

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Trey Fields,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 2, 2021
Court of Appeals Case No.
21A-CR-1040
Appeal from the
Madison Circuit Court
The Honorable
David A. Happe, Judge
Trial Court Cause No.
48C04-1602-F4-407

Vaidik, Judge.

Case Summary

- [1] Trey Fields appeals his sentence of thirty-seven years—with twenty-five years to serve and twelve years suspended to probation—for Level 4 felony stalking, Level 5 felony battery against a public-safety official, Level 5 felony disarming a law-enforcement officer, Level 6 felony resisting law enforcement, Level 6 felony escape, and being a habitual offender. He argues the trial court relied on an improper aggravating factor. We disagree and affirm.

Facts and Procedural History

- [2] Fields has been convicted numerous times in multiple counties for stalking and harassing the same victim, E.J., from 2012 to 2016. In October 2012, in Hamilton County, Fields was convicted of Class A misdemeanor invasion of privacy (for violating a protective order) and sentenced to a year in jail, all suspended. *See* Cause No. 29D03-1206-CM-5644. In January 2013, in Madison County, Fields was convicted of Class D felony stalking and two counts of Class A misdemeanor invasion of privacy (for twice violating a protective order) and sentenced to three years in prison, all suspended except 216 days. *See* Cause No. 48C04-1208-FC-1507. In July 2014, in Monroe County, Fields was convicted of Class C felony carrying a handgun without a license and Class D felony stalking and sentenced to eight years in prison, with three years to serve and five years suspended. *See* Cause No. 53C02-1304-FB-330. In February 2016, in Madison County, Fields was convicted of Level 6 felony invasion of

privacy (for violating a no-contact order) and sentenced to eighteen months on home detention with GPS monitoring. *See* Cause No. 48C04-1507-F6-1160.

[3] On February 17, 2016, one day after being sentenced in F6-1160, Fields cut off his GPS device and contacted a friend of E.J. hoping to get E.J.'s phone number. The next morning, officers from the Madison County Sheriff's Department went to E.J.'s house to perform a welfare check. Captain Rob Olesky spotted Fields "laying along a fence line to the Southwest of [E.J.'s] residence." Appellant's App. Vol. II p. 23. When Captain Olesky got out of his car, Fields stood up and ran away. When Captain Olesky caught up with Fields, Fields "charged at Olesky with his fists clenched." *Id.* at 24. Fields punched Captain Olesky in the face and chest. As the two fought, Fields "grabbed Olesky's holstered handgun with both hands, trying to remove it from the holster." *Id.* Additional officers arrived, and Fields was taken into custody. Captain Olesky suffered injuries to his face, forehead, leg, jaw, and hand. A backpack found near the fence line contained lighter fluid, duct tape, a knife, two small locks, a flashlight, and a wallet with Fields's ID card.

[4] The State charged Fields with Level 4 felony stalking (elevated from a Level 6 felony because Fields had a prior conviction for stalking E.J.), Level 5 felony stalking (elevated from a Level 6 felony because the stalking violated a no-contact order), Level 5 felony battery against a public-safety official resulting in bodily injury, Level 5 felony disarming a law-enforcement officer, Level 6 felony resisting law enforcement resulting in bodily injury, and Level 6 felony

escape. The State also alleged Fields is a habitual offender based on prior felony convictions.

[5] In July 2016, Fields and the State entered into a plea agreement under which Fields pled guilty as charged (though the Level 5 felony stalking was later merged into the Level 4 felony stalking) and sentencing was left to the discretion of the trial court, subject to a cap of twenty-five years on the executed portion of the sentence. After the sentencing hearing, the court issued a written sentencing order in which it identified three aggravating factors: “1) Prior criminal history; 2) Same victim involved; 3) Multiple counts with multiple victims.” Appellant’s App. Vol. II p. 135. The court also identified two mitigating factors: “1) Accepted responsibility by pleading guilty; 2) Shows signs of some remorse.” *Id.* Finding that the aggravators outweigh the mitigators, the court imposed a sentence of thirty-seven years (including thirty years for Level 4 felony stalking—ten years plus the maximum habitual-offender enhancement of twenty years). The court ordered twenty-five years executed and twelve years suspended to probation.

[6] Fields later sought and received permission to bring this belated appeal. *See Fields v. State*, 162 N.E.3d 571 (Ind. Ct. App. 2021), *trans. denied*.

Discussion and Decision

[7] Fields challenges the trial court’s “same victim involved” aggravator. 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*.

[8] One way a trial court abuses its discretion is by giving 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). Fields argues the “same victim involved” aggravator is improper because his stalking charge in this case was elevated from a Level 6 felony to a Level 4 felony based on a previous conviction for stalking E.J. As Fields notes, “a factor constituting a material element of a crime cannot be considered an aggravating circumstance when sentencing a defendant.” *Rogers v. State*, 878 N.E.2d 269, 274 (Ind. Ct. App. 2007), *trans. denied*.

[9] We first observe that during the sentencing hearing Fields’s attorney stated, “I do agree with the aggravation and mitigation that’s spelled out in the pre-sentence investigation report.” Tr. p. 70. And the “aggravation” identified in the pre-sentence investigation report is, “The defendant has a history of criminal or delinquent activity, **which involves the same victim in five (5) separate causes[.]**” Appellant’s App. Vol. II p. 116 (emphasis added). Therefore, Fields arguably waived the argument he makes on appeal.

[10] In any event, Fields’s argument fails because the prior stalking conviction that elevated the current stalking charge from a Level 6 felony to a Level 4 felony was just one of several offenses against E.J. before this case. Between 2012 and 2016, in four cases in three counties, Fields was convicted of two counts of

stalking and four counts of invasion of privacy (for violating protective and no-contact orders). The last of those prior convictions, for Level 6 felony invasion of privacy, was entered just a day or two before Fields's crimes in this case.

[11] As Fields acknowledges, while a trial court may not use a material element of an offense as an aggravator, it may find the nature and circumstances of the offense to be an aggravating circumstance if it sufficiently explains its reasons for doing so. *Plummer v. State*, 851 N.E.2d 387, 391 (Ind. Ct. App. 2006). Here, the trial court explained in detail the basis for its sentencing decision:

Mr. Fields has chased a young woman around the State and refused to stop no matter what any court said to him. He just would not stop. He would represent that he was apologetic and would stop, and then the first chance he got he would not. And it's a little chilling to look at how the defendant interprets the events that have happened in his notebook.^[1] It's very clear that he cannot understand the impact that his actions have had on other people, and only sees himself as a victim of the very person he has victimized. Somehow he thinks because he got in trouble for this, this is the victim's fault. Having seen the defendant go through this pattern repeatedly, the court could not expect any compliance from Mr. Fields in any form of community corrections. And the only thing which is clearly going to make him stop is to put him in a position where he's physically unable to continue harassing this young woman.

¹ Excerpts from Fields's notebook can be found in State's Exhibit 6.

Tr. p. 73. Specifically addressing the “same victim” aggravator, the court added:

[Fields] has selected an individual to harass and torment in an attempt to express his will over. And that’s his apparent motivation for the crimes that he’s committed. And that exasperates the harm that goes against this victim having been the victim over and over and over by the same person who just won’t stop. So that is powerful aggravation, and a reason for the court to use all the [coercive] power in its reach today to keep the defendant from doing what he wants to do in terms of causing emotional and other harm to the victim.

Id. at 74. Given this thorough explanation, we cannot say the trial court abused its discretion by finding the “same victim involved” aggravator.

[12] Affirmed.

May, J., and Molter, J., concur.