MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jared Michael McClaskey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 3, 2022

Court of Appeals Case No. 21A-CR-2931

Appeal from the Vermillion Circuit Court

The Honorable Jill D. Wesch, Judge

Trial Court Cause No. 83C01-2101-F6-14

Robb, Judge.

Case Summary and Issue

[1] Jared McClaskey pleaded guilty to operating a motor vehicle while privileges were suspended and possession of a syringe, both Level 6 felonies. McClaskey also admitted to being an habitual offender. The trial court sentenced McClaskey to an aggregate of six years. McClaskey now appeals, claiming he was denied effective assistance of trial counsel at sentencing. Concluding that McClaskey did not receive ineffective assistance of counsel, we affirm.

Facts and Procedural History

[2] In January 2021, McClaskey was arrested for operating a vehicle after his license had been suspended for being an habitual traffic violator. McClaskey was also found to be in possession of a hypodermic syringe. The State charged McClaskey with operating a motor vehicle while privileges were suspended and possession of a syringe as Level 6 felonies. The State also alleged McClaskey was an habitual offender. McClaskey pleaded guilty to both charges and admitted to being an habitual offender.

[3] Prior to sentencing, the probation department filed a Pre-Sentence Investigation report ("PSI"). McClaskey reviewed the PSI and did not indicate prior to sentencing that there were any corrections or additions to report. *See* Transcript of Evidence, Volume 2 at 19. The PSI states that McClaskey has a good relationship with his parents and with the mother of his children, with whom he is in a romantic relationship. The mother has custody of the children and

McClaskey is not ordered to pay child support. Further, the PSI states that McClaskey "has been on medication for depression and anxiety in the past [although h]e is not currently under the supervision of a physician and not on medication." Appendix to Brief of Appellant, Volume 2 at 58.

[4] On December 15, 2021, the trial court held a sentencing hearing. At the hearing, McClaskey addressed the court and stated, "I have a bad history with . . . drugs and alcohol and everything, and I'm asking for a chance of probation and rehab or a sober living house." Tr., Vol. 2 at 21. McClaskey's counsel then asked the trial court to give McClaskey concurrent one and one-half year sentences for his two Level 6 felony counts and impose the minimum of two years for McClaskey's habitual offender enhancement.

[5] The trial court found McClaskey's guilty plea to be a mitigating circumstance. As an aggravating circumstance, the trial court found that McClaskey has a significant criminal history. The trial court determined that the aggravating circumstances outweighed the mitigating circumstances. The trial court then sentenced McClaskey to two years for each Level 6 felony to be served concurrently. McClaskey's sentence was then enhanced by four years due to his habitual offender status, for an aggregate of six years. McClaskey now appeals.[1] Additional facts will be provided as necessary.

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[1] McClaskey filed a notice of appeal pro se, which was later amended by counsel. *See* Appellant's App., Vol. 2 at 11, 81-82.

Discussion and Decision

I. Standard of Review

[6] The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to counsel and mandates "that the right to counsel is the right to the effective assistance of counsel." *Strickland v. Washington*, 466 U.S. 668, 686 (1984) (quotation omitted). When we consider a claim of ineffective assistance of counsel, we apply a "strong presumption . . . that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Morgan v. State*, 755 N.E.2d 1070, 1073 (Ind. 2001). "[C]ounsel's performance is presumed effective, and a defendant must offer strong and convincing evidence to overcome this presumption." *Williams v. State*, 771 N.E.2d 70, 73 (Ind. 2002).

II. Ineffective Assistance of Counsel

[7] McClaskey argues that he received ineffective assistance of counsel at his sentencing hearing when his trial counsel failed to raise mitigating circumstances.[2] To prevail on a claim of ineffective assistance of counsel, a

[2] McClaskey contends that trial counsel failed to investigate his mental health circumstances. Specifically, McClaskey claims that his mother provided trial counsel with a "packet" of information regarding his mental health. Brief of Appellant at 8. First, we note that the PSI addresses McClaskey's mental health and states that "he has been on medication for depression and anxiety in the past [but h]e is not currently under the supervision of a physician and not on medication." Appellant's App., Vol. 2 at 58. Second, a claim of ineffective assistance of counsel on direct appeal "addresses claims of error established in the record of the proceedings" and new evidence not presented at trial may not be introduced. *Jewell v. State*, 887 N.E.2d 939, 941 (Ind. 2008) (citations omitted). Therefore, we do not consider this alleged outside evidence regarding McClaskey's mental health.

petitioner must demonstrate both that his counsel's performance was deficient and that he was prejudiced by the deficient performance. *See French v. State*, 778 N.E.2d 816, 824 (Ind. 2002) (citing *Strickland*, 466 U.S. at 687, 694). A counsel's performance is deficient if it falls below an objective standard of reasonableness based on prevailing professional norms. *Id.* The petitioner is prejudiced if there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* A reasonable probability is a probability sufficient to undermine confidence in the outcome. *Perez v. State*, 748 N.E.2d 853, 854 (Ind. 2001). Failure to satisfy either prong will cause the claim to fail. *French*, 778 N.E.2d at 824.

