

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Christopher Taylor-Price
Taylor-Price Law, LLC
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jennifer Anwarzai
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Ricardo Civil,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 27, 2023

Court of Appeals Case No.
23A-CR-1051

Appeal from the Knox Circuit
Court

The Honorable Monica C.
Gilmore, Judge

Trial Court Cause No.
42C01-1703-F1-2

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Ricardo Civil (Civil), appeals his sentence for rape, a Level 1 felony, Ind. Code § 35-42-4-1(a)(1), (b)(3).

[2] We affirm.

ISSUE

[3] Civil presents this court with one issue: Whether the trial court abused its discretion in considering the victim's injuries as an aggravating circumstance, where serious bodily injury was an element of the offense.

FACTS AND PROCEDURAL HISTORY

[4] During the late hours of March 24, 2017, or the early morning hours of March 25, 2017, sixteen-year-old B.W. sneaked out of her parents' home to meet twenty-year-old Civil in the parking lot of a park within walking distance of her home in Bicknell, Indiana. B.W. had become acquainted with Civil on the internet, and prior to agreeing to meet Civil in the park, B.W. and Civil had socialized twice in a group setting.

[5] When B.W. arrived at the park, she saw Civil standing outside a white van which had been parked in a remote corner of the park. B.W. and Civil spoke for a few minutes, after which B.W., who feared that her parents would catch her, told Civil that she was leaving. Civil then spoke in a foreign language, the door to the van opened, and a man who B.W. did not recognize grabbed B.W. The unknown man and Civil dragged B.W. into the back seat of the van. As

the other man held B.W. down, Civil removed B.W.'s pants and inserted his penis into her vagina between ten and twenty times. B.W.'s resistance was futile, and she begged for her life. B.W. began to bleed profusely in the van. After Civil was finished raping B.W., he and the other man threw B.W., her clothes, and her cellphone out of the van.

- [6] B.W. struggled to make her way back to her parents' home, where she continued to bleed profusely from her vagina. B.W. attempted to shower and bathe, but she was too weak to stand. After B.W. fell in the bathroom, her relatives who were at home awoke, came to her assistance, and called 9-1-1. B.W. was nonverbal by the time officers responded.
- [7] B.W. was transported to the hospital, where she was given two rounds of intravenous fluids and her vagina was packed with cotton to prevent her from bleeding to death. B.W. had lost at least a liter of blood and was given a transfusion of three units of blood to stabilize her condition. B.W. underwent emergency surgery to repair the injuries to her vagina and spent three days in the hospital.
- [8] B.W. identified Civil as the man who had raped her. Civil gave a statement to police in which he provided shifting accounts of his interactions with B.W. on March 24 and 25, 2017. On March 30, 2017, the State filed an Information, charging Civil with Level 1 felony rape. On August 24, 2019, Civil posted bond in this matter and was released from custody. On August 12, 2021, the trial court granted the State's motion to revoke Civil's bond due to his new arrest in

Vanderburgh County for Level 3 felony rape. For reasons which are unclear from the record, the Vanderburgh County rape charge against Civil was subsequently dismissed. On August 19, 2022, after a hearing, the trial court denied Civil's request to reinstate his bond in the instant matter.

[9] On February 21, 2023, the trial court convened Civil's two-day jury trial. B.W., who had never had sexual intercourse before Civil raped her, described the pain of Civil inserting his penis into her vagina repeatedly as "unbearable" and like "getting stabbed over and over again in the same spot . . . but more deep." (Transcript p. 119). As a result of struggling against being held down, B.W. had upper body and shoulder strain that was treated with pain medication.

[10] The physician who performed emergency surgery on B.W. on March 25, 2017, testified that when she first encountered B.W. in the emergency room, B.W. was "in and out of consciousness" and had "severe, significant blood loss." (Tr. pp. 152, 159). B.W. had sustained a hymenal laceration, lacerations to multiple areas of the interior of her vagina that required closures of multiple layers of tissue, a hematoma of her right vaginal sidewall that was four inches long and one and one-half inches wide, and bruising on the back side of her vagina. In addition, B.W. sustained a severe hematoma to her perineum and significant bruising of her urethra. The physician characterized the pain B.W. experienced as a result of these injuries as being "significant" and worse than most child births. (Tr. p. 166). At the conclusion of the evidence, the jury found Civil guilty as charged.

[11] On April 4, 2023, the trial court held Civil’s sentencing hearing. The trial court found as mitigating circumstances that Civil had no prior criminal record, he lacked education, and he lacked familial support. As aggravating circumstances, the trial court found that, based on the severity of B.W.’s injuries as established at trial, the harm, injury, loss, or damage to B.W. was greater than necessary to prove the offense of Level 1 felony rape. The trial court also found the fact that Civil’s bond in the instant matter had been revoked to be aggravating. The trial court found that the aggravating circumstances outweighed the mitigating circumstances and observed that “we’re all very lucky that we are here for a rape trial instead of a murder trial because that could have been very easily the case.” (Tr. p. 225). The trial court sentenced Civil to thirty-seven years in the Department of Correction.

