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**IN THE
COURT OF APPEALS OF INDIANA**

DARRYL HOPKINS,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 54A01-0701-CR-52
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-8902-CF-15

July 11, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Darryl Hopkins (“Hopkins”) belatedly appeals his 1991 sentence of fifty years imprisonment following his plea of guilty to Rape, a Class A felony,¹ and Criminal Deviate Conduct, a Class A felony.² We affirm.

Issue

Hopkins presents a single issue for review: whether the trial court abused its discretion by according insufficient sentencing weight to evidence of Hopkins’ troubled childhood and the subsequent failure of mental health counseling.

Facts and Procedural History

On January 8, 1989, while he was on parole following a Texas conviction for aggravated sexual abuse, Hopkins abducted P.J. from a parking lot in Montgomery County, Indiana. He raped P.J. and compelled her to perform oral sex on him.

Four days later, he abducted a second victim from a parking lot in Madison County, Indiana, raped her, and compelled her to perform oral sex on him. He pleaded guilty to Rape and Criminal Deviate Conduct and was sentenced to fifty years imprisonment, with fifteen years suspended to probation.

Meanwhile, on February 27, 1989, Hopkins was charged in Montgomery County with one count of Rape, three counts of Criminal Deviate Conduct, and one count of Confinement.

On November 21, 1990, he pleaded guilty to one count of Rape and one count of Criminal Deviate Conduct, Class A felonies. On February 1, 1991, Hopkins was sentenced to fifty

¹ Ind. Code § 35-42-4-1.

years imprisonment on each conviction, with the sentences to be served concurrently with each other, but consecutive to any sentence to be served as a result of the parole violation. The sentences were also to be concurrent to the sentence imposed in Madison County.

On October 19, 2006, Hopkins was granted permission to file a belated appeal to challenge the sentence imposed in Montgomery County. This appeal ensued.

Discussion and Decision

At the time Hopkins was sentenced, Indiana Code Section 35-50-2-4 provided that a person who committed a Class A felony should be imprisoned for a fixed term of thirty years, with not more than twenty years added for aggravating circumstances and not more than ten years subtracted for mitigating circumstances. Trial courts were empowered with the discretion, within statutory limits, to determine the appropriate sentence for a defendant, including the discretion to find and weigh the aggravating and mitigating factors, if any. Corbett v. State, 764 N.E.2d 622, 630 (Ind. 2002). We review the trial court's determination for an abuse of that discretion. Id.

In sentencing Hopkins, the trial court found as aggravating circumstances: (1) Hopkins planned P.J.'s abduction;³ (2) he violated parole; and (3) he had a history of similar crimes. The trial court found no mitigators. Hopkins now contends that the trial court failed to give due weight to the mitigating circumstance of his childhood abuse. He contends that he was "programmed by years of abuse" and thereafter received ineffectual assistance from

² Ind. Code § 35-42-4-2.

³ P.J. testified in her deposition that she returned to her car in a fast food parking lot to find Hopkins' vehicle parked next to hers. He had backed in so that his driver's side door was beside her driver's side door. He had raised the hood, giving the appearance that he was having car trouble.

his therapist. Appellant's Brief at 6.

The trial court is not obligated to accord the same weight to a factor that the defendant considers mitigating or to find mitigators simply because they are urged by the defendant. Klein v. State, 698 N.E.2d 296, 300 (Ind. 1998). Rather, it is within the trial court's discretion to determine whether mitigating circumstances are significant and what weight to accord to the identified circumstances. Kelly v. State, 719 N.E.2d 391, 395 (Ind. 1999), reh'g denied. Moreover, the trial court is not required to explain why it did not find a certain factor to be significantly mitigating. Dunlop v. State, 724 N.E.2d 592, 594 (Ind. 2000), reh'g denied.

Our Supreme Court has "consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." Coleman v. State, 741 N.E.2d 697, 700 (Ind. 2000). See also Rose v. State, 810 N.E.2d 361, 366 (Ind. Ct. App. 2004) (holding that trial court did not abuse its discretion when it declined to find that troubled childhood was a mitigator). Here, Hopkins was on parole for a sexual offense when he abducted and raped P.J. He committed a similar offense four days later. When Hopkins told his prior therapist that he was committing indecent exposure, and the therapist advised Hopkins that he would be obligated to report criminal activity, Hopkins refused to continue counseling. His failure to benefit from prior rehabilitative efforts is apparent. The trial court did not abuse its discretion by refusing to mitigate Hopkins' sentence due to childhood abuse or the alleged limitations of mental health therapy.

Affirmed.

SHARNACK, J., and MAY, J., concur.