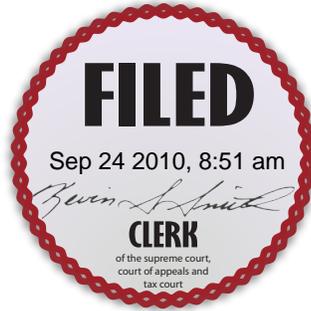


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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ERIC L. HATCHER, )  
 )  
Appellant-Defendant, )  
 )  
vs. )  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

No. 30A04-1002-CR-59

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APPEAL FROM THE HANCOCK SUPERIOR COURT  
The Honorable Dan E. Marshall, Judge  
Cause No. 30D02-0909-FD-1339

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**September 24, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## Case Summary

Eric L. Hatcher (“Hatcher”) appeals his conviction and sentence for Receiving Stolen Property, as a Class D felony.<sup>1</sup> We affirm.

### Issues

Hatcher presents three issues for review:

- I. Whether the trial court abused its discretion when it denied Hatcher’s motion to withdraw his guilty plea;
- II. Whether the trial court abused its discretion by failing to recognize significant mitigating circumstances; and
- III. Whether Hatcher’s two and one-half year sentence is inappropriate.

### Facts and Procedural History

On September 8, 2009, the State charged Hatcher with Receiving Stolen Property and Operating While Intoxicated, as a Class A misdemeanor.<sup>2</sup> At his initial hearing, also on September 8, 2009, Hatcher pled guilty to both counts. Hatcher subsequently sought to withdraw his guilty plea as to Receiving Stolen Property, by filing a pro-se motion on September 10, 2009 and a verified motion (with assistance of counsel) on November 5, 2009.

On December 31, 2009, the trial court conducted a hearing on Hatcher’s motion to withdraw his guilty plea. The trial court took the motion under advisement, pending the opportunity to listen to the trial court’s tape of the initial hearing. On January 4, 2010, the trial court denied Hatcher’s motion. On January 21, 2010, the trial court conducted a

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<sup>1</sup> Ind. Code § 35-43-4-2. Hatcher does not contest his conviction for Operating While Intoxicated.

<sup>2</sup> Ind. Code § 9-30-5-2.

sentencing hearing and sentenced Hatcher to two and one-half years imprisonment for Receiving Stolen Property, and one year for Operating While Intoxicated, with such sentences to be served concurrently. Hatcher appeals.

## **Discussion and Decision**

### **I. Motion to Withdraw Guilty Plea**

Hatcher contends that the trial court should have granted his amended verified motion to withdraw his guilty plea. More specifically, he argues that his decision to plead guilty was not knowing and voluntary because he suffers from Paranoid Schizophrenia and was unrepresented by counsel at the initial hearing. According to Hatcher, he believed that he was pleading guilty to only one misdemeanor charge but then took immediate steps to set aside the felony plea after being informed by other inmates that he had pled guilty to the additional charge.

Indiana Code § 35-35-1-4(b) states the applicable standard when a defendant seeks to withdraw a guilty plea before the trial court has imposed a sentence:

After entry of a plea of guilty ... but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea ... for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. ... The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea ... whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Our appellate courts have interpreted this statute to require a trial court to grant such a request where the defendant “proves that withdrawal of the plea is necessary to correct a manifest injustice.” Weatherford v. State, 697 N.E.2d 32, 34 (Ind. 1998) (citation omitted).

“The court must deny a motion to withdraw a guilty plea if the withdrawal would result in substantial prejudice to the State.” Id. “Except under these polar circumstances, disposition of the petition is at the discretion of the trial court.” Id.

The trial court’s ruling on a motion to withdraw a guilty plea comes to us with a presumption in favor of the ruling. Id. “An appellant of an adverse decision on a motion to withdraw must prove the court abused its discretion by a preponderance of the evidence. In evaluating a defendant’s arguments on this point, we will not disturb the trial court’s ruling where it was based on conflicting evidence.” Id. (citations omitted).

In determining whether a trial court has abused its discretion in denying a motion to withdraw a guilty plea, this Court examines the statements made by the defendant at the guilty plea hearing to decide whether his plea was offered “freely and knowingly.” Brightman v. State, 758 N.E.2d 41, 44 (Ind. 2001).

In this case, the following exchange took place:

Court: And Mr. Hatcher this is cause number 0909-FD-1339. And in that cause number sir you have been charged with the offense of Possession of Stolen Property as a “D” Felony and Operating While Intoxicated as an “A” Misdemeanor. Do you understand that sir?

Defendant: Yes sir.

Court: And sir were you present when I advised everyone of the possible penalty range for operating while intoxicated as an “A” misdemeanor?

Defendant: Yes sir.

Court: Did you understand that penalty range?

Defendant: Yes sir.

Court: Did you have any questions about that penalty range?

Defendant: No sir.

Court: Sir the offense of Possession of Stolen Property is a Class "D" Felony and carries the following possible penalty range if you are convicted. Anything from six (6) months in jail up to three (3) years in jail and up to a Ten Thousand Dollar (\$10,000.00) fine. Do you understand that sir?

