

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Drew A. Castor,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 19, 2023

Court of Appeals Case No.  
22A-CR-2981

Appeal from the Blackford Circuit  
Court

The Honorable Brian Bade, Judge

Trial Court Cause No.  
05C01-2105-F1-163

### Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

**Pyle, Judge.**

## Statement of the Case

[1] Drew A. Castor (“Castor”) appeals his aggregate sentence after he pled guilty to two counts of Level 3 felony child molesting.<sup>1</sup> Castor argues that: (1) the trial court abused its discretion in its determination of mitigating and aggravating circumstances; and (2) his aggregate sentence is inappropriate. Concluding that the trial court did not abuse its discretion and that Castor’s sentence is not inappropriate, we affirm his sentence.

[2] We affirm.

## Issues

1. Whether the trial court abused its discretion when sentencing Castor.
2. Whether Castor’s sentence is inappropriate.

## Facts

[3] In September 2020, then thirty-two-year-old Castor had sexual intercourse with then thirteen-year-old L.R. (“L.R.”) on two separate occasions. Castor had made an agreement with L.R.’s father that Castor could have “[s]exual intercourse with L.R.” in exchange for allowing L.R.’s father to “do anything [sexually] to [Castor].” (Tr. Vol. 2 at 31). At the time of Castor’s offenses, he

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<sup>1</sup> IND. CODE § 35-42-4-3.

was on probation for a conviction for Class B felony aiding a burglary in Cause 05C01-1003-FB-112 (“Probation Cause”).

- [4] In May 2021, the State charged Castor with four counts of Level 1 felony child molesting and Level 6 felony contributing to the delinquency of a minor under Cause 05C01-2105-F1-163 (“Child Molesting Cause”). The State also alleged that he was an habitual offender.
- [5] The State had also filed other charges against Castor for alleged offenses while he was on probation. Specifically, in Cause 05C01-2008-F4-255, the State had charged Castor with Class 4 felony unlawful possession of a firearm by a serious violent felon, Class 6 felony resisting law enforcement, and Class B misdemeanor unlawful use of a police radio (Pending Charges Cause”).
- [6] Approximately two weeks before Castor’s scheduled September 2022 trial in this Child Molesting Cause, Castor entered into a guilty plea for this cause as well as for his Probation Cause and Pending Charges Cause. For this Child Molesting Cause, Castor agreed to plead guilty to two of the four child molesting counts, both amended to Level 3 felony child molesting, in exchange for the dismissal of: (1) the two remaining Level 1 felony child molesting charges, the Level 6 felony contributing to the delinquency of a minor charge, and the habitual offender allegation in this Child Molesting Cause; and (2) all three charges in his Pending Charges Cause. The plea agreement provided that sentencing in this Child Molesting Cause was left open to the trial court’s discretion. Castor also agreed to admit to violating his probation in his

Probation Cause as alleged in the fourth petition to revoke in that cause. The plea agreement provided that Castor would serve 1,190 days of his previously suspended sentence in his Probation Cause.

- [7] At the beginning of Castor’s sentencing hearing, the trial court accepted Castor’s guilty plea. The trial court specifically noted that its acceptance was “based largely upon the request of the victim in this cause[.]” (Tr. Vol. 2 at 25). L.R. submitted a written victim impact statement, which was attached to the presentence investigation report (“PSI”), and provides, in relevant part, as follows:

[Castor] abused me for a year and a half[,] starting when I was 12 years old. [Castor] was a friend, someone I thought I could trust, and he hurt me in the worst way physically and emotionally. It has been 2 years since the abuse stopped[,] and I am still terrified of him. I still have nightmares every night, and I have suicidal thoughts because I still don’t understand why he did this to me. I don’t want him to have the chance to hurt anyone else like he hurt me.

(App. Vol. 2 at 192). The State further discussed the impact on L.R., adding that L.R. was in counseling and was “still dealing with . . . what [Castor had] inflicted upon her[.]” (Tr. Vol. 2 at 34).

