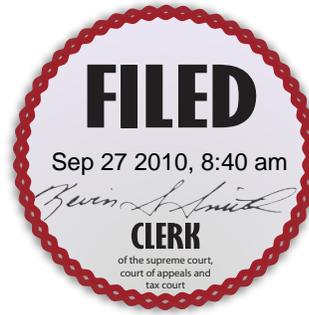


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CAMERON D. REED,)
)
Appellant-Defendant,)
)
vs.) No. 47A04-1002-CR-109
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable William G. Sleva, Judge
Cause No. 47D02-0808-FB-722

September 27, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Cameron D. Reed pleaded guilty to Possession of a Schedule II Controlled Substance¹ as a class D felony. He appeals the sentence imposed by the trial court, arguing as the sole issue on appeal that the trial court erred in failing to find his mental illness a mitigating circumstance.

We affirm.

The facts as admitted by Reed are that on August 19, 2008, Reed purchased 120 Lortab (hydrocodone) pills at a pharmacy and gave them to an acquaintance as repayment for a debt. As a result, the State charged Reed with dealing in a Schedule II controlled substance as a class B felony. Thereafter, the State and Reed entered into a plea agreement whereby Reed pleaded guilty to possession of a Schedule II controlled substance as a class D felony. Sentencing was left to the trial court's discretion.

The trial court heard arguments from the parties and testimony from Reed at the sentencing hearing. Trial counsel argued that Reed's mental illness should be considered as a mitigating circumstance. The pre-sentence investigation report revealed that Reed was hospitalized in 1986-87 for nearly one year at Madison State Hospital (MSH) after hitting his mother in the head and setting her home on fire. While there, he was diagnosed as suffering from paranoid schizophrenia and bipolar disorder. Reed has participated in mental health counseling in the years since his hospitalization at MSH, although he did not do so during several periods of incarceration. Reed reported over the years that he heard voices that told him to commit certain acts that resulted in criminal convictions.

In light of these and other factors, the trial court ordered a competency hearing in the

¹ Ind. Code Ann. § 35-48-4-2(A)(1) (West, Westlaw through 2010 2nd Regular Sess.).

instant case. Two evaluators submitted reports to the court, both concluding that Reed was competent. The court cited Reed's extensive criminal history as aggravating and found that no mitigating circumstances existed. Thus, the court found that the aggravating circumstances outweighed the mitigating circumstances and imposed the maximum three-year sentence for a class D felony conviction. Reed contends the trial court abused its discretion in failing to find his mental illness as a mitigating factor.

Determining mitigating circumstances is within the discretion of the trial court. *Corbett v. State*, 764 N.E.2d 622 (Ind. 2002). A trial court does not err in failing to find mitigation when a mitigation claim is "highly disputable in nature, weight, or significance." *Smith v. State*, 670 N.E.2d 7 (Ind. 1996). We further observe that the trial court is not obligated to accept the defendant's arguments as to what constitutes a mitigating factor. *Corbett v. State*, 764 N.E.2d 622. Nor is the trial court required to give the same weight to proffered mitigating factors as the defendant does. *Id.* Additionally, the trial court is not obligated to explain why it did not find a factor to be significantly mitigating. *Id.* The failure to find mitigating circumstances that are clearly supported by the record, however, may imply that they were overlooked and not properly considered. *Id.* An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Id.*

Our Supreme Court has explained that there are several factors bearing upon the determination of whether mental illness is a mitigating factor, "including: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of

any nexus between the disorder or impairment and the commission of the crime.” *Smith v. State*, 770 N.E.2d 818, 823 (Ind. 2002). The Court has held that these factors are not exclusive, “but are among those the trial court must consider in determining what, if any, mitigating weight to give to any evidence of a defendant’s mental illness after a finding or plea of guilty but mentally ill.” *Id.*

Implicit in the trial court’s sentencing order is a finding that Reed’s mental illness is entitled to no mitigating weight. Per *Corbett*, does this indicate that the trial court erroneously overlooked or did not properly consider this potential mitigator? The record reflects such is not the case. In pronouncing sentence, the court made the following comments:

I am specifically, I’m not sure if it’s ... gonna benefit or hurt if I make specific recommendations to DOC that he’s in need of counseling and or medication and treatment. Jailor, do you know if that if [sic] putting that language makes it harder?

[The jailor answered in the negative.]

Well, I’m going to specifically recommend and state that ah, he’s in need of psychiatric or mental health counseling which can best be provided through DOC. Also Court Reporter, given prior diagnoses, he is also in need of ongoing treatment and medication^[2] which can also be best provided by incarceration with DOC. So jailer, whatever it takes. If you need anything else from me, but I think those recommendations would benefit Mr. Reed.

Transcript at 26-27 (footnote supplied). Clearly, these comments reflect that the trial court was aware of, i.e., did not overlook, Reed’s mental health issues, but rejected his claim that

² An update to the presentence report submitted to the court indicated that Reed “was not capable of being responsible with taking his own medication.” *Presentence Update* at 1. Reed also was receiving outpatient mental health services at Centerstone, a mental health facility. The update indicated, however, that Centerstone had indicated it did not want to accept Reed back into the program primarily because he attended sporadically or did not attend at all, and he “continued to use other substances.” *Id.*

they should be considered as a mitigating circumstance at sentencing. Moreover, although the trial court was apprised of the long-standing nature of Reed's mental health issues, we can find nothing in the materials before the trial court suggesting the existence of a nexus between Reed's mental health issues and the commission of this offense. *See Smith v. State*, 770 N.E.2d 818. The trial court did not abuse its discretion in failing to find the state of Reed's mental health as a mitigating circumstance.

Judgment affirmed.

BARNES, J., and CRONE, J., concur.