Defendant: Yes sir.

Court: Sir with respect to these two (2) counts today how would you like to proceed by pleading guilty or not guilty?

Defendant: Uh, guilty.

Court: Do you understand by pleading guilty you would be waiving or giving up the rights that I advised you of?

Defendant: Yes.

Court: Do you understand that by pleading guilty you would be exposing yourself to the penalty range I described?

Defendant: Yes sir.

Court: Did anyone promise you anything, threaten you or intimidate you in anyway to get you to plead guilty?

Defendant: No sir.

Court: Is pleading guilty your own free and voluntary act?

Defendant: Yes sir.

(Tr. 6-7.) After the trial court advised Hatcher of two separate charges and two separate penalty ranges, the trial court went on to establish the factual basis for each charge:

Court: Is it true that on September 6<sup>th</sup> 2009 in Hancock County, State of Indiana that you did then and there knowingly receive, retain or dispose of property of Kevin Stanner that had been the subject of theft. Is that true sir?

Defendant: Yes sir.

Court: Sir is it also true that on September 5<sup>th</sup> in Hancock County, State of Indiana that you did operate a vehicle while intoxicated on State Road 67 in a manner that endangered a person in Hancock County, State of Indiana. Is that true sir?

Defendant: Yes sir.

Court: Sir I will accept your offer to plead guilty. Find that you are guilty of these two (2) counts.

(Tr. 7-8.) As such, the record reveals that Hatcher's responses were lucid and appropriate. The record does not provide support for Hatcher's contention that he somehow knew he was pleading guilty to one offense but did not know that he was pleading guilty to a second offense. Hatcher has not demonstrated that the trial court abused its discretion by denying Hatcher's motion to withdraw his guilty plea.

## II. Mitigating Circumstances

Upon conviction of a Class D felony, Hatcher faced a sentencing range of six months to three years, with the advisory sentence being one and one-half years. See Ind. Code § 35-50-2-7. In imposing the two and one-half year sentence, the trial court found one aggravating circumstance, Hatcher's criminal history, and one mitigating circumstance, Hatcher's mental illness. Hatcher now claims that the trial court abused its discretion by not finding as mitigating circumstances hardship to his dependents and the lack of serious harm to person or property.

“So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007) (Anglemyer II). This includes the finding of an aggravating circumstance and the omission to find a proffered mitigating circumstance. Id. at 490-91. When imposing sentence for a felony, the trial court must enter “a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence.” Id. at 491.

The trial court’s reasons must be supported by the record and must not be improper as a matter of law. Id. However, a trial court’s sentencing order may no longer be challenged as reflecting an improper weighing of sentencing factors. Id. A trial court abuses its discretion if its reasons and circumstances for imposing a particular sentence are 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. Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007).

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 significant. Anglemyer II, 875 N.E.2d at 220-21. Although Hatcher claims that the lack of serious harm to person or property should have mitigated his offense, he did not advance this argument to the trial court. Moreover, we

observe that Hatcher pled guilty to the offense of Receiving Stolen Property, as a Class D felony, an offense which does not encompass serious harm to person or property.<sup>3</sup>

With regard to Hatcher's dependents, a trial court "is not required to find that a defendant's incarceration would result in undue hardship upon his dependents." Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), trans. denied. Indeed, "[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).

According to Hatcher, the trial court should have found undue hardship as to his two children because his Social Security disability benefits of approximately \$650 monthly "have stopped" upon his incarceration. Appellant's Brief at 10. However, Hatcher also testified that his wife had begun working full-time as opposed to part-time. Prison is always a hardship on dependents. See Vazquez v. State, 839 N.E.2d 1229, 1234 (Ind. Ct. App. 2005), trans. denied. In this case, we do not find that the trial court abused its discretion by failing to identify undue hardship to Hatcher's dependents as a significant mitigating circumstance.

### III. Appropriateness of Sentence

Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the

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<sup>3</sup> Indiana Code Section 35-43-4-2(b) provides in relevant part: "A person who knowingly or intentionally receives, retains, or disposes of the property of another person that has been the subject of theft commits receiving stolen property, a Class D felony."

offender.” Ind. Appellate Rule 7(B). In performing our review, we assess “the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008). A defendant ““must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.”” Anglemyer, 868 N.E.2d at 494 (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” Childress, 848 N.E.2d at 1081. Here, the record discloses nothing remarkable about Hatcher’s offense of receiving stolen property.

As to the character of the offender, Hatcher has failed to benefit from prior rehabilitative efforts. He has convictions including Burglary in 1995, Battery in 1996, Theft in 1997, Theft in 1998, Theft in 1999, Theft in 2001, Theft in 2006, and Battery and Resisting Law Enforcement in 2009. At least four of his convictions were for felonies.

In light of Hatcher’s character and the nature of his offense, we do not find his sentence to be inappropriate.

### **Conclusion**

The trial court did not abuse its discretion by denying Hatcher’s motion to withdraw his guilty plea; nor did the trial court abuse its sentencing discretion. Finally, Hatcher’s sentence is not inappropriate.

Affirmed.

RILEY, J., and KIRSCH, J., concur.