

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alan Orozco-Salmeron,
Appellant / Defendant,

v.

State of Indiana,
Appellee / Plaintiff.

February 19, 2021

Court of Appeals Case No.
20A-CR-1647

Appeal from the Marion Superior
Court

The Hon. Barbara Crawford,
Judge

Trial Court Cause No.
49G01-1912-F4-47491

Bradford, Chief Judge.

Case Summary

- [1] On December 11, 2019, Alan Orozco-Salmeron came to the Indianapolis home of Alejandra Jalindo, with whom he had a child, and abducted her after grabbing her by her hair and forcing her into his vehicle. Orozco-Salmeron drove in the direction of Patricia Wibbles, forcing her to jump out of the way. A later search of Orozco-Salmeron's vehicle uncovered methamphetamine and cocaine. Orozco-Salmeron eventually pled guilty, pursuant to a written plea agreement, to Level 5 felony kidnapping, Level 6 felony criminal recklessness, Level 6 felony domestic battery, Level 6 felony cocaine possession, and Level 6 felony methamphetamine possession. The trial court sentenced Orozco-Salmeron to six years of incarceration, with two to be served in the Department of Correction ("DOC"), three to be served on home detention, and one to be suspended to probation. Orozco-Salmeron contends that his sentence is inappropriately harsh and that the trial court abused its discretion by considering information from a probable-cause affidavit and failing to make a sufficiently detailed sentencing statement. Because we conclude that Orozco-Salmeron's sentence is not inappropriate, he waived any argument regarding the trial court's consideration of the probable-cause affidavit, and any sentencing error the trial court may have committed can only be considered harmless, we affirm.

Facts and Procedural History

- [2] The following factual basis was read into the record during Orozco-Salmeron's change-of-plea hearing:

Had this matter proceeded to trial, the State would have proven beyond a reasonable doubt, that on December 11th, 2019, officers were dispatched to an address on Post Road in reference to a domestic disturbance. They were approached by the family of Alejandra Jalindo, who were crying and yelling, “He took them”, [in] reference [to] Alejandra Jalindo and her three year old son. The sister of Alejandra stated that Alejandra’s boyfriend and father of her son, Alan Orozco-Salmeron, had just driven away in a green Honda Civic. She was able to provide a license plate number. She went on to explain that she and her husband [and] Patricia Wibbles were inside and Alan Orozco-Salmeron and Alejandra Jalindo were speaking in the driveway after he agreed to drive to the home with the three year old so that Alejandra could see that he was safe. Carla stated that she walked outside and observed Alan driving away while Al[e]jandra was hanging on partially inside the car with her legs in the air until she fell into the road. At some point, Alan Orozco stated that he was taking Alejandra to the hospital. Patricia Wibbles stated that she was outside standing near the driveway when she had to jump out of the way of the green Honda, due to it to driving directly towards her. She believed he was trying to run her over. Patricia Wibbles had a sprained ankle as a result. A neighbor to the south approached officers and explained they too had observed what happened and decided to drive from the road south of the home where they observed Alan Orozco put the Honda in reverse, get out of the driver’s seat and pick up Alejandra by her hair and drag her into the vehicle and then drive away towards Post Road. Officers were able to do an emergency location ping to determine where Orozco and Alejandra were located. Officers requested Eskanazi Hospital deputies to be on the lookout for the green Honda Civic. Deputies there advised they had located the vehicle in the hospital parking lot and a deputy with Eskanazi was instructed to detain the male who was later identified by Mr. Orozco. Orozco was read his Miranda rights and he admitted that he had picked Alejandra up by the hair and forced her into his vehicle to drive to the hospital. Officers responded to the hospital and spoke with Alejandra who had abrasions from her tumbling

onto the pavement from the vehicle. She explained that earlier in the week, Alan Orozco had taken the three year old son from her home and she had not seen him for several days. When this incident began, she had been leaning into the vehicle to make sure her son was okay. Mr. Orozco suddenly drove off while she was still halfway inside the vehicle. Alejandra stated she continued to scream until he hit the brakes causing her to fall from the vehicle. He got out of the car and said, “That’s what you get” and picked her up by her hair and put her into the vehicle and drove away. Officers requested the Honda be towed and performed a department policy inventory search which resulted in locating cocaine and methamphetamine and a wallet under an ID card for Alan Orozco. Orozco admitted the drugs were his, all of which occurred in Marion County, all of which is contrary to the laws of the state of Indiana.

Tr. Vol. II pp. 15–17.