- [8] During the hearing, Castor acknowledged that, while he had been incarcerated in jail on this Child Molesting Cause, he had had two misconduct reports for fighting and had been placed on lockdown. Castor generally stated that he was “sorry for everything [he had] done.” (Tr. Vol. 2 at 29). Castor also told the trial court that he had received social security disability income since he was

“little” and that he had a diagnosis of mild mental retardation. (Tr. Vol. 2 at 28). Castor’s counsel acknowledged that Castor’s diagnosis did not excuse his conduct but asked the trial court to find that diagnosis to be a mitigating circumstance. Additionally, Castor’s counsel asked the trial court to consider the “hardship for [Castor’s] relationship with his child” to be a mitigating circumstance. (Tr. Vol. 2 at 32). However, during the sentencing hearing, Castor’s mother testified that she had a guardianship over Castor’s thirteen-year-old son and explained that Castor’s son had lived with her since he was one and one-half years old. Castor’s counsel also noted that Castor had pleaded guilty and had apologized to the victim.

[9] When sentencing Castor, the trial court found the following aggravating circumstances: (1) Castor’s criminal history, which included three felony convictions and two misdemeanor convictions; (2) Castor had been on probation at the time he had committed the child molesting offenses; (3) Castor had previously violated terms of his probation; and (4) the “ongoing and severe impact to the victim[.]” (Tr. Vol. 2 at 36). In regard to the last aggravating circumstance, the trial court specifically noted that the victim would “carry with her, suffer from the [e]ffects of [Castor’s] conduct, likely through the entirety of her life” and that it was “[b]eyond the scope of the elements of this particular crime[.]” (Tr. Vol. 2 at 36).

[10] The trial court considered and rejected Castor’s proffered mitigating circumstances. Specifically, the trial court declined to find that Castor’s guilty plea was a mitigating circumstance and specifically told Castor that it “want[ed]

to impress upon [him] that [he] [had] benefit[ed] greatly from the Court's acceptance of this plea agreement." (Tr. Vol. 2 at 36). The trial court also explained that Castor had faced Level 1 felonies and that the court "would not have accepted this agreement if not for the wishes of the victim." (Tr. Vol. 2 at 36). The trial court acknowledged that Castor had "offer[ed] . . . a willingness to make an apology to the victim" but did not find that remorse was a mitigating circumstance. (Tr. Vol. 2 at 35). The trial court also noted that Castor's counsel had offered Castor's intelligence level as a potential mitigating circumstance and then specifically rejected it in its sentencing order as follows:

The Court has very carefully considered this argument and how it might relate to overall culpability. The Court was also presented with evidence that clearly indicates that [Castor] engaged in bargaining with the victim's father to continue the inappropriate relationship. These acts, which the Court finds reprehensible, are clearly, in the Court's mind, indicative of [Castor's] understanding of the inappropriateness of his conduct. [Castor], in fact, took specific steps to circumvent potential interruption to the continued acts or to avoid deterrence. The bargaining required specific contemplation of the circumstances and of the conduct as a whole.

(App. Vol. 2 at 197).

[11] The trial court imposed a sixteen (16) year sentence on each of the Level 3 felony child molesting convictions and ordered them to be served consecutively, resulting in an aggregate thirty-two (32) year sentence.

[12] Castor now appeals.

## Decision

[13] Castor contends that: (1) the trial court abused its discretion when sentencing him; and (2) his sentence is inappropriate. We will review each argument in turn.

### 1. Abuse of Discretion

[14] Castor argues that the trial court abused its discretion in its determination of mitigating and aggravating circumstances. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* An abuse of discretion will be found where 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. *Id.* A trial court may abuse its discretion in several ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91.

[15] Castor first argues that the trial court abused its discretion in its determination of mitigating circumstances. Specifically, Castor contends that the trial court

erred by failing to find his guilty plea, remorse, undue hardship to his dependent, and mental disability as mitigating circumstances. We disagree.

[16] A trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000). In fact, a claim that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493.

[17] Here, Castor makes a general assertion that “[n]one of these mitigating factors were mentioned by the trial court[.]” (Castor’s Br. 11). Castor, however, makes no cogent argument to show how the mitigating circumstances were both significant and clearly supported by the record and has, therefore, waived appellate review of the argument. *See* Ind. Appellate Rule 46(A)(8)(a).

