

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Damontre Q. Sims-Session,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 22, 2022

Court of Appeals Case No.
22A-CR-1122

Appeal from the Marion Superior
Court

The Honorable Ronnie Huerta,
Magistrate

Trial Court Cause Nos.
49D35-2009-F6-27700
49D35-2102-F6-5183

Crone, Judge.

Case Summary

- [1] Damontre Q. Sims-Session appeals the 1,516-day aggregate sentence imposed by the trial court following his guilty plea to four level 6 felonies and two class A misdemeanors under two separate causes. He contends that the trial court abused its discretion during sentencing. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] On September 1, 2020, Sims-Session came out of an Indianapolis hotel and ran past a family that included two young children. He was wearing only a shirt and a bathrobe, and his penis was exposed. Sims-Session mumbled to himself, grabbed his penis, looked directly at the family's eleven-year-old son, and began masturbating. The boy's father, who was holding his two-year-old daughter, ran after Sims-Session. Lawrence Police Department officers arrived quickly and located Sims-Session on the sidewalk in front of the hotel with his penis clearly visible. When he saw the officers, Sims-Session walked in the opposite direction. When officers caught up to him, he told the officers that he was schizophrenic. Dispatch also informed the officers that Sims-Session was a registered sex offender. When police later interviewed the young boy's father, he informed them that his daughter told him that she had seen Sims-Session's buttocks. Officers arrested Sims-Session, and the State subsequently charged him under cause number 49G09-2009-F6-27700 (Cause 277) with one count of level 6 felony conducting performance before minors that is harmful to minors and two counts of class A misdemeanor public indecency.

[3] On February 17, 2021, a police officer working for the United States Department of Veteran Affairs (VA) was dispatched to a VA medical center where Sims-Session was staying regarding his involvement in a possible sexual assault. The victim, J.C., informed the officer that Sims-Session entered a group room where J.C. was, shut the door, and sat down next to J.C. Sims-Session asked J.C. to have sex with him, but J.C. refused. Sims-Session persisted with his request in an increasingly aggressive manner until a nurse entered the room and J.C. left. J.C. came back to the group room later, and Sims-Session followed him in and shut the door. Sims-Session again asked J.C. for sex, and J.C. refused. After the refusal, Sims-Session removed his penis from his pants and held it in his hand until he became aroused. Sims-Session offered to pay J.C. for sex, but J.C. still refused. Sims-Session then informed J.C. that he was a sex offender who had raped others before. He threatened J.C., saying, “Who would stop me from f***king you. I can have it in your ass before anyone could get in here.” Appellant’s App. Vol. 2 at 141. J.C. fled the room, and Sims-Session followed shouting obscenities.

[4] A nurse at the facility informed the officer that, after the incident with J.C., she observed Sims-Session having a “very angry and belligerent” conversation on the phone. *Id.* When the nurse approached him and told him to calm down and that his phone time was up, he slammed down the phone and threatened to rape the nurse and punch her in the head. Sims-Session swung his arm at the nurse but did not make contact. Sims-Session then began to yell at other patients in the room, threatening to rape and punch them. The nurse and the

other patients were afraid Sims-Session was going to hurt them. Sims-Session was transported to the Marion County Sheriff's Department and subsequently charged under cause number 49D35-2102-F6-5183 (Cause 5183) with two counts of level 6 felony intimidation, one count of level 6 felony attempted battery against a public safety official, and one count of class A misdemeanor public indecency.

- [5] On April 21, 2022, Sims-Session entered an open guilty plea to all counts in both causes. The trial court sentenced Sims-Session to 786 days on the harmful performance conviction, with concurrent one-year sentences for the two public indecency counts in Cause 277. In Cause 5183, the trial court sentenced Sims-Session to concurrent sentences of 730 days for the three level 6 felonies, and 365 days for the class A misdemeanor. The sentences in both causes were ordered to be served consecutively, for a total executed sentence of 1,516 days. This appeal ensued.

