

Case Summary

Jeremiah Farmer appeals his aggregate twenty-year sentence for one count of Class B felony robbery and one count of Class B felony burglary. We affirm.

Issue

The sole issue before us is whether the trial court abused its discretion in sentencing Farmer.

Facts

On February 7, 2008, Farmer broke a closed window to gain entrance into a residence in Gary occupied by Tara Mathews and stole several items from her, including a computer, radio, DVD player and jewelry. On February 7, 2009, Farmer was driving a vehicle also occupied by Joseph Gursky when Farmer stopped the vehicle, exited, and proceeded to strike Gursky several times in the head and face with a crow bar. Farmer then pulled out a handgun and demanded that Gursky give him his wallet. Gursky complied, and the wallet contained \$750.

Under separate cause numbers, the State charged Farmer with Class B felony robbery and Class C felony battery with respect to the Gursky incident and Class B felony burglary with respect to the Mathews incident. On March 1, 2010, Farmer pled guilty to Class B felony robbery and Class B felony burglary, and the State dismissed the battery charge, as well as charges pending in another case. The plea agreement left sentencing to the trial court's discretion, except that it imposed a cap of ten years total with respect to each offense and required the sentences to be served consecutively.

On April 5, 2010, the trial court sentenced Farmer to ten years for each offense, to be served consecutively. The trial court found as aggravating circumstances Farmer's criminal history and that he had violated conditions of pretrial release in a different case when he committed these offenses. As mitigating, the trial court noted Farmer's guilty plea and evidence that Farmer previously had been diagnosed with bipolar disorder. Farmer now appeals.

Analysis

Farmer argues that the trial court abused its discretion in sentencing him by failing to acknowledge certain mitigators. An abuse of discretion in identifying or not identifying aggravators and mitigators occurs if it 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.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007) (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). Additionally, an abuse of discretion occurs if the record does not support the reasons given for imposing sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91. The relative weight given to aggravators and mitigators is not subject to appellate review. J.S. v. State, 928 N.E.2d 576, 579 (Ind. 2010).

Farmer first contends that the trial court erred in its consideration of his mental health. There is no dispute that Farmer, at age sixteen, was diagnosed with bipolar disorder. In its sentencing order, the trial court acknowledged Farmer's bipolar disorder

diagnosis but stated it was only giving it “moderate” mitigating weight, given the lack of expert testimony on the issue. App. p. 40. As noted, the weight that a trial court decides to assign to an aggravator or mitigator is not reviewable on appeal. J.S., 928 N.E.2d at 579. There is no abuse of discretion on this point.

Next, Farmer, who is the father of two young girls, contends the trial court abused its discretion in failing to recognize undue hardship to his dependents as a mitigating circumstance.¹ There is no requirement that a trial court find a defendant’s incarceration would result in undue hardship to his or her dependents. Roney v. State, 872 N.E.2d 192, 204 (Ind. Ct. App. 2007), trans. denied. As our supreme court has observed, “[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.” Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). To support use of this mitigator, there generally should be some evidence that the hardship to be suffered by a dependent is more severe than that suffered by any child whose parent is incarcerated. See Roney, 872 N.E.2d at 205.

Here, there was no evidence that Farmer has ever paid any support for his two daughters. Rather, the children resided with and were entirely cared for by Farmer’s

¹ The State alleges in its brief that Farmer waived his claim regarding hardship to his dependents because he did not advance that claim before the trial court, and in fact told the trial court that he was not advancing that claim. That is incorrect. During closing argument, counsel expressly asked the trial court to consider hardship to his dependents as a mitigator. See Tr. p. 30. The trial court did later ask counsel if there was any additional evidence to present with respect to that proffered mitigator, and counsel said there was not; at no time, however, did counsel state that she was abandoning reliance on that mitigator. See id. at 32.

mother.² As for Farmer's claim that his daughters will miss having a close emotional attachment to him by virtue of his incarceration, that is an unfortunate circumstance that applies to any incarceration of a parent with young children. It does not warrant automatically granting mitigating weight on the basis of undue hardship to dependents. This proffered mitigating circumstance was not clearly supported by the record, and the trial court did not abuse its discretion in rejecting it.

Conclusion

The trial court did not abuse its discretion in sentencing Farmer. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.

² The children's mother is absent from their lives.