MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Vincent F. Wallace,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 15, 2023

Court of Appeals Case No. 22A-CR-2283

Appeal from the Monroe Circuit Court

The Honorable Valeri Haughton, Judge

Trial Court Cause No. 53C02-1702-FB-127

Memorandum Decision by Judge Tavitas
Judges Vaidik and Foley concur.

Tavitas, Judge.

Case Summary

[1] Vincent Wallace appeals his consecutive, maximum sentences, totaling twenty-eight years, all executed in the Department of Correction ("DOC"), for his two convictions for sexual misconduct with a minor, one a Class B felony and the other a Class C felony. Wallace argues that: 1) the trial court abused its discretion by issuing an inadequate sentencing statement and failing to consider several mitigators; and 2) Wallace's sentences are inappropriate. We find that the trial court did not abuse its discretion and that Wallace's sentences are not inappropriate. Accordingly, we affirm.

Issues

[2] Wallace raises two issues on appeal, which we restate as:

I. Whether the trial court abused its discretion by issuing an inadequate sentencing statement and failing to consider several mitigators.

II. Whether Wallace's consecutive, maximum sentences, all executed in the DOC, are inappropriate.

Facts

[3] S.S. ("Mother") had three daughters, S.H., Si.H., and A.S. Mother began dating Wallace in 2004. Almost immediately thereafter, when S.H. and Si.H. were approximately ages nine or ten, Wallace moved in with the family. Over the next decade, Wallace controlled, isolated, manipulated, degraded, battered, and inappropriately touched the girls. Wallace also squandered the family's

limited resources, pitted the girls against one another, and beat the family pets in front of the family.

[4] Wallace inappropriately touched and sexually exploited the girls in myriad ways, at times daily. Wallace told the girls to dress in their "sluttiest clothes," forced them to wear their mother's lingerie, used "sex toys" on them, forced them to watch pornography and listen to him and their mother have intercourse, and forced Si.H. to have intercourse with him and Mother. Tr. Vol. II p. 36. Wallace seized on moments alone with the girls at home, in swimming pools, and in the car to inappropriately touch them and force them to perform sexual acts on him. Wallace threatened that the girls "would be taken away from [their] mom, separated[,] bad stuff would happen to all of [them], and [their] mom would go to jail" if the girls reported his abuse. *Id*. at 35-36.

[5] The investigation into Wallace's conduct, unfortunately, did not begin until 2016. During his interviews with law enforcement, Wallace admitted to inappropriately touching S.H. and Si.H. and to having "threesomes" with Si.H. and Mother. Appellant's App. Vol. II p. 31. Wallace stated that "there was no romantic cuddling or kissing" because "the girls did not like that kind of stuff and just wanted the sexual attention." *Id*. at 30. Wallace also repeatedly blamed the girls for initiating sexual contact.

[6] On February 9, 2017, the State charged Wallace with nine counts of sexual misconduct with a minor. On August 26, 2022, Wallace and the State executed

a plea agreement wherein Wallace agreed to plead guilty to Counts II and VIII and agreed that his sentences would run consecutively. Count II alleged that Wallace had S.H. perform oral sex on him, and Count VIII alleged that Wallace touched Si.H.'s breasts with the intent to arouse or satisfy the sexual desires of Wallace or Si.H. That same day, the trial court held a sentencing hearing and entered judgments of conviction on Counts II and VIII.[1]

[7] During the sentencing hearing, Wallace admitted to inserting his penis into S.H.'s mouth when she was between the ages of fourteen and sixteen and to touching Si.H.'s breasts with the intent to arouse or satisfy the sexual desires of either himself or Si.H. when Si.H. was between the ages of fourteen and sixteen.

[8] The State offered the testimony of Indiana State Police Trooper Julie Deal, who testified regarding the investigation into Wallace's offenses. Trooper Deal testified that S.H. and Si.H. were approximately ages nine or ten when Wallace began to abuse them. She further testified that Wallace threatened that the girls would be taken away from their mother if they reported him and that, in addition, Wallace "plac[ed] the blame" on the girls during law enforcement interviews. Tr. Vol. II p. 21.