Discussion and Decision

- [6] Sims-Session asserts that the trial court abused its discretion during sentencing. “Generally speaking, sentencing decisions are left to the sound discretion of the trial court, and we review the trial court’s decision only for an abuse of this discretion.” *Singh v. State*, 40 N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied* (2016). “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.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (quotation marks omitted), *clarified on reh’g*, 875

N.E.2d 218. A trial court may abuse its discretion by (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.*

[7] Sims-Session first argues that the trial court abused its discretion by issuing a sentencing statement that was not sufficiently detailed. When imposing a sentence for a felony offense, the trial court must issue “a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence.” *Id.* During sentencing, the trial court stated that it found as mitigating the fact that Sims-Session had accepted responsibility for his crimes and that he was actively participating in and responding well to treatment. As far as aggravating factors, the trial court found Sims-Session’s long criminal history (including multiple misdemeanors and Indiana felony convictions for rape and sexual battery, and a Georgia felony conviction for aggravated sodomy), and the nature and circumstances of the current offenses, particularly the great harm caused to others and the reoccurring and continuing nature of his behavior, to be aggravating factors. The trial court thoroughly explained that based upon these findings, a suspended sentence would not be appropriate for Sims-Session, but neither would be a maximum sentence. Rather, the trial court imposed a less-than-maximum sentence and encouraged Sims-Session to participate in DOC programs so that he can “continue to get help[.]” Tr. Vol. 2 at 98. Contrary to

Sims-Session’s assertions, the trial court’s sentencing statement was more than adequate.

[8] Sims-Session also asserts that the trial court found improper aggravating factors. He claims that the trial court improperly found as aggravating the fact that some of his victims were minors because a victim’s status as a minor is a material element of one of his crimes, namely, level 6 felony conducting performance before minors that is harmful to minors. However, while a “trial court may not use a material element of the offense as an aggravating factor,” it “may find the nature and particularized circumstances surrounding the offense to be an aggravating factor.” *Gober v. State*, 163 N.E.3d 347, 354 (Ind. Ct. App. 2021), *trans. denied*. Here, in considering the nature and circumstances of all of the offenses, the trial court broadly referenced that “minors,” specifically children under twelve years of age, were involved in some of the crimes. Tr. Vol. 2 at 97. Notably, the victims’ mere status as “minors” is not a material element of either of his public indecency offenses,¹ and the trial court was well within its discretion to consider the presence of children under twelve years of age and the harm caused to them as aggravating with regard to the nature and circumstances of those particular offenses.

¹ Pursuant to Indiana Code Section 35-45-4-1(a)(4), Count 2 alleged that Sims-Session knowingly fondled his genitals in a public place. Pursuant to Indiana Code Section 35-45-4-1(b), Count 3 alleged that Sims-Session knowingly or intentionally, in a public place, appeared in a state of nudity with the intent to be seen by a child less than sixteen years of age.

[9] Sims-Session further asserts that the trial court improperly assigned aggravating weight to his likelihood to “reoffend.” Appellant’s Br. at 16. Specifically, when discussing the current crimes, the trial court stated, “I find it’s likely to continue to reoccurrence. Occurred in the past. It’s continuing to occur.” *Id.* Sims-Session argues that this statement implies that the trial court found an additional aggravating factor involving his criminal history when it had “already considered” his criminal history as an aggravating factor. *Id.* However, we agree with the State that the trial court’s statement was clearly made in the context of its finding that the nature and circumstances of the current offenses, which involved repeated sexual behavior, was an aggravating factor. The trial court did not find Sims-Session’s likelihood to reoffend or again consider his criminal history as a separate aggravator. Under the circumstances, we find no abuse of discretion.

[10] Regardless, even assuming the trial court relied on any improper aggravating factors, Sims-Session concedes that his criminal history alone was a valid aggravating factor. It is well settled that even if “an improper aggravator is used, we remand for resentencing only if we cannot say with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances.” *McCain v. State*, 148 N.E.3d 977, 984 (Ind. 2020). Here, given Sims-Session’s extensive criminal history, which includes crimes of violence, we can say with confidence that the trial court would have imposed the same sentence even without considering any other aggravators. The sentence imposed by the trial court is affirmed.

[11] Affirmed.

May, J., and Weissmann, J., concur.