[12] Civil now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[13] Civil contends that the trial court improperly considered the severe nature of the injuries to B.W. as an aggravating circumstance because ‘serious bodily injury’ was an element of the offense for which he was convicted. In addressing Civil’s argument, we begin by acknowledging that, so long as a sentence imposed by a trial court is within the statutory range for the offense, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). An abuse of the trial court’s sentencing discretion occurs if its 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 abuses its discretion when it fails to enter a sentencing statement at all, its stated reasons for imposing sentence are not supported by the record, its sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or its reasons for imposing sentence are improper as a matter of law. *Id.* at 490-91.

[14] One of the circumstances a trial court may consider upon sentencing a defendant for a crime is whether the “harm, injury, loss, or damage suffered by the victim of an offense was significant and greater than the elements necessary to prove the offense.” I.C. § 35-38-1-7.1(a)(1) (internal punctuation omitted). In addition, as a general rule, “[w]hile a court may not use a factor constituting a material element of an offense as an aggravating circumstance, it may look to the particularized circumstances of the criminal act.” *Scott v. State*, 840 N.E.2d 376, 382 (Ind. Ct. App. 2006), *trans. denied*. As a result of the application of these sentencing principles, a trial court does not abuse its discretion in considering as an aggravating circumstance injury to the victim in excess of that necessary to prove serious bodily injury, even where the injury to the victim is a factor which elevates the offense level. For example, in *Patterson v. State*, 846 N.E.2d 723, 728 (Ind. Ct. App. 2006), this court held that in sentencing Patterson for robbery resulting in serious bodily injury, the trial court’s consideration of the fact that the robbery had resulted in the victim’s death was within its discretion “to the extent that [the victim’s] injury went beyond that required to constitute ‘serious bodily injury.’” Similarly, in *Lang v. State*, 461

N.E.2d 1110, 1113 (Ind. 1984), our supreme court rejected Lang’s argument that his sentence for Class A felony robbery could not be aggravated based on the serious nature of the injuries to his victim which had elevated the offense from a Class C felony and held that the “serious nature of the injuries to the victim in this case was one of the specific facts which the court could consider as an aggravating circumstance.”

[15] Here, the State charged Civil with Level 1 felony rape as follows:

On or about March 25, 2017 . . . Civil did knowingly or intentionally have sexual intercourse OR other sexual conduct with B.W.; when such person was compelled by force, to wit: [] Civil raped B.W. while she was being forcibly held down and said act resulting in serious bodily injury to B.W., to wit: *tearing and lacerations to the vaginal area causing bleeding and clotting requiring surgery to repair.*

(Appellant’s App. Vol. II, p. 49) (emphasis added). Civil claims that the trial court abused its discretion by considering the same facts that the State charged as serious bodily injury, namely vaginal tearing and lacerations causing bleeding and requiring surgery, to aggravate his sentence. We cannot agree.

[16] “Serious bodily injury” is defined as

bodily injury that creates a substantial risk of death or that causes: (1) serious permanent disfigurement; (2) unconsciousness; (3) extreme pain; (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or (5) loss of a fetus.

I.C. § 35-31.5-2-292. The evidence at trial established that the lacerations and tearing to B.W.'s vagina were life threatening, in that it was necessary for emergency personnel to pack B.W.'s vagina with cotton to prevent her from bleeding to death. B.W. required surgery to repair her injuries, and she spent three days in the hospital. This evidence proved the existence of serious bodily injury. *See id*; *see also McFadden v. State*, 25 N.E.3d 1271, 1275 (Ind. Ct. App. 2015) (finding sufficient evidence of serious bodily injury where the victim sustained injuries which required surgery and a four-day hospital stay). In addition to the evidence of the lacerations and tears to B.W.'s vagina, the State showed that B.W. experienced loss of consciousness upon presentation to the hospital and that she experienced extreme pain as a result of Civil's offense. There was also evidence presented at trial that B.W. suffered upper body strain from struggling while being held down during the rape which had to be treated with pain medication and that she went into shock, causing a spike in her blood sugar that had to be stabilized during her emergency treatment. These were harms, damage, and injuries separate and in addition to those relied upon by the State to prove serious bodily injury and were, thus, circumstances that were properly considered by the trial court at sentencing as going "beyond that required to constitute 'serious bodily injury.'" *Patterson*, 846 N.E.2d at 728. In its sentencing statement, the trial court focused on the severity of B.W.'s overall

injuries and did not simply rely upon the charged lacerations and tears to B.W.'s vagina to enhance Civil's sentence.

[17] However, even if the trial court had erred in considering B.W.'s injuries as an aggravating circumstance, we would not reverse and remand for resentencing. "When 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." *McCain v. State*, 148 N.E.3d 977, 984 (Ind. 2020) (internal citation omitted). Here, the trial court found as an additional aggravating circumstance that Civil's bond in the instant matter had been revoked. The existence of even one valid aggravating circumstances is enough to enhance a sentence. *Harris v. State*, 163 N.E.3d 938, 956 (Ind. Ct. App. 2021), *trans. denied*. On appeal, Civil does not address the existence of this additional valid aggravating circumstance or its significance in light of the mitigating circumstances found by the trial court. Therefore, Civil has failed to persuade us that the trial court would not have imposed the same sentence had it only considered his bond revocation. Accordingly, we do not disturb the trial court's sentencing decision.

CONCLUSION

[18] Based on the foregoing, we conclude that the trial court did not abuse its discretion in considering B.W.'s injuries as an aggravating factor, and that, even if it had, Civil has not demonstrated reversible error.

[19] Affirmed.

[20] Crone, J. and Mathias, J. concur