

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Devon M. Tucker,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

March 21, 2023

Court of Appeals Case No.
22A-CR-2246

Appeal from the Noble Circuit
Court

The Honorable Michael J. Kramer,
Judge

Trial Court Cause No.
57C01-1908-F3-0011

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Devon M. Tucker (“Tucker”) appeals his twelve-year sentence imposed after a jury trial for armed robbery as a Level 3 felony.¹ Specifically, Tucker argues that the trial court failed to recognize his years long struggle with substance abuse as a mitigating factor. Concluding that there was no error, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether the trial court erred when it did not recognize Tucker’s history of substance abuse as a mitigating factor.

Facts

[3] On January 6, 2019, Tucker and another man, William Moore (“Moore”), entered a Marathon gas station in Albion, Indiana wearing red bandanas. An employee and customer were inside the gas station. Tucker was armed with a handgun, which later turned out to be a BB-gun. After a cooler was tipped over, Tucker pointed the gun at the employee and demanded money. Tucker and Moore left the gas station with \$579 in cash and cartons of cigarettes.

[4] Tucker was subsequently arrested and charged with armed robbery as a Level 3 Felony. After a jury trial, Tucker was convicted. On August 22, 2022, the trial

¹ IND CODE § 35-42-5-1.

court conducted a sentencing hearing. At that hearing, evidence of Tucker's criminal history was introduced. It was determined that Tucker had prior misdemeanor convictions for operating while intoxicated, criminal mischief, disorderly conduct, and false informing. In addition, he also has prior felony convictions for auto theft, dealing in a narcotic drug, and maintaining a common nuisance. As a part of his dealing case, Tucker was allowed to participate in Noble County's drug court program, but he was subsequently terminated from the program. Tucker also has a history a probation violations and had his bond revoked in this case. At the sentencing hearing, Tucker introduced evidence that he had struggled with substance abuse. His sister, Lindsey Woods, testified that Tucker had struggled with substance abuse and addiction for ten years. In addition, she noted that Tucker has also struggled with anxiety and depression.

[5] At the conclusion of the sentencing hearing, the trial court took note of Tucker's criminal history. It noted that there were previous attempts at rehabilitation through drug court, but that Tucker had previously violated the conditions of his probation. Finding that any mitigating factors were outweighed by the aggravation the trial court imposed a twelve (12) year sentence, with ten (10) years executed in the Department of Correction and two (2) years to be served on probation.

[6] Tucker now appeals.

Decision

- [7] Tucker argues that the trial court abused its discretion by failing to consider his struggle with substance abuse and addiction as a mitigating factor when imposing his sentence. We disagree.
- [8] “Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs if the decision of the trial court 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.* at 491. While we can review the presence or absence of reasons justifying a sentence for an abuse of discretion, we cannot review the relative weight given to these reasons. *Id.* One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. “However, a trial court is not obligated to accept a defendant’s claim as to what constitutes a mitigating circumstance.” *Hape v. State*, 903 N.E.2d 977, 1000 (Ind. Ct. App. 2009) *trans. denied.*
- [9] In this case, we find that the trial court did not abuse its discretion by failing to recognize Tucker’s struggle with substance abuse as a mitigator. In fact, the trial court took note of the fact that Tucker had been given the opportunity to participate in Noble County’s drug court program as a part of his dealing case.

However, Tucker was terminated from the drug court program for violating its terms and conditions. As a result, the trial court gave his substance abuse and addiction issues little to no consideration. *See Hape*, 903 N.E.2d at 1002 (Trial court does not abuse its discretion by rejecting drug addiction as mitigating circumstance when defendant is aware of substance abuse problem but has not taken appropriate steps to treat it.). We find no abuse of discretion.

[10] Affirmed.

Altice, C.J., and Riley, J., concur.