

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Timothy P. Broden
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Devonta Lashawn Roberts,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2023

Court of Appeals Case No.
22A-CR-2018

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-2107-MR-7

Memorandum Decision by Judge Robb
Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issue

- [1] After Devonta Roberts pleaded guilty to two counts of murder, the trial court sentenced him to sixty years for each count and ordered the sentences to run consecutive to each other, for an aggregate sentence of 120 years executed in the Indiana Department of Correction (“DOC”). The sole issue Roberts raises on appeal is whether the trial court abused its discretion by imposing consecutive sentences. Concluding the trial court did not abuse its discretion at sentencing, we affirm.

Facts and Procedural History

- [2] On July 5, 2021, Roberts was with his girlfriend, Victoria Moore; V.H., Moore’s five-year-old non-verbal son; and D.R., Roberts’ and Moore’s three-year-old daughter. Roberts, Moore, and the children were outside of Moore’s Lafayette, Indiana, apartment, setting off fireworks with neighbors. That evening, Roberts had been drinking, acting in an aggressive manner, and displaying a handgun, “threatening people.” Exhibits, Volume 1 at 19.
- [3] At some point during the fireworks display, Roberts accused Moore of flirting with a male neighbor. Roberts then retaliated by flirting with the neighbor’s girlfriend. Roberts and Moore began to argue over the situation, and,

eventually, Moore grabbed D.R. and went inside her apartment. The neighbors who had gathered to set off fireworks dispersed.

[4] A short while later, another neighbor heard “several pops coming from [Moore’s] apartment.” *Id.* The neighbor then saw Roberts enter a blue Chrysler 300 sedan and drive “out of the parking lot in a hurry.” *Id.* V.H., Moore’s non-verbal son, knocked on the neighbor’s door and began making grunting noises and gesturing for the neighbor to come outside. The neighbor walked with V.H. to Moore’s apartment and found Moore laying on the floor in a pool of blood and D.R. laying underneath Moore. The neighbor also saw on a table in Moore’s apartment a handgun that appeared to be the same gun that Roberts had displayed earlier in the evening. The neighbor extracted D.R. from underneath Moore, who was unresponsive, then picked up the child. The neighbor returned to her apartment with D.R. and V.H. While holding D.R., the neighbor discovered that D.R. had been shot. The neighbor called 911.

[5] At approximately 11:30 p.m., Lafayette Police Department officers were dispatched to Moore’s apartment complex on a report that a shooting had occurred. Upon arrival, the officers located D.R. in a grassy area outside of the apartment and saw an individual attempting to administer first aid. An officer carried D.R. to a waiting ambulance, and, on route, asked the child her name. D.R. responded, “[M]y daddy killed me.” *Id.* at 17.

- [6] Officers found Moore in the kitchen of her apartment. She had been shot multiple times. The officers observed a handgun with an extended magazine on Moore's kitchen table and numerous shell casings on the kitchen floor. An officer administered CPR on Moore, but she appeared to have succumbed to her injuries.
- [7] Medical personnel transported Moore and D.R. to a local hospital where Moore was declared dead. D.R. was airlifted to a children's hospital in Indianapolis where she later died during surgery. Autopsies revealed that Moore had sustained seventeen gunshot wounds to various parts of her body, and D.R. had sustained five gunshot wounds.
- [8] On July 6, at approximately 1:30 a.m., West Lafayette Police Department officers observed a male, later identified as Roberts, driving a blue Chrysler 300 sedan. After Roberts stopped and exited the vehicle, the officers approached and detained Roberts and eventually transported him to the Lafayette Police Department. Roberts had what appeared to be blood on the front of his shirt. A neighbor identified Roberts from a photo lineup as the person the neighbor saw arguing with Moore and, later, leaving the apartment complex.
- [9] On July 12, the State charged Roberts with two counts of murder. Specifically,

Count I

* * *

On or about July 5, 2021, in Tippecanoe County, . . . Devonta Lashawn Roberts did knowingly or intentionally kill . . . Victoria Moore[.]

and

Count II

* * *

On or about July 5, 2021, in Tippecanoe County, . . . Devonta Lashawn Roberts did knowingly or intentionally kill [D.R.]

