MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Anthony Cook,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 10, 2021

Court of Appeals Case No.
21A-CR-483

Appeal from the
LaPorte Superior Court

The Honorable
Michael Bergerson, Judge

Trial Court Cause No.
46D01-1901-F3-100

Vaidik, Judge.

Case Summary

[1] Anthony Cook pled guilty to Level 3 felony battery resulting in serious bodily injury to a person less than fourteen years of age for battering his girlfriend's seven-month-old baby, causing "horrific" injuries including a fractured skull and bleeding on the brain. The trial court sentenced Cook to the maximum term of sixteen years, and Cook now appeals his sentence. We affirm.

Facts and Procedural History

[2] On November 24, 2018, Cook, who was twenty-nine years old, was taking care of his girlfriend Nicole's seven-month-old son L.N. while Nicole was at work.[1] At some point during the day, Cook texted Nicole that L.N. was injured and needed to go to the doctor. When Cook picked up Nicole from work, she noticed L.N.'s "head was starting to swell." Appellant's App. Vol. II p. 68.[2] They took L.N. to the emergency room in Michigan City, and he was transferred to a hospital in South Bend. Cook told doctors L.N. fell off a futon. L.N.'s condition was considered "life threatening." *Id.* at 80. After extensive testing, it was determined that L.N. had numerous injuries that were consistent with non-accidental trauma, including an occipital skull fracture; subdural hematomas; significant retinal hemorrhages; bruising to the head, face, and

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[1] Cook, who is not L.N.'s biological father, and Nicole got married shortly after this incident. Nicole was charged with three counts of neglect of a dependent, but the State later dismissed the counts.

[2] The parties agreed the trial court could consider the presentence investigation report and the documents attached to it. *See* Tr. p. 14; Appellant's Br. p. 7; Appellee's Br. p. 5 n.1.

chest in various stages of healing; a fractured humerus; tibia fractures; and healing rib fractures.

[3] In January 2019, the State charged Cook with four counts: Count I: battery resulting in serious bodily injury to a person less than fourteen years of age ("skull fracture, and/or bleeding on the brain, and/or substantial risk of death" occurring on November 24, 2018); Count II: Level 3 felony neglect of a dependent resulting in serious bodily injury ("skull fracture and/or bleeding on the brain, and/or substantial risk of death" occurring on November 24, 2018); Count III: Level 3 felony neglect of a dependent resulting in serious bodily injury ("fractures to LN's rib and/or legs" occurring between April 4, 2018, and November 23, 2018); and Count IV: Level 3 felony neglect of a dependent resulting in serious bodily injury ("failing to seek medical care for LN's broken bones" between April 4, 2018, and November 23, 2018). *Id.* at 16-17.

[4] In June 2019, Cook and the State entered into a plea agreement, under which Cook would plead guilty to Count I, the State would dismiss the remaining counts, and any executed time could "not exceed 9 years." *Id.* at 50. The trial court rejected this plea agreement. In November 2019, Cook and the State entered into another plea agreement, under which Cook would plead guilty to Count I, the State would dismiss the remaining counts, and Cook's sentence would be left to the discretion of the court. At the guilty-plea hearing, Cook admitted to "bounc[ing] [L.N.'s] head on the floor more than once," which caused a skull fracture and bleeding on the brain. Tr. p. 34.

[5] A sentencing hearing was held in December 2019. At the time, L.N. was in foster care and still receiving treatment for his injuries. Although L.N. had lost some of his vision, the full extent of his injuries was unknown. Evidence was presented that Cook had worked as a correctional officer at the Indiana Department of Correction until his arrest in this case and that he had no prior criminal history. Several family members testified in support of Cook, and Cook testified he "fel[t] terrible for what [he] did to [L.N.]." *Id.* at 40. At the conclusion of the hearing, the trial court took Cook's sentence under advisement. The court later issued a sentencing order identifying one mitigator—Cook pled guilty—and six aggravators: (1) L.N.'s injuries are "horrific"; (2) the injuries "far exceed those necessary to establish just the basic facts of this aggravated battery"; (3) the medical records indicate the injuries "occurred over a length of time and not just one particular episode"; (4) a sentence less than sixteen years would depreciate the seriousness of this crime; (5) Cook had care, custody, and control of L.N.; and (6) L.N. was "significantly less than 12, he was seven months old." Appellant's App. Vol. II pp. 107-08. Finding the aggravators "far outweigh" the mitigators, the court sentenced Cook to the maximum term of sixteen years. *Id.* at 108.

[6] Cook now appeals his sentence.

Discussion and Decision

I. Mitigator

[7] Cook first contends the trial court erred in failing to identify his lack of criminal history as a mitigator. The finding of aggravators and mitigators rests within the sound discretion of the trial court, and we review such decisions only for an abuse of that discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied.* One way a trial court abuses its discretion is by not recognizing mitigators that are clearly supported by the record and advanced for consideration. *Id.* However, even if we find an abuse of discretion, "we need not remand for resentencing if we can say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Vega v. State*, 119 N.E.3d 193, 203 (Ind. Ct. App. 2019) (quotation omitted).

[8] Here, although the trial court did not explicitly find Cook's lack of criminal history to be a mitigator, it acknowledged his lack of criminal history at the sentencing hearing. *See* Tr. p. 57 ("I understand that he's pled guilty. He's got very little or – if any criminal history, but I agree with the aggravators that the State has identified."). In reviewing a sentencing decision in a non-capital case, we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings. *Wert*, 121 N.E.3d at 1083. Moreover, the basis for the court's decision was the "horrific" injuries Cook caused to seven-month-old L.N. over "a length of time." Given

these aggravators—none of which Cook challenges on appeal—and the fact that the court acknowledged Cook did not have a criminal history, we can say with confidence it would have imposed the same sentence had it explicitly found his lack of criminal history to be mitigator.

II. Inappropriate Sentence

[9] Cook next contends his maximum sentence of sixteen years is inappropriate and asks us to reduce it to the advisory term of nine years, "with a portion to be served in community corrections or on probation." Appellant's Br. p. 16; *see also* Ind. Code § 35-50-2-5(b). Under Indiana Appellate Rule 7(B), an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The appellate court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). "Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate." *Id.* at 160 (quotation omitted).

[10] As Cook notes, there are redeeming aspects to his character. He was employed at the DOC until his arrest in this case, he has no prior criminal history, he has the support of family, and he pled guilty. But the horrific nature of the offense supports the maximum sentence. L.N. was nowhere near fourteen, the statutory threshold for a Level 3 felony; rather, he was a mere seven months old. L.N.

suffered multiple serious injuries—a fractured skull, bleeding on the brain, retinal hemorrhages, and fractures to his ribs, legs, and arm—over "a length of time," some of which will last L.N.'s lifetime. And L.N. was in Cook's sole care and control during the events of November 24, 2018, totally dependent on him.

[11] This is not an exceptional case that warrants a sentence revision. We therefore affirm Cook's sentence.

[12] Affirmed.

Kirsch, J., and May, J., concur.