- [3] On December 17, 2019, the State charged Orozco-Salmeron with a total of twelve counts: Level 4 felony kidnapping, Level 5 felony kidnapping, Level 6 felony criminal recklessness, two counts of Level 6 felony domestic battery, Level 6 felony cocaine possession, Level 6 felony methamphetamine possession, Class B misdemeanor harassment, Class A misdemeanor interference with the reporting of a crime, Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class A misdemeanor theft. On July 17, 2020, Orozco-Salmeron and the State executed a written plea agreement in which he agreed to plead guilty to Level 5 felony kidnapping, Level 6 felony criminal recklessness, Level 6 felony domestic battery, Level 6 felony cocaine possession, and Level 6 felony methamphetamine possession. The plea agreement provided that the trial court was to sentence Orozco-Salmeron to an aggregate sentence of no more than six years of incarceration,

with no more than two years to be executed in the DOC. On August 28, 2020, Orozco-Salmeron pled guilty pursuant to the terms of the plea agreement, and the trial court sentenced him to an aggregate sentence of six years of incarceration, with two to be served in the DOC, three to be served on home detention, and one to be suspended to probation. Orozco-Salmeron's presentence investigation report ("PSI") directed the reader to refer to the probable-cause affidavit for the official version of events surrounding his crimes.

Discussion and Decision

[4] Orozco-Salmeron pled guilty to Level 5 felony kidnapping and four Level 6 felonies and agreed that his sentence would be no longer than six years of incarceration with no more than two years in the DOC. Indiana Code section 35-50-2-6(b) provides that "[a] person who commits a Level 5 felony [...] shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." Indiana Code section 35-50-2-7(b) provides that "[a] person who commits a Level 6 felony [...] shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Orozco-Salmeron contends that his sentence is inappropriately harsh and that the trial court abused its discretion in sentencing him.

I. Appropriateness of Orozco-Salmeron's Sentence

[5] We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in

light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted). “[W]hether we regard a sentence as appropriate at the end of the day 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). In addition to the “due consideration” we are required to give to the trial court’s sentencing decision, “we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). As mentioned, Orozco-Salmeron was sentenced to six years of incarceration with two to be served in the DOC, three to be served on home detention, and one suspended to probation following his guilty pleas to one Level 5 and four Level 6 felonies.

[6] The nature of Orozco-Salmeron’s offenses undercuts his argument for a sentence reduction. The crimes to which Orozco-Salmeron pled guilty involved kidnapping Jalindo, dragging her from the side of his moving vehicle, grabbing her by her hair, and committing domestic violence against her; driving his vehicle at Wibbles, forcing her to jump out of the way; and possessing methamphetamine and cocaine. All of this occurred in the presence of Orozco-

Salmeron and Jalindo's three-year-old child. Jalindo sustained injuries that warranted a trip to the hospital, and had Wibbles not been able to evade Orozco-Salmeron's vehicle, she might have been seriously injured or even killed. The nature of Orozco-Salmeron's offenses does not warrant a reduction in his sentence.

- [7] As for Orozco-Salmeron's character, it also does not warrant a reduction in his sentence. Orozco-Salmeron was found to have committed sexual battery and theft while he was a juvenile in 2007. *See McCray v. State*, 823 N.E.2d 740, 745 (Ind. Ct. App. 2005) ("[A]cts committed by a juvenile that would constitute a criminal offense if committed by an adult may be used to support an enhanced sentence."). In 2017, Orozco-Salmeron was convicted of operating a vehicle without ever receiving a license. Orozco-Salmeron had previously been arrested for domestic battery in 2013. At the time of sentencing in the current case, Orozco-Salmeron had pending charges for operating a vehicle without ever receiving a license in Marion County and escape in Clinton County. Orozco-Salmeron also had an open warrant out of Riverside County, California, for felony assault with a deadly weapon. Orozco-Salmeron's record of juvenile adjudications and criminal convictions, as well as his arrests, does not reflect favorably on his character. *Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002) (observing that a record of arrests reveals that subsequent antisocial behavior on the part of the defendant has not been deterred even after having been subject to the police authority of the State and made aware of its oversight). Orozco-Salmeron also acknowledged that he had engaged in illegal

drug use by snorting cocaine and smoking methamphetamine on multiple occasions. *See Conley*, 972 N.E.2d at 874 (declining to reduce the defendant's sentence of life without parole while observing that his "lack of criminal history was offset by his actual criminal behavior of smoking marijuana"); *see also Bailey v. State*, 763 N.E.2d 998, 1004 (Ind. 2002) (finding that the defendant's "history of marijuana use" was a valid aggravating circumstance).

