking assistance. Finally, Barrett's admission of guilt does not automatically amount to a mitigating factor because he received a substantial benefit from his guilty plea. Specifically, the State agreed to refrain from filing a habitual offender enhancement against Barrett in exchange for his plea. *See Luhrsen v. State*, 864 N.E.2d 452, 458 (Ind. Ct. App. 2007), *trans. denied* (determining that the defendant's guilty plea was not entitled to substantial mitigating weight because the State dismissed a habitual offender enhancement in exchange for the plea). We conclude that the trial court did not abuse its discretion by declining to identify Barrett's proffered circumstances as mitigating factors.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

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