[1] The trial court subsequently dismissed the remaining counts.

[9] The State also offered victim impact statements from S.H., Si.H., A.S., all of whom stated that Wallace groomed, manipulated, and threatened them and that he inappropriately touched them in myriad ways, at times daily.

[10] Wallace offered the following statement to the trial court:

> Okay. First and foremost, I'd like to apologize to everyone directly involved and indirectly involved. Do I have remorse for everything I've been involved with, yes. And it's not because I'm here in Court. Everything that happened was wrong, no doubt about it. Just like the covid scenario two weeks ago, things don't always appear as they seem. And I'm going to leave it at that, I'm not going to waste the Court's time. Thank you.

Id. at 47. Wallace advanced as mitigators: 1) Wallace's purportedly minor criminal history, which includes a prior conviction for neglect of Si.H.; 2) Wallace apologized and expressed remorse; and 3) the hardship to Wallace's mother if Wallace was unable to care for her. Wallace requested advisory sentences.

[11] In its oral sentencing statement, the trial court stated that Wallace "ruined the lives of at least three people." *Id*. at 50. Regarding Wallace's apology, the trial court stated, "It didn't sound like remorse. It just sounded[] like some abstract thing that you felt that you should say to me at this time." *Id*. at 51. The trial court also stated, regarding Wallace's criminal history, that Wallace's criminal conduct began when he started abusing the girls when they were approximately ages nine or ten and that, because Wallace's "criminal conduct went on for such a long period of time, I, quite frankly, cannot give any weight to the fact

you have only one other conviction. Maybe very little weight." *Id*. at 52. In addition, the trial court stated, regarding Wallace's hardship claim, that Wallace had siblings who could care for their mother.

[12] The trial court found four aggravators: 1) Wallace violated the conditions of his pretrial release by using illegal drugs; 2) Wallace was in a position of care, custody, or control of the victims; 3) the ages of the victims; and 4) the harm, injury, loss, or damage to the victims was significantly greater than necessary to prove the commission of the offense. Regarding this last aggravator, the trial noted that Wallace: 1) began grooming the girls when they were approximately ages nine or ten; 2) controlled and isolated the girls; 3) committed acts of animal abuse in front of the girls; 4) threatened that the girls would be taken from Mother if they reported him; 5) manipulated and pitted the girls against one another; and 6) treated the girls like "sexual play things" and "made them [his] receptacles at any time that [he] chose to use them." *Id*. at 53. The trial court did not find any mitigators.

[13] The trial court sentenced Wallace to the maximum sentence of twenty years on Count II and the maximum sentence of eight years on Count VIII, all executed consecutively in the DOC. Wallace now appeals.

Discussion and Decision

1. Abuse of Sentencing Discretion

[14] Wallace argues that the trial court abused its discretion by: 1) failing to issue an adequate sentencing statement; and 2) failing to find several mitigating factors. We find that the trial court did not abuse its discretion.

[15] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse occurs only 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." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[16] A trial court abuses its discretion in a number of ways, including:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[17] "This Court presumes that a court that conducts a sentencing hearing renders its decision solely on the basis of relevant and probative evidence." *Schuler*, 132 N.E.3d at 905. "When an abuse of discretion occurs, this Court will remand for resentencing only if 'we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491).

Sentencing Statement

[18] Wallace first argues that the trial court's sentencing statement is inadequate because it is "unclear" as to whether the trial court considered as mitigators: 1) Wallace's purported "lack of criminal history"; 2) his expression of remorse and apology; 3) the hardship to Wallace's mother; and 4) his "successful pretrial home detention." Appellant's Br. p. 11. We find no error in the trial court's sentencing statement.

