

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jonathan G. Hernandez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2022

Court of Appeals Case No.
22A-CR-950

Appeal from the Elkhart Superior
Court

The Hon. Kristine A. Osterday,
Judge

Trial Court Cause No.
20D01-2103-F1-4

Bradford, Chief Judge.

Case Summary

- [1] In March of 2021, seventeen-year-old Jonathan Hernandez forced his way into the Goshen home of seventy-one-year-old C.M., pushed her to the floor, struck her on the head with a hard object, and forcibly penetrated her anus and vagina with his fingers. C.M. suffered a concussion and heart attack during the attack. Hernandez pled guilty to two counts of Level 1 felony rape, and the trial court merged the two offenses and sentenced him to forty years of incarceration with two years suspended to probation. Hernandez contends that the trial court wrongfully prevented him from presenting evidence at his sentencing hearing, the trial court abused its discretion in not giving him the benefit of alternative juvenile sentencing, and his sentence is inappropriately harsh. Because we disagree with all of Hernandez's contentions, we affirm.

Facts and Procedural History

- [2] During the late evening of March 9, 2021, Hernandez drove his mother's car to the Ashley Court neighborhood of Goshen. Hernandez walked around for approximately ten to fifteen minutes before noticing that the interior light of the home belonging to seventy-one-year-old C.M. was on. After unsuccessfully attempting to enter through the back door, Hernandez walked to the front of the house and rang C.M.'s doorbell.
- [3] When C.M. opened the door, Hernandez forced his way inside the home. C.M. struggled with Hernandez, and Hernandez eventually struck her, forcing her to the ground. While C.M. was on her back, Hernandez placed his left hand over her mouth. C.M. bit Hernandez, and, in response, Hernandez struck

her in the head with a hard object. Hernandez removed C.M.'s underwear and used his fingers to penetrate both her vagina and her anus. Hernandez covered C.M.'s mouth and nose, and she began to fear that she would pass out. C.M. repeatedly told Hernandez that she could not breathe. Eventually, Hernandez fled through the front door. After the sexual assault had been reported to police, C.M. was transported to a nearby hospital, where it was discovered that she had suffered a heart attack and a concussion.

[4] On March 16, 2021, the State charged Hernandez with two counts of Level 1 felony rape. On December 20, 2021, Hernandez pled guilty to both counts of rape without benefit of a plea agreement. On April 4, 2022, Hernandez's sentencing hearing was held. The trial court began the proceedings by hearing additions and corrections to the presentence investigation report ("PSI") from Hernandez's counsel and then inquired as to how counsel "wish[ed] to handle the proceedings[.]" Tr. Vol. II pp. 40–41. The trial court stated, "I understand that we do have some other witnesses who may wish to testify." Tr. Vol. II p. 41. The prosecutor confirmed that both sides had "a couple of witnesses" to call. Tr. Vol. II p. 41. The trial court responded, "I certainly don't want to interfere with however you think it would best serve the Court as far as presenting evidence" and proposed hearing argument after both the State and defense finished presenting evidence. Tr. Vol. II p. 41.

[5] The State called Goshen Police Detective Adam Johnson to testify about prior incidents where Hernandez had sexually assaulted women of a similar age to C.M. The first of these was an incident that occurred on September 8, 2019,

when Hernandez had approached his sixty-one-year-old victim at the front door of her home, knocked her to the ground, and groped her around her groin before being pushed away. The second incident occurred a few weeks later when, on September 22, 2019, Hernandez had fled a local