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ATTORNEY FOR APPELLANT:

ROBERT O. BEYMER
Portland, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANDREW R. FALK
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM A. LAWHORN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 05A04-1009-CR-725
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-1006-FB-214

June 9, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

William Lawhorn pled guilty to Class B felony dealing methamphetamine,[1] and the trial court sentenced him to twenty years, with ten suspended to probation. He complains the trial court erred when it did not find mitigating circumstances in his substance abuse problem and three dependent children. We affirm.

FACTS AND PROCEDURAL HISTORY

On June 8, 2010, the State charged Lawhorn with Class B felony dealing in methamphetamine and Class D felony possession of methamphetamine.[2] On July 28, 2010, Lawhorn pled guilty to dealing methamphetamine, and in exchange the State dropped the possession charge. The plea agreement provided Lawhorn would not serve more than ten years in prison, but the trial court would decide the remaining terms of the sentence.

The trial court found no mitigating factors and four aggravating factors: Lawhorn had been adjudicated a juvenile delinquent; Lawhorn had several misdemeanor and felony convictions; Lawhorn had failed multiple efforts at rehabilitation; and Lawhorn committed the dealing methamphetamine offense when he was on bond. The court sentenced Lawhorn to twenty years, with ten years suspended to probation.

DISCUSSION AND DECISION

We review allegations that a trial court failed to find valid mitigators under an abuse of discretion standard. *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 abuses its discretion when it ignores a

[1] Ind. Code § 35-48-4-1.1.
[2] Ind. Code § 35-48-4-6.1(a).

significant mitigator that was raised by the defendant at sentencing and was clearly supported by the record. *Id.* The trial court is not obligated to give the same weight to a mitigator as the defendant would. *Covington v. State*, 842 N.E.2d 345, 349 (Ind. 2006).

Lawhorn first argues the trial court should have found a mitigator in his substance abuse problem. Lawhorn cites no legal authority demonstrating a court abuses its discretion if it does not find addiction to be a mitigator. Rather, case law supports an opposite conclusion. *See, e.g.*, *Hildebrandt v. State*, 770 N.E.2d 355, 363 (Ind. Ct. App. 2002) (holding no abuse of discretion in finding substance abuse was an aggravating factor), *trans. denied*.

The trial court explicitly considered and rejected this mitigator: "The Court does not consider your addiction to be a mitigating factor. You've had many, many opportunities to . . . address your addiction and have chosen not to do so." (Tr. at 12.) Lawhorn's substance abuse was not ignored by the court nor was its significance as a mitigator clearly supported by the record.

Lawhorn next argues the court should have considered the effect his incarceration may have on dependent children to be a mitigating factor. Lawhorn owes $40,000 in unpaid child support, and he has not pointed to any evidence that he has paid or will be able to pay it. We do not minimize the hardship that Lawhorn's children might face, but given Lawhorn's history of failing to pay child support, we cannot say the court abused its discretion by rejecting Lawhorn's assertion that the effect his incarceration may have on his dependents should be considered a mitigating factor. *See Gray v. State*, 790 N.E.2d 174, 178 (Ind. Ct.

App. 2003) (finding no abuse of discretion in rejection of dependents as a mitigator when the record demonstrated the defendant did not support his dependants).

For these reasons, we hold the court did not abuse its discretion by rejecting these alleged mitigating factors.

Affirmed.

BAKER, J., and BRADFORD, J., concur.