[19] We have previously explained that:

> Our trial courts are required to enter sentencing statements whenever imposing a sentence for a felony offense. *Anglemyer*, 868 N.E.2d at 490. The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id.* If the trial court includes aggravating or mitigating circumstances in its sentencing statement, it must identify all of the significant circumstances and "explain why each circumstance has been determined to be aggravating or mitigating." *Id.*

Gleason v. State, 965 N.E.2d 702, 710 (Ind. Ct. App. 2012).

[20] To begin, the trial court had no obligation to discuss in its sentencing statement mitigators that it did not find significant. *Anglemyer*, 868 N.E.2d at 493. Moreover, the trial court specifically explained the mitigating weight, or lack thereof, that it afforded Wallace's proffered mitigators.

[21] Regarding Wallace's apology, evidently, the trial court did not find Wallace's apology genuine, let alone mitigating. As for Wallace's criminal history, the trial court stated that Wallace's criminal conduct began when the girls were approximately ages nine or ten and "went on for such a long period of time" that, as a result, it could not "give any weight to the fact that [Wallace] [had] only one other conviction. Maybe, very little weight." Tr. Vol. II p. 52. It is clear from this statement that the trial court afforded, at most, minimal mitigating weight to Wallace's criminal history. As for the hardship to Wallace's mother, the trial court observed that Wallace's siblings could care for her. The trial court, thus, implicitly rejected Wallace's hardship claim.

[22] Finally, as for Wallace's purportedly successful pretrial home detention, Wallace did not advance any argument at the sentencing hearing that his pretrial home detention weighed in favor of mitigation, and his argument regarding that mitigator, therefore, is waived. *See Webb v. State*, 941 N.E.2d 1082, 1089 (Ind. Ct. App. 2011) (citing *Simms v. State*, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003)), *trans. denied*. Moreover, Wallace admitted to violating the conditions of his home detention by using illegal drugs. Based on the

foregoing, we find that the trial court's sentencing statement was not inadequate.

Mitigators

[23] Wallace next argues that the trial court erred by failing to give mitigating weight to his four proffered mitigators. We find no error.

[24] The trial court "'is not obligated to accept the defendant's contentions as to what constitutes a mitigating circumstance or to give the proffered mitigating circumstances the same weight the defendant does.'" *Weisheit v. State*, 26 N.E.3d 3, 9 (Ind. 2015) (quoting *Wilkes v. State*, 917 N.E.2d 675, 690 (Ind. 2009)). "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)). "However, '[i]f the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist.'" *Id*. (quoting *Fugate v. State,* 608 N.E.2d 1370, 1374 (Ind. 1993)).

[25] Wallace fails to offer a cogent argument regarding how his proffered mitigators are significant and enjoy clear support in the record. His argument is, therefore, waived. *See Pedigo v. State*, 146 N.E.3d 1002, 1014 n.5 (Ind. Ct. App. 2020) (citing *Lee v. State*, 91 N.E.3d 978, 990-91 (Ind. Ct. App. 2017) (citing Ind. App. R. 46(A)(8)(a)), *trans. denied*), *trans. denied*.

[26] Waiver notwithstanding, Wallace would not prevail on the merits. Regarding Wallace's apology, "[t]he trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether the remorse is genuine." *Snyder v. State*, 176 N.E.3d 995, 998 (Ind. Ct. App. 2021). Here, the trial court explained that it did not find Wallace's remorse to be genuine, and we will not second guess that credibility determination. Accordingly, we find no error.

[27] As for Wallace's criminal history, Wallace has one previous felony conviction for neglect of Si.H., which stems out of the same chain of abuse as his instant offenses. The trial court, therefore, could properly find that Wallace's criminal history was not significant as a mitigator. Moreover, though Wallace's criminal history is not particularly lengthy, the trial court had no obligation to assign mitigating weight to it. *See Harman v. State*, 4 N.E.3d 209, 219 (Ind. Ct. App. 2014), *trans. denied*.

