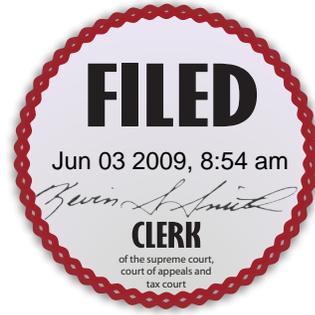


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHAWN L. ARNOLD,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 48A02-0812-CR-1153

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-0511-FD-00519
48D03-0802-FC-00058

JUNE 3, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

HOFFMAN, Senior Judge

Defendant-Appellant Shawn Arnold appeals the sentence he received for auto theft, a Class D felony, Ind. Code § 35-43-4-2.5; resisting law enforcement, a Class D felony, Ind. Code § 35-44-3-3(b)(1); resisting law enforcement, a Class A misdemeanor, Ind. Code § 35-44-3-3(a); and attempted escape, a Class C felony, Ind. Code §§ 35-44-3-5(a) and 35-41-5-1.

We affirm.

Arnold presents two issues for our review, which we restate as:

- I. Whether the trial court abused its discretion by failing to find certain circumstances mitigating.
- II. Whether Arnold's sentence is inappropriate.

In November 2005, Arnold was charged with auto theft and two counts of resisting law enforcement. In May 2007, he was additionally charged with attempted escape. Arnold pleaded guilty in August 2008 to the attempted escape, and, in September 2008, he pleaded guilty to the charges of auto theft and resisting law enforcement. On the same day, he was sentenced on all the charges. The trial court sentenced Arnold to three years on the auto theft, three years on the felony resisting law enforcement, and one year on the misdemeanor resisting law enforcement, to be served concurrently. Further Arnold was sentenced to eight years on the attempted escape conviction, to be served consecutively to

the sentences imposed for the auto theft and resisting convictions. It is from this aggregate eleven-year sentence that Arnold now appeals.

As his first allegation of error, Arnold claims that the trial court abused its discretion by failing to find as mitigating factors his troubled childhood and the undue hardship imprisonment would cause his minor children. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on rehearing*, 875 N.E.2d 218. 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.*

More specifically, a trial court “may impose any sentence that is ... authorized by statute ... regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” Ind. Code § 35-38-1-7.1(d). When imposing a sentence for a felony, a trial court must enter a sentencing statement including reasonably detailed reasons for imposing a particular sentence. *Anglemyer*, 868 N.E.2d at 490. A trial court abuses its discretion when it: 1) fails to issue any sentencing statement; 2) enters a sentencing statement that explains reasons for imposing a sentence, but the record does not support the reasons; 3) enters a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or 4) considers reasons that are improper as a matter of law. *Id.* at 490-91.

The finding of mitigating circumstances is within the discretion of the trial court. *Page v. State*, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007), *trans. denied*, 891 N.E.2d 39 (2008). In addition, the court is not required to give the same weight to a proffered mitigating circumstance as does the defendant. *Rogers v. State*, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007), *trans. denied*, 891 N.E.2d 37 (2008). An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant on appeal to establish that the mitigating evidence is both significant *and* clearly supported by the record. *Page*, 878 N.E.2d at 408.

Arnold argues that his childhood is a mitigating factor deserving of recognition. Arnold was raised by his grandparents. When Arnold was approximately seven years old, his step-father was shot and killed during a drug transaction. His mother died in 2004, when Arnold was already an adult, of a drug overdose, and he indicated that he had had no contact with his biological father for several years.

Evidence of a difficult childhood warrants little, if any, mitigating weight. *Coleman v. State*, 741 N.E.2d 697, 700 (Ind. 2000). In the present case, we see no need to vary from this general tenet because we are presented with no evidence showing that this proffered mitigator is significant. The trial court did not abuse its discretion by not finding Arnold's troubled childhood as a mitigating circumstance.

Arnold also contends that the trial court improperly overlooked the impact his imprisonment will have on his children. He asserts that the hardship to his children is

beyond that normally experienced by children whose parent is incarcerated, both financially and emotionally.

Absent special circumstances, a trial court is not required to find that a defendant's incarceration would result in undue hardship on his dependents. *Roney v. State*, 872 N.E.2d 192, 204 (Ind. Ct. App. 2007), *trans. denied*, 878 N.E.2d 217 (2007). Here, no special circumstances exist. Arnold's former wife and former mother-in-law testified that Arnold is a good dad who pays child support when he is not incarcerated. Arnold's former mother-in-law also testified that the children are suffering from ADHD¹, are having nightmares, and are in counseling.