[8] While Orozco-Salmeron notes that he behaved while in jail awaiting trial and did not use drugs during that time, that is to be expected. Orozco-Salmeron also claims on appeal that substance use contributed to his actions in this case. Orozco-Salmeron, however, stated otherwise in the PSI, claiming that his drug use had "not caused legal problems[,] adding it did not play a role in the instant offense" and "relat[ing] he was not using drugs or drinking alcohol the day of the incident and was 'sober' when it occurred." Appellant's App. Vol. II p. 68. Orozco-Salmeron argues that he was "consistently employed" and "took care of his two kids financially." Appellant's Br. p. 15. However, because most adults are gainfully employed and provide support to their children, this does not establish a significant mitigating factor that would demonstrate that the trial court's sentence was inappropriate. *See Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) (observing that "[m]any people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as [the defendant] proposes"), *trans. denied*. We think it worth noting that Orozco-Salmeron acknowledged in the PSI that he was in arrears with respect to child support.

[9] Finally, Orozco-Salmeron contends that his guilty plea warrants a reduction in his sentence. Orozco-Salmeron's guilty plea, however, gave him a substantial benefit and was therefore almost certainly the result of a pragmatic decision. In exchange for his guilty plea, the State agreed to drop charges of Level 4 felony kidnapping, Level 6 felony domestic battery, Class B misdemeanor harassment, Class A misdemeanor interference with the reporting of a crime, Class A misdemeanor domestic battery, Class A misdemeanor battery, and Class A misdemeanor theft. The Level 4 felony kidnapping charge alone could have resulted in a sentence of up to twelve years of incarceration. *See* Ind. Code § 35-50-2-5.5. Moreover, Orozco-Salmeron's plea agreement provided for concurrent sentences despite his crimes having multiple victims. Given the great benefit conferred upon Orozco-Salmeron in exchange for his guilty plea, we cannot say that it necessarily speaks well of his character. *See, e.g., Norris v. State*, 113 N.E.3d 1245, 1254 (Ind. Ct. App. 2018) ("A guilty plea is not necessarily a mitigating factor where the defendant receives substantial benefit from the plea or where evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic.") (citation omitted), *trans. denied*. We conclude that Orozco-Salmeron has failed to establish that his sentence is inappropriate in light of the nature of his offense and his character.

II. Abuse of Discretion

[10] Under our current sentencing scheme, "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007),

modified on other grounds on reh'g, 875 N.E.2d 218 (Ind. 2008). We review the sentence for an abuse of discretion. *Id.* An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” *Id.* A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that “are improper as a matter of law.” *Id.* at 490–91.

A. Consideration of Probable-Cause Affidavit

[11] Orozco-Salmeron contends that the trial court abused its discretion in considering the probable-cause affidavit in sentencing him. Orozco-Salmeron, however, raised no objection to consideration of the probable-cause affidavit at his sentencing hearing, either when the PSI (which specifically referenced it) was discussed or when the trial court specifically mentioned that it had considered the probable-cause affidavit when determining his sentence. Consequently, Orozco-Salmeron has waived this argument for appellate review. *See Dillard v. State*, 827 N.E.2d 570, 576 (Ind. Ct. App. 2005), (ruling that failure to object to a PSI waives appellate review of the trial court’s consideration of its contents), *trans. denied*; *see also Grace v. State*, 731 N.E.2d 442, 444 (Ind. 2000) (“Grounds for objection must be specific and any grounds not raised in the trial court are not available on appeal.”).

B. Specificity of Sentencing Statement

[12] Orozco-Salmeron also contends that the trial court abused its discretion in failing to make a sentencing statement in which it identified aggravating and mitigating circumstances. We need not address the merits of his argument, however, as any error in this regard can only be considered harmless. We have stated on multiple occasions that when a trial court is found to have erred in sentencing a defendant, the error is harmless if the sentence imposed is not inappropriate. *See Govan v. State*, 116 N.E.3d 1165, 1177 (Ind. Ct. App. 2019) (“[E]ven if the trial court is found to have abused its discretion during sentencing, any error is harmless if the sentence imposed was not inappropriate.”), *trans. denied*; *Melton v. State*, 993 N.E.2d 253, 260 n.6 (Ind. Ct. App. 2013) (concluding that “we need not discuss Melton’s contentions that the court abused its discretion in sentencing him if we determine that his sentence is not inappropriate”) (citations omitted), *trans. denied*; *Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012), (“[A]ny error in sentencing is harmless if the sentence is not inappropriate[.]”), *trans. denied*. Because we have already determined that Orozco-Salmeron’s sentence is not inappropriate, any error the trial court might have made in sentencing him can only be considered harmless.

[13] We affirm the judgment of the trial court.

Kirsch, J., and May, J. concur.