[28] With regard to the hardship to Wallace's mother, Wallace fails to explain how his mother's hardship was clearly supported in the record given her other potential caretakers. Moreover, we have explained that incarceration causes hardship to any family and that, "'absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.'" *Smoots v. State*, 172 N.E.3d 1279, 1288 (Ind. Ct. App. 2021) (quoting *Nicholson v. State*, 768 N.E.2d 443, 448 n.13 (Ind. 2022)). Wallace fails to identify any special circumstances, and we, accordingly, find no error.

[29] Finally, regarding whether the trial court failed to consider whether "Wallace would respond affirmatively to home detention considering his prior successful pretrial home detention," Appellant's Br. p. 12, we note, again, that this argument is waived because it was not presented to the trial court. Moreover, Wallace admitted to using illegal drugs in violation of the conditions of his pretrial release, and, therefore, we cannot characterize his period of home detention as successful.

[30] In summary, Wallace's proffered mitigators are neither significant nor clearly supported in the record. Even if they were, however, we have repeatedly held that "[a] single aggravating circumstance may be sufficient to enhance a sentence." *Kedrowitz v. State*, 199 N.E.3d 386, 404 (Ind. Ct. App. 2022) (quoting *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*). Here, Wallace does not challenge any of the four significant aggravators that the trial court found, and we are confident, therefore, that the trial court would impose the same sentences even if it considered the mitigators proffered by Wallace. Accordingly, we find that the trial court did not abuse its discretion.

II. Inappropriate Sentence

[31] Wallace next argues that his consecutive, maximum sentences, totaling twenty-eight years, all executed in the DOC, are inappropriate. We disagree.

[32] The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v.*

State, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[33] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When

determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014).

[34] In the case at bar, Wallace was convicted of two counts of sexual misconduct with a minor, one as a Class B felony and the other as a Class C felony. Class B felonies carry a sentencing range of six and twenty years with the advisory sentence set at ten years. Ind. Code § 35-50-2-5. Class C felonies carry a sentencing range of two and eight years with the advisory sentence set at four years. Ind. Code § 35-50-2-6. Wallace was sentenced to consecutive, maximum sentences, totaling twenty-eight years, all executed in the DOC.

[35] Wallace first argues that his placement in the DOC is inappropriate based on his "successful pretrial home detention." Appellant's Br. p. 15. Again, we cannot say that Wallace's pretrial detention was successful given his violation of its conditions. Moreover, we have explained that:

> [I]t will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. This is because the question under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate.

Webb, 941 N.E.2d at 1090 (quoting *King v. State*, 894 N.E.2d 265, 267-68 (Ind. Ct. App. 2008) (emphasis in original). Wallace fails to explain how his

placement in the DOC is inappropriate, and we, therefore, decline to revise his placement.

[36] Wallace next argues that his sentences are inappropriate in light of his character based on his "lack of criminal history" and his apology at the sentencing hearing. Appellant's Br. p. 16. We are not persuaded.

[37] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020). The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Pierce*, 949 N.E.2d at 352-53; *see also Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[38] Here, Wallace's conviction for neglect of a Si.H. stems out of the same chain of abuse as his instant offenses. We, therefore, do not find that his criminal history evidences good character. As for Wallace's apology, as we have explained, the trial court found it disingenuous, and we find no reason to disagree. Moreover, during interviews with law enforcement, Wallace, a forty-

one-year-old man, blamed the victims, who were approximately ages nine or ten when the abuse began. Wallace points to no compelling evidence that portrays his character in a positive light and, accordingly, we do not find that his sentences are inappropriate based on his character.

[39] Wallace does not argue that his sentences are inappropriate in light of the nature of the offense.[2] We note, however, that Wallace was in a position of trust when he groomed, manipulated, and threatened S.H. and Si.H., and possibly A.S., and that he inappropriately touched his victims in myriad ways, at times daily. We, therefore, do not find Wallace's sentences inappropriate in light of the nature of the offense. Accordingly, we decline to revise Wallace's sentences.

Conclusion

[40] The trial court did not abuse its discretion when sentencing Wallace, and Wallace's sentences are not inappropriate. Accordingly, we affirm.

[41] Affirmed.

Vaidik, J., and Foley, J., concur.

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[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).