[8] Most ineffective assistance of counsel claims can be resolved by a prejudice inquiry alone. *Id.* The dispositive question in determining whether a defendant is prejudiced by counsel's failure at sentencing to present mitigating evidence is what effect the totality of the omitted mitigation evidence would have had on the sentence. *Coleman v. State*, 741 N.E.2d 697, 702 (Ind. 2000), *cert. denied,* 534 U.S. 1057 (2001).

[9] Here, the trial court found McClaskey's guilty plea to be the only mitigating factor. The trial court is not required to find the presence of mitigating circumstances. *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993). When evidence of mitigators is presented, the trial court has the discretion to determine whether the factors are mitigating, and it is not required to explain why it does not find the proffered factors to be mitigating. *Taylor v. State*, 681

N.E.2d 1105, 1112 (Ind. 1997). In *McCarty v. State*, however, we found that prejudice could arise where "mitigating circumstances were not placed before the court at all [and] the court was therefore unable to even consider them." 802 N.E.2d 959, 967 (Ind. Ct. App. 2004), *trans. denied*.

[10] McClaskey contends that trial counsel failed to present evidence of relevant mitigators listed in Indiana Code section 35-38-1-7.1(b). Specifically, McClaskey argues that trial counsel should have presented the following mitigating circumstances: (1) there was no victim who suffered an injury; (2) McClaskey has dependent children for whom his imprisonment would create undue hardship[3]; (3) the crime would be unlikely to reoccur; (4) McClaskey's strong social ties; and (5) the strong relationships McClaskey has with the mother of his children and his own mother.[4] McClaskey claims that the trial court "did not list any of the aforementioned applicable mitigating [circumstances] because it was not presented with any evidence of [them]." Brief of Appellant at 10. We disagree.

[11] First, McClaskey pleaded guilty to operating a motor vehicle while privileges are suspended and possession of syringe. Neither crime would have a "victim"

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[3] We note that a trial court "is not required to find that a defendant's incarceration will result in undue hardship upon his dependents." *Davis v. State*, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005), *trans. denied.* "Many 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).

[4] McClaskey also argues that trial counsel did not mention the fact that he had been accepted into two rehabilitation programs. However, the record is clear that trial counsel did introduce McClaskey's acceptances as exhibits. *See* Tr., Vol. 2 at 19-20.

nor an "injury, damage or loss[.]" *Id.* McClaskey fails to show how the presentation of such a mitigating circumstance would be relevant or given any weight by the trial court.

[12] Next, evidence regarding McClaskey's minor dependents, social ties, and relationship with the mother of his children and his own mother is included in the PSI. We presume the trial court was aware of information in the PSI. *See McCarty,* 802 N.E.2d at 966. The PSI states that McClaskey has one close friend and has a good relationship with his parents but that his main support system is the mother of his children. McClaskey's "Family & Social Support Domain Level" and "Peer Associations Domain Level" were rated as low and moderate risks, respectively. Appellant's App., Vol. 2 at 58. Further, the PSI states that although McClaskey co-parents, the mother of his children has custody of the children, and he has not been ordered to pay child support. We presume the trial court purposefully excluded these as mitigators. *See Taylor*, 681 N.E.2d at 1112.

[13] Last, McClaskey's contention that his offense is unlikely to reoccur is refuted by evidence of his extensive criminal history as detailed in the PSI. McClaskey's license was suspended because he was an habitual traffic offender. In this case he admitted again to being an habitual offender and he has a long history of drug and alcohol abuse. This suggests that it is very likely that McClaskey will reoffend.

[14] We conclude McClaskey failed to show that he was prejudiced by trial counsel's failure to present evidence of alleged relevant mitigators at the sentencing hearing because he does not show that trial counsel's presentation of this evidence would have changed his sentence.

Conclusion

[15] We conclude that McClaskey did not receive ineffective assistance of counsel. Accordingly, we affirm.

[16] Affirmed.

Pyle, J., and Weissmann, J., concur.