Although these witnesses testified that Arnold's children rely upon him, the materials on appeal belie this assertion. Arnold's former wife testified that, at the time of sentencing, Arnold had been away from his children for three years, and his former mother-in-law agreed that Arnold had been arrested "a lot of times" since his children had been born. Tr. at 59. Moreover, there was no evidence that the issues with which the children were dealing at the time of sentencing were related to Arnold or his incarceration/continued separation from the children. The trial court did not abuse its discretion in not finding undue hardship to be a mitigating factor. *See Roney*, 872 N.E.2d at 205 (finding that trial court did not abuse its discretion by not finding hardship to dependents as mitigating factor where defendant failed to demonstrate that any hardship

¹ ADHD refers to a chronic disorder called attention deficit hyperactivity disorder. It is a condition that is characterized by inattention, hyperactivity and impulsiveness. These symptoms can lead to difficulty in academic, emotional, and social functioning.

http://www.medicinenet.com/attention_deficit_hyperactivity_disorder_adhd/article.htm

suffered by his children was “undue” in sense that it was any worse than that suffered by any children whose father is incarcerated).

For his final assertion of error, Arnold claims that his sentence is inappropriate. We have the authority to revise a sentence if, after due consideration of the trial court’s decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer*, 868 N.E.2d at 494.

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Arnold’s three-year sentences are the statutory maximum sentences for his two Class D felony convictions, *see* Ind. Code § 35-50-2-7 (advisory sentence is one and one-half years), and his eight-year sentence is the statutory maximum sentence for his Class C felony conviction. *See* Ind. Code § 35-50-2-6 (advisory sentence is four years). His one-year sentence for his Class A misdemeanor conviction is the maximum statutory sentence. *See* Ind. Code § 35-50-3-2. Nothing about Arnold’s particular crimes makes them out of the ordinary. However, Arnold could have avoided these charges by taking advantage of the previous opportunities made available to him to become drug-free. He indicated that at the time he committed the offenses of auto theft and resisting law enforcement, he was on marijuana, methamphetamine, and methadone. He further stated that, he “messed up” and “let drugs

run” his life. Appellant’s Appendix Vol. II, Pre-Sentence Investigation Report at 10. Thus, the nature of Arnold’s offenses, alone, does not necessarily weigh in favor of either a reduction or addition to the advisory sentence.

As to the character of the offender, Arnold’s character weighs heavily in favor of a sentence above the advisory sentence. As mentioned above, Arnold has used illegal drugs for many years. He started using marijuana at age 12 and experimented with acid as a youth. While still a youth, Arnold was admitted to the Anderson Center for substance abuse treatment but left against medical advice after three hours. In 2005, Arnold was allowed to participate in the Madison County Drug Court Program, but he absconded from the program and his participation was terminated.

In addition, Arnold has an extensive criminal history which began when he was only seven years old with charges of six counts of arson. Thereafter, he was charged with criminal mischief, theft, burglary, criminal conversion, and resisting law enforcement, to name only a few. He was placed at a boys’ residential unit when he was eleven where he was involved in several incidents and by age thirteen he had been committed to the Indiana Boys’ School where he completed the eighth grade. Arnold began his adult criminal career by being waived into adult court on charges of battery on a police officer when he was fifteen. That began an extensive adult criminal history spanning sixteen years and including such charges as felony battery, arson, manufacturing or possessing an explosive or flammable substance, hurling a bomb, burglary, theft, possession of a controlled substance, resisting law enforcement, auto theft, and attempted escape.

Moreover, Arnold has had at least seven notices of violation of probation/suspended sentence filed against him.

In favor of Arnold's character, he appears to pay support when he is not incarcerated. However, Arnold has the burden of persuading this Court that his sentence is inappropriate, *see Childress*, 848 N.E.2d at 1080, and although the nature of his offenses may not merit a sentence greater than the advisory sentence, his consistent unwillingness to abide by the law and his violation of virtually every form of correctional and/or rehabilitative treatment indicates his sentence is not inappropriate.

Based upon the foregoing discussion and authorities, we conclude that the trial court did not abuse its discretion in failing to find as mitigating factors the hardship to Arnold's dependents caused by his imprisonment and his troubled childhood. Further, we conclude that Arnold's sentence is not inappropriate.

Affirmed.

DARDEN, J., and BRADFORD, J., concur.