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**IN THE
 COURT OF APPEALS OF INDIANA**

FREDRIC ROBINSON,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A05-0701-CR-47
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
 The Honorable Sheila Carlisle, Judge
 Cause No. 49G03-0605-MR-77164

October 19, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Fredric¹ Robinson (“Robinson”) appeals his conviction, pursuant to a guilty plea, for murder,² a felony.

We affirm.

ISSUE

Whether the trial court failed to find significant mitigating circumstances that were clearly supported by the record.

FACTS

Joanne Smith (“Joanne”) and her husband, Robinson, resided at 3227 North Winthrop Avenue in Indianapolis in a duplex owned by Joanne’s father. On April 27, 2006, Edna Hansborough, who lived in the adjacent unit, heard loud thumping noises coming from Joanne and Robinson’s unit. Hansborough also heard Robinson shout, “I’m not going to let you go until you tell me where it’s at.” (Tr. 52). Hansborough never heard Joanne respond. Concerned, Hansborough telephoned Joanne’s father, Paul Smith,³ and told him that Joanne and Robinson were fighting.

Smith telephoned the police and reported the domestic disturbance. Officers Michael Forrest and Robert Henderson of the Indianapolis Police Department were dispatched to the scene. The officers spoke with Robinson at the door. He was not out of

¹ Robinson’s first name appears throughout the record as “Frederick,” “Frederic,” and “Fredrick.” We refer to him as “Fredric,” based upon his signature in the pre-sentence report. (PSI 11).

² Ind. Code § 35-42-1-1.

³ Paul Smith was Hansborough’s landlord.

breath and did not appear agitated. The officers noted that the living room did not appear to be in disarray. Soon thereafter, the officers left the scene “[t]hinking that everything was okay” (Tr. 53).

At approximately 7:45 a.m., the following morning, Joanne’s brother, Ellis Smith, stopped by the residence to check on her. Robinson turned Ellis away, saying that Joanne was still sleeping. Later that day, Robinson confessed to his mother that he had “hurt Joanne [sic] really bad.” (Tr. 53). Robinson’s mother relayed his comments to his sister, who then notified the police. The police returned to the residence to conduct a welfare check and discovered Joanne’s dead body. An autopsy later revealed that Joanne, who weighed eighty-five pounds at her death, died of blunt force trauma, manual strangulation, and a broken neck. Among her other injuries, Joanne suffered blackened eyes, a lacerated liver and kidneys, and vaginal and rectal injuries.

On May 3, 2006, the State charged Robinson with murder. On November 20, 2006, the parties tendered a plea agreement to the trial court. Under the plea agreement, the State agreed to dismiss Robinson’s pending probation violation.⁴ In addition, the State agreed to a sentence cap equal to the fifty-five year advisory sentence. Robinson admitted that he knowingly killed Joanne by inflicting mortal injuries upon her person and causing her to die. Thereafter, the trial court accepted the agreement of the parties.

On December 20, 2006, the trial court imposed the fifty-five year advisory sentence, identifying the following aggravating and mitigating circumstances:

⁴ At the time of Joanne’s murder, Robinson was on probation after serving a two-year sentence for operating a motor vehicle while intoxicated causing death, as a class C felony. Robinson’s passenger, his older brother, died in the crash.

. . . I heard . . . about some issues with your upbringing and some possible issues that have never been addressed in your life, perhaps there's a mental health issue. I'm certain that if there is one, it doesn't rise to the level of . . . any issue with you being not competent here in this case because you clearly are and there has never been a suggestion that you were not. Uh, but perhaps there were things throughout your life that you could have received or should have received treatment for that you didn't. Obviously, alcohol is an issue. It's riddled through your . . . Pre-sentence Report as an issue and I've heard some more about that today in your Sentencing Hearing but when it comes time to pronounce the sentence, it's all the things about you, both good and bad, that the Court has to identify for the record.

* * * * *

So, as far as mitigation, the only thing I can . . . find . . . is the fact that you've accepted responsibility and pled guilty. But I agree that that is tempered with the fact that you had a very . . . reasonable Plea Agreement because it capped the amount of time that you could have received. And because of that, . . . the mitigation weight is not as significant to the Court because you've been given a great benefit by the plea as well, that is to say, you would have been deserving of the maximum sentence. [I] find . . . that your prior criminal history is, clearly, an aggravating circumstance. It is riddled with . . . alcohol issues and unfortunately, it's, also, evident that you have caused the death of another. And that, also, appears to have involved alcohol at the time. So, throughout your . . . adult history of convictions which began with a conviction for operating while intoxicated, you've had the benefit, it looks like, of several opportunities to get some help and chose not to[,] either through probation or through some orders of special programs on probation.

* * * * *

So, the alcohol issue has always been there for you and you've not, apparently, learned from all your previous mistakes or your punishment hasn't been severe enough to change your conduct or maybe it's both, I don't know.

* * * * *

[I] find [your] prior criminal history to be an aggravating circumstance and then in addition to that, I find the fact that you were on probation and/or work release . . . to be incredibly aggravating . . . you were out [at the time of Joanne's murder], either on probation or work release for [the death of your brother] at the time. So, clearly from this record, it is the

Court's belief that . . . the presumptive⁵ sentence which is fifty-five years and also, the cap, that's allowed under the Plea Agreement is, indeed, the appropriate sentence for you.