Appendix of Appellant, Volume II at 44-45. The State also charged Roberts with a firearm enhancement for the unlawful use of a firearm while committing a felony. On May 20, 2022, Roberts entered into a plea agreement and pleaded guilty to both counts of murder, admitting that he shot Moore while she held D.R. in her arms. In exchange, the State dismissed the firearm enhancement charge. The trial court accepted the plea agreement, and, on August 12, sentenced Roberts to sixty years on each count and ordered the sentences to be served consecutive to each other, for an aggregate sentence of 120 years executed in the DOC. Roberts now appeals.

Discussion and Decision

I. Standard of Review

[10] Sentencing determinations are within the trial court’s discretion and will be reversed only for an abuse of discretion. *Harris v. State*, 964 N.E.2d 920, 926 (Ind. Ct. App. 2012), *trans. denied*. An abuse of discretion occurs if the decision 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.” *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014), *trans. denied*. A trial court abuses its discretion if it: 1) fails “to enter a sentencing statement at all”; 2) enters “a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons”; 3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration”; or 4) considers reasons that “are improper as a matter of law.” *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491.

II. Consecutive Sentences

[11] Roberts contends the trial court abused its discretion at sentencing by failing to “articulate sufficient reasons” for imposing consecutive sentences. Brief of Appellant at 6. To support his contention, Roberts turns our attention to the

trial court's discussion at sentencing of whether imposing consecutive sentences violated the prohibition against double jeopardy. Roberts maintains that the trial court's discussion had "little if any bearing upon the issue of imposing consecutive sentences." *Id.*

[12] The decision to impose consecutive sentences lies within the discretion of the trial court. *Gross*, 22 N.E.3d at 869 (citing *Gilliam v. State*, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009)). However, a trial court is required to state its reasons for imposing consecutive sentences. *Id.* A single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Id.*

[13] Roberts' contention – that the trial court failed to provide sufficient reasons for imposing consecutive sentences – ignores the trial court's oral and written sentencing statements that contain the trial court's finding of several valid aggravating circumstances for each of the murder counts, any one of which supports the imposition of consecutive sentences. For example, for Count I, the trial court found as aggravating circumstances that Roberts had a criminal history that included felony firearms and domestic battery convictions, the Count I offense was committed in the presence or within hearing of two children who were less than eighteen years old, and D.R. was still alive when Moore was "shot and killed in [D.R.'s] presence." *Appealed Order* at 2. Regarding Count II, the trial court found as aggravating circumstances that Roberts had a criminal history; the victim, D.R., was less than twelve years old; the offense was committed in the presence or within hearing of V.H.; Roberts

was in a position of having care, custody, or control over D.R.; and it was Roberts' duty to protect D.R. And Roberts does not challenge the validity of any of these aggravating circumstances.

[14] After finding the aggravating circumstances, and some mitigating circumstances, the trial court then engaged in a double jeopardy analysis to determine whether the sentences imposed should “run concurrent or consecutive[.]”¹ Transcript, Volume 2 at 34. The trial court ultimately determined that no double jeopardy concerns existed because Roberts had inflicted separate harms on multiple victims. The existence of multiple crimes or victims constitutes a valid aggravating circumstance that justifies consecutive sentences. *McBride v. State*, 992 N.E.2d 912, 919-20 (Ind. Ct. App. 2013) (citing *O’Connell v. State*, 742 N.E.2d 943, 952 (Ind. 2001)), *trans. denied*.

[15] Here, the trial court found multiple, valid aggravating circumstances to support imposing consecutive sentences, and Roberts' crimes involved multiple victims.

¹ In *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020), and *Powell v. State*, 151 N.E.3d 256 (Ind. 2020), our supreme court established two new tests for analyzing substantive double jeopardy claims, the *Wadle* “multiple statutes” test and the *Powell* “single statute” test. Relevant here, the *Powell* test applies “when a single criminal act or transaction violates a single statute and results in multiple injuries.” 151 N.E.3d at 263. In the case before us, the trial court correctly applied the reasoning in *Powell* in determining that no double jeopardy concerns existed. However, had the trial court determined that Roberts' murder convictions constituted double jeopardy, the appropriate remedy would not have been to impose a concurrent sentence, but, rather, to vacate one of the convictions. See *Wadle*, 151 N.E.3d at 255-56 (finding the appropriate remedy for a double jeopardy violation was to vacate the lower-level felony).

Therefore, we find the trial court did not abuse its discretion when it imposed consecutive sentences.

Conclusion

[16] We conclude the trial court did not abuse its discretion by imposing consecutive sentences. The judgment of the trial court is affirmed.

[17] Affirmed.

Mathias, J., and Foley, J., concur.