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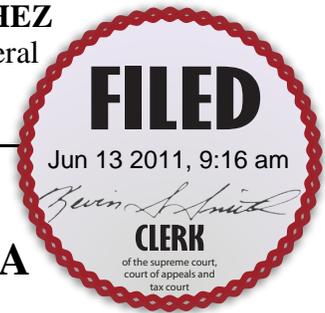
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**IN THE  
COURT OF APPEALS OF INDIANA**

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ALFRED MANZEL WILEY, )

Appellant-Defendant, )

vs. )

STATE OF INDIANA, )

Appellee-Plaintiff. )

No. 45A04-1007-CR-417

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0808-FB-73  
Cause No. 45G03-0910-FB-95

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**June 13, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**BAKER, Judge**

Appellant-defendant Alfred M. Wiley appeals the aggregate ten-year sentence that was imposed following his guilty plea to Dealing in Cocaine,<sup>1</sup> a class B felony, and Carrying a Handgun Without a License,<sup>2</sup> a class C felony. Wiley argues that he must be resentenced because the trial court abused its discretion in not identifying the hardship that his female companion and three minor children would suffer as a result of his prolonged incarceration. Concluding that Wiley was properly sentenced, we affirm the judgment of the trial court.

### FACTS

On August 25, 2008, Wiley was in possession of an AK-47 rifle that was modified to be aimed and fired with one hand. The gun was in his vehicle near an intersection in Gary. Wiley did not have a license to carry the weapon and he knew it was illegal to do so because he had previously been convicted of carrying a handgun without a license. The following day, the State charged Wiley with various offenses related to this incident under Cause 08-73.

While on bond, Wiley sold crack cocaine to a confidential informant at a McDonald's Restaurant. As a result, on October 1, 2009, Wiley was charged under Cause 09-95 with two counts of dealing in cocaine, a class B felony, and one count of neglect of a dependent, a class D felony.

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<sup>1</sup> Ind. Code § 35-48-4-1.

<sup>2</sup> Ind. Code § 35-47-2-1 and -23.

On April 27, 2010, the parties stipulated to a factual basis and entered into a plea agreement. In accordance with the agreement, the State amended the charging information in cause 08-73 and added the charge of carrying a handgun without a license, a class C felony. Wiley agreed to plead guilty to the amended charge and to one count of dealing in cocaine, a class B felony, under Cause 09-95.

In exchange for Wiley's guilty plea, the State agreed to dismiss the remaining charges under both cause numbers, and sentencing was left to the trial court's discretion. At the sentencing hearing that commenced on June 9, 2010, it was established that Wiley has three children, ages eleven, ten, and five. Prior to his arrest, Wiley lived with his girlfriend of fifteen years—Latosha Herrod—his three children, and Herrod's mother.

The evidence showed that Wiley held three separate fulltime jobs between 2001 and 2005. Since that time, Wiley has only held fulltime employment for three months in 2008. Wiley also asserted that he sometimes worked on a farm and on cars on a part time basis.

The trial court did not identify any aggravating or mitigating circumstances and sentenced Wiley to the Indiana Department of Correction (DOC) to serve consecutive sentences of four years on the handgun charge and to six years for dealing in cocaine.

Wiley now appeals.

## DISCUSSION AND DECISION

As set forth above, Wiley contends that the trial court abused its discretion in sentencing him<sup>3</sup> because it did not identify the hardship that incarceration would have on his dependents as a mitigating factor. Sentencing determinations are within the trial court's sound discretion, and we will not reverse that decision absent an abuse of discretion. Allen v. State, 722 N.E.2d 1246, 1250 (Ind. Ct. App. 2000). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances of the case. Groves v. State, 823 N.E.2d 1229, 1231 (Ind. Ct. App. 2005). A trial court abuses its discretion only where: (1) the trial court fails to provide any sentencing statement; (2) the sentencing statement is not supported by the record; (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration by the defendant; or (4) the trial court's reasons are improper as a matter of law. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). Although the finding of mitigating circumstances is squarely within the trial court's discretion, the court can abuse its discretion where it omits consideration of mitigating factors that are clearly supported by the record and advanced for consideration. Id. at 490-91.

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<sup>3</sup> Wiley makes no separate argument that his sentence is inappropriate in light of the nature of his offense or his character pursuant to Indiana Appellate Rule 7(B). Regardless, we do not consider Wiley's sentence to be inappropriate.

A trial court “is not required to find a defendant’s incarceration would result in undue hardship on his dependents.” Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005). Indeed, “[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.” Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Thus, the hardship to a defendant’s dependents is not always a significant mitigating factor. McElroy v. State, 865 N.E.2d 584, 592 (Ind. 2007).

As discussed above, Wiley’s employment history was spotty. Wiley reported that he worked on a fulltime basis for only three months between 2006 and his arrest in this case. Appellant’s App. p. 10. Although Herrod testified that she wanted Wiley to return home and assist her with the care of the children, the evidence established that she is regularly employed as a nursing assistant and supports the children on her own. Sent. Tr. p. 6-8.

While Herrod’s duties with the children might be less difficult with Wiley’s help, the record is unclear as to what degree the children depended on Wiley for care or support. Moreover, Wiley has failed to demonstrate the effect that his incarceration would have on the children.

In sum, although Wiley’s children will suffer hardship as a result of his absence, he has failed to show the existence of any special circumstances that would cause his children to suffer unique or particularly grievous hardship. Put another way, Wiley has not demonstrated that any hardship suffered by his children is undue in the sense that it is

any worse than that suffered by any child whose father is incarcerated. Thus, we find no abuse of discretion as a result of the trial court's decision not to identify the alleged hardship to Wiley's dependents as a significant mitigating factor. See Anglin v. State, 787 N.E.2d 1012, 1018 (Ind. Ct. App. 2003) (finding no abuse of discretion where the evidence established that the defendant's daughter was ill and he was concerned and wished to spend time with her, but nothing indicated her degree of reliance upon him).

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.