(Tr. 95-99). Robinson now appeals.

DECISION

Robinson argues that the trial court failed to “appropriately weigh and consider” his alleged history of mental illness and substance abuse. Robinson’s Br. 5. He frames the issue as one of improper weight being accorded his proffered mitigating circumstances;⁶ however, throughout his brief, he argues that the trial court “dismissed” significant mitigating factors that were clearly supported by the record, and in so doing, abused its discretion. Robinson’s Br. 7. We address this issue below.

Sentencing decisions are within the sound discretion of the trial court. *Edwards v. State*, 842 N.E.2d 849, 854 (Ind. Ct. App. 2006). These decisions are afforded great deference on appeal and will only be reversed for an abuse of discretion. *Id.* We note that the finding of mitigating factors is not mandatory and rests within the discretion of the trial court. *Niemeyer v. State*, 865 N.E.2d 674, 676 (Ind. Ct. App. 2007). The trial

⁵ Indiana Code section 35-20-2-5 was amended in 2005 to replace the word “presumptive” with “advisory,” reflecting the changes made to the Indiana sentencing statutes in response to *Blakely v. Washington*, 542 U.S. 296, (2004), *reh’g denied*.

⁶ Robinson’s claim that the trial court “failed to appropriately weigh and consider” his alleged mental illness and substance abuse as mitigating circumstances is not available for appellate review. In support, we note our Supreme Court’s recent holding that

[b]ecause the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ [aggravating and mitigating] factors.

Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007).

court is not required to find the mitigating circumstances that a defendant offers; nor is the trial court required to explain why it has chosen not to make such a finding. *Id.* However, the failure of a trial court to find a significant mitigating circumstance clearly supported by the record may imply that the sentencing court overlooked or did not properly consider the circumstance. *Rawson v. State*, 865 N.E.2d 1049, 1056 (Ind. Ct. App. 2007).

First, with regard to Robinson's alleged mental illness, During Robinson's sentencing hearing, the defense counsel stated,

[T]here's clearly something that has gone on with Mr. Robinson that there's evidence of mental illness in the family, the combination of alcohol, unstable childhood, possible latent, uh, at least personality disorders, have all combined to create an individual who committed this act.

(Tr. 91). We note, however, that when asked during his pre-sentence interview about his history, if any, of mental illness, Robinson denied having ever suffered from any psychological disorder, and stated further that he had never been evaluated for mental illness. In his pre-sentence investigation report, Robinson did state that he experienced depression, nervousness and anxiety, but further indicated that such resulted from the circumstances surrounding his arrest, conviction, and pending incarceration for Joanne's murder.

The trial court's acknowledgment that "perhaps" there were personal issues for which Robinson "could have received or should have received treatment" throughout his life, (Tr. 95), is a far cry from Robinson's assertion that "the trial court accepted as fact [that he] likely had untreated mental health issues" Robinson's Br. 7. We agree

with the State that the trial court “at most acknowledged a possibility” that Robinson had a mental health issue, but ultimately concluded that the factor was neither significant nor clearly supported by the record. State’s Br. 4. We find no error.

Next, regarding Robinson’s substance abuse problems, the trial court stated, “Obviously, alcohol is an issue. . . . riddled through your [criminal history].” (Tr. 95). The trial court specifically noted Robinson’s three convictions for operating a motor vehicle while intoxicated -- the last of which resulted in the death of his older brother. In his brief, Robinson complains, “Instead of viewing [my] substance abuse and obvious addictions as a mitigating circumstance[,] the trial court blamed [me] for [my] addictions implying that [they were] a sign of weakness and laziness.” Robinson’s Br. 7. Robinson is apparently referring to the trial court’s conclusion that throughout Robinson’s adult history of convictions, he “had the benefit . . . of several opportunities to get some help and . . . chose not to” (Tr. 97).

As the State correctly notes, a defendant’s untreated substance abuse problem may properly be considered an aggravating, rather than a mitigating circumstance. *Bryant v. State*, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004). Admittedly, Robinson attended substance abuse treatment during his prior stints in prison and reported attending Alcoholics Anonymous meetings prior to his incarceration for Joanne’s murder. However, the trial court was unmoved by the extent of Robinson’s efforts to address his alcoholism, particularly given his extensive criminal history, which was “riddled with” numerous alcohol-related offenses, including one a few years earlier that resulted in his brother’s death, for which he was on probation at the time of Joanne’s death. (Tr. 97).

Moreover, as the State notes, “there has been no showing whatever that [Robinson’s] alcohol or substance abuse played a part” in Joanne’s murder. State’s Br. 6. Ultimately, the trial court concluded that Robinson’s substance abuse problems were not significant mitigating circumstances and would not influence its sentencing decision. We find no error.

Robinson has not established that his alleged mental illness and substance abuse problems were significant mitigating circumstances clearly supported by the record. It is apparent to us that the trial court considered both factors and determined, in its sound discretion, that neither was significant. Thus, the trial court determined that neither factor would influence its sentencing decision. We find no abuse of discretion.

Affirmed.

MAY, J., and CRONE, J., concur.