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IN THE COURT OF APPEALS OF INDIANA

GEORGE PARKER,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A04-1104-CR-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Eichholtz, Judge
The Honorable Peggy Hart, Commissioner
Cause No. 49G20-1006-FA-050986

December 22, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

George Parker ("Parker") pleaded guilty in Marion Superior Court to Class A felony dealing in cocaine and was ordered to serve a thirty-year sentence in the Department of Correction. Parker appeals and argues that the trial court abused its discretion when it failed to consider that his incarceration will result in undue hardship to his dependents as a mitigating circumstance when the court imposed Parker's sentence.

Facts and Procedural History

On June 29, 2010, Parker was charged with Class A felony dealing in cocaine and Class B felony possession of cocaine. The State alleged the offenses were committed within 1,000 feet of a Family Housing Complex. On March 8, 2011, a jury trial commenced. The jury was sworn and the State's first witness had testified when Parker informed the court that he wanted to plead guilty. Thereafter, a guilty plea hearing was held and Parker pleaded guilty to both charged offenses, but the trial court determined that the offenses merged.

Parker's sentencing hearing was held on March 18, 2011. Parker argued several mitigating circumstances, but the trial court found only one: Parker's guilty plea. The trial court declined to assign significant mitigating weight to his guilty plea because Parker agreed to plead guilty only after the State presented evidence to the jury that Parker sold the cocaine to an undercover officer in an apartment complex parking lot in broad daylight with children present. The trial court considered Parker's criminal history as an aggravating circumstance. Parker was then ordered to serve thirty years executed in the Department of Correction for his Class A felony dealing in cocaine conviction. Parker now appeals.

Discussion and Decision

The trial court ordered Parker to serve thirty years executed for his Class A felony dealing in cocaine conviction. See Ind. Code § 35-50-2-4 (providing that the sentencing range for a Class A felony is twenty to fifty years, with thirty years being the advisory term). On appeal, Parker argues that the trial court abused its discretion when failed to consider the following mitigating circumstance: that a lengthy incarceration would result in undue hardship to his dependents.

Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. Id. An abuse of discretion will be found where 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. A trial court may abuse its discretion by issuing an inadequate sentencing statement, finding aggravating or mitigating factors that are not supported by the record, omitting factors that are clearly supported by the record and advanced for consideration, or by finding factors that are improper as a matter of law. Id. at 490–91.

The hardship to a defendant's dependents is not necessarily a significant mitigating factor because incarceration will always be a hardship on dependents. McElroy v. State, 865 N.E.2d 584, 592 (Ind. 2007); Vazquez v. State, 839 N.E.2d 1229, 1234 (Ind. Ct. App. 2005), trans. denied. Many persons convicted of crimes have dependents and, in the absence of special circumstances showing an excessive undue

hardship, a trial court does not abuse its discretion by failing to consider it as a mitigating circumstance. Benefield v. State, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009), trans. denied.

During the sentencing hearing, Parker failed to argue that his incarceration would result in undue hardship for his dependents.[1] Consequently, his argument is waived. See Georgopulos v. State, 735 N.E.2d 1138, 1145 (Ind. 2000).

Waiver notwithstanding, at the sentencing hearing, Parker alone testified that his fiancée suffers from a syndrome similar to Lupus. Parker alone testified that he has provided special care for her needs in the past. There was no evidence of his fiancée's current condition and/or any special care she currently requires, whether through Parker or through any other witness. Parker's fiancée did not testify. For all of these reasons, we conclude that Parker failed to present any evidence of special circumstances that would support his claim on appeal that his incarceration will result in undue hardship to his dependents.

The trial court did not abuse its discretion when it sentenced Parker to thirty years executed in the Department of Correction.

Affirmed.

FRIEDLANDER, J., and RILEY, J., concur.

[1] Parker argued that "[t]he next mitigator I'd ask for is the concern for his family." Tr. p. 68. Parker's "concern" was the potential for a lengthy separation between himself and his family members. Id.