[18] Waiver notwithstanding, and contrary to Castor’s suggestion, the trial court did not overlook his proffered mitigating circumstances. Instead, as explained in the facts above, the trial court recognized the proffered mitigators and then simply and duly rejected them. *See Anglemyer*, 875 N.E.2d at 221 (holding that “a guilty plea may not be significantly mitigating . . . when the defendant receives a substantial benefit in return for the plea”); *Pickens v. State*, 767 N.E.2d 530, 534-535 (Ind. 2002) (explaining that a trial court’s determination of a defendant’s remorse is similar to a determination of credibility and that, without evidence of some impermissible consideration by the trial court, our appellate courts will accept the trial court’s determination); *Steinberg v. State*, 941 N.E.2d

515, 534 (Ind. Ct. App. 2011) (holding that in order for a defendant's mental history to be considered as a mitigating circumstance, the defendant must show a nexus between his mental health and his crime), *trans. denied*; *Benefield v. State*, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009) (explaining that there is no requirement that a trial court find a defendant's incarceration would result in undue hardship to his dependents), *trans. denied*. Accordingly, we conclude that the trial court did not abuse its discretion by declining to find these circumstances as mitigators.

[19] Castor also argues that the trial court abused its discretion by considering the significant impact to the victim as an aggravating circumstance. We need not, however, address this argument because we would affirm the sentence imposed even without the challenged aggravator based on the other aggravating circumstances found by the trial court. "Even when the trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld." *Garland v. State*, 855 N.E.2d 703, 707 (Ind. Ct. App. 2006), *trans. denied*. Indeed, a single aggravating circumstance may support an enhanced sentence. *Buford v. State*, 139 N.E.3d 1074, 1081 (Ind. Ct. App. 2019). Here, the trial court found three additional aggravating circumstances that Castor does not challenge on appeal. Because we can say that the trial court would have imposed the same sentence even without the victim impact aggravating circumstance, we affirm the trial court's sentence. See *Ackerman v. State*, 51 N.E.3d 171, 194 (Ind. 2016) (explaining that when an abuse of discretion occurs in sentencing, our appellate courts will

remand for resentencing only 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”) (cleaned up), *cert. denied*.

## **2. Inappropriate Sentence**

[20] Castor argues that his aggregate sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[21] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. Castor pled guilty and was convicted of two counts of child molesting that were reduced to Level 3 felonies. A person who commits a Level 3 felony “shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the

advisory sentence being nine (9) years.” I.C. § 35-50-2-5. The trial court imposed a sixteen (16) year sentence on each of the Level 3 felony child molesting convictions and ordered them to be served consecutively, resulting in an aggregate thirty-two (32) year sentence.

[22] Turning first to the nature of Castor’s offenses, we note that thirty-two-year-old Castor had sexual intercourse with a thirteen-year-old girl on two separate occasions. Castor had made an agreement with the victim’s father to get the father’s permission to allow Castor to engage in the illegal sexual acts with the young girl in exchange for the father’s ability to perform sexual acts on Castor. We echo the trial court’s determination that Castor’s acts of child molesting and bargaining with the victim’s father were “reprehensible” and “abhorrent[.]” (App. Vol. 2 at 197; Tr. Vol. 2 at 35). Nothing about the nature of the offenses renders Castor’s sentence inappropriate.

[23] In reviewing Castor’s character, we note that he has a criminal history that includes three felony convictions for theft, aiding a burglary, and receiving stolen property. He also has two misdemeanor convictions. At the time he committed the two child molesting offenses, Castor was on probation for his felony burglary conviction, which reflects extremely poorly on his character. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (explaining that any criminal history reflects poorly on a person’s character). Additionally, Castor had violated that probation on three other occasions. While Castor was incarcerated on this Child Molesting Cause, he accumulated two misconduct reports for fighting. Castor’s criminal history and repeated probation violations

reflect his disdain for the law. Castor's character is likewise revealed by his repulsive act of bartering sexual favors in exchange for permission to molest a young girl. Accordingly, Castor's sentence is also not inappropriate in light of his character.

[24] Castor has not persuaded us that his aggregate thirty-two-year sentence for his two Level 3 felony child molesting convictions is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[25] Affirmed.

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