

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Michael J. Moore,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 18, 2023

Court of Appeals Case No.  
22A-CR-2476

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven Meyer,  
Judge

Trial Court Cause No.  
79D02-2108-F5-149

**Memorandum Decision by Judge May**  
Judges Mathias and Bradford concur.

**May, Judge.**

[1] Michael J. Moore appeals the four-year sentence imposed following his convictions of Level 5 felony battery with a deadly weapon<sup>1</sup> and Level 6 felony residential entry.<sup>2</sup> He argues the trial court abused its discretion when it aggravated his sentence based on elements of the offense and a misunderstanding of the factual basis for his guilty plea. We affirm.

## Facts and Procedural History

[2] On the night of May 9, 2021, Moore entered Robert Elliott’s apartment without Elliott’s permission. Moore believed a woman he knew, Steffanie Deboer, was in the apartment. When Moore arrived, he and Deboer began arguing. Moore told Deboer “that she needed to come with him because [she] was his property.” (App. Vol. II at 49.) Elliott, who was asleep in another room of the apartment heard Moore and Deboer arguing. When Elliott went into the room to investigate, Moore hit Elliott in the head with a heavy item contained in a backpack or pillowcase. Elliott went to the hospital, and the doctor who examined him told police that Elliott had a “head laceration [and] he would classify the injury as serious as there could be a fracture in the skull or further internal bleeding.” (*Id.*)

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<sup>1</sup> Ind. Code § 35-42-2-1(g)(2).

<sup>2</sup> Ind. Code § 35-43-2-1.5.

[3] On August 24, 2021, police arrested Moore. The State charged him under cause number 79D02-2108-F5-149 (“F5-149”) with Level 5 felony battery with a deadly weapon, Level 6 felony battery resulting in moderate bodily injury,<sup>3</sup> and Level 6 felony residential entry. On October 6, 2021, under cause number 79D04-2110-F6-898 (“F6-898”), the State charged Moore with a Level 6 felony battery resulting in moderate bodily injury stemming from a different incident. On July 6, 2022, under F5-149, Moore pled guilty with the benefit of a plea agreement to Level 5 felony battery with a deadly weapon and Level 6 felony residential entry in exchange for the dismissal of the Level 6 felony battery resulting in moderate bodily injury. Additionally, Moore’s plea included the dismissal of the charge under F6-898.

[4] Moore did not appear for his sentencing hearing on August 26, 2022. The trial court sentenced him in absentia. In its order, the trial court found:

The Court finds as aggravating factors: The overall circumstances of the offense; Defendant’s criminal history; he has 8 Petitions to Revoke Probation filed against him with 7 having been found to be true; he has 1 Motion to Execute Community Corrections sentence filed against him and granted; he was charged with an offense in [F6-898] a month after this offense; he has 18 Failures to Appear; he failed to appear for his sentencing in this cause today; he was uncooperative with Probation; and prior attempts at rehabilitation have failed.

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<sup>3</sup> Ind. Code § 35-42-2-1(e)(1).

The Court finds as mitigating factors: Defendant pled guilty (diminished by the benefits of the plea agreement and dismissal of [F6-898]); and he has substance abuse problems.

The Court further finds that the aggravating factors outweigh the mitigating factors.

(*Id.* at 59.) Based thereon, the trial court imposed a four-year sentence for Level 5 felony battery with a deadly weapon and a two-year sentence for Level 6 felony residential entry. The trial court ordered the sentences served concurrent to one another for an aggregate sentence of four years.

## Discussion and Decision

[5] We afford trial courts broad discretion in fashioning sentences, and we review a trial court's sentencing decision for an abuse of discretion. *Gober v. State*, 163 N.E.3d 347, 353 (Ind. Ct. App. 2021), *trans. denied*. "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." *Id.* (internal quotation marks omitted). A trial court may abuse its discretion at sentencing 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.

*Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). However, even if the trial court considers an improper aggravating factor in imposing sentence, we will remand for resentencing only if we cannot say with confidence the trial court would have imposed the same sentence had it solely considered proper reasons that enjoy support in the record. *Kayser v. State*, 131 N.E.3d 717, 722 (Ind. Ct. App. 2019).

[6] The sentencing range for a Level 5 felony is between one and six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). The sentencing range for a Level 6 felony is between six months and two-and-one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). For the Level 5 felony, the trial court sentenced Moore to four years, which is one year above the advisory sentence. For the Level 6 felony, the trial court sentenced Moore to two years, which is also one year more than the advisory sentence. Moore argues the trial court abused its discretion when it “merely restated the elements of the offense without identifying any particular aspect of the case that warranted finding an aggravator.” (Br. of Appellant at 8.) Additionally, Moore contends the trial court abused its discretion “by imposing a sentence based on alleged facts that were contrary to the factual record and the factual basis supporting Moore’s guilty plea.” (*Id.* at 10.)

[7] However, a single aggravating factor may justify an enhanced sentence. *Madden v. State*, 162 N.E.3d 549, 563 (Ind. Ct. App. 2021). Here, the trial court found multiple aggravators: Moore’s criminal history; multiple petitions to revoke his probation in other cases; one order that he execute a Community

Corrections sentence; Moore being arrested and charged for the offense in F6-898; Moore's failure to appear before a trial court as ordered eighteen times, including for the sentencing hearing in the case before this court; his being "uncooperative with Probation;" and his failed prior attempts at rehabilitation. (App. Vol. II at 59.) Therefore, even if one of the eight aggravators considered by the trial court were inappropriate, any such error would be harmless because multiple other aggravators justified Moore's sentence. *See McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007) (holding even if the trial court's consideration of challenged aggravating factors was improper, remand for resentencing was not required because unchallenged aggravating factors justified the defendant's sentence).

## Conclusion

[8] Moore's sentence, which was one year above the advisory and two years below the maximum sentence for a Level 5 felony, was supported by the trial court's entry of multiple unchallenged aggravators. Accordingly, we affirm.

[9] Affirmed.

Mathias, J., and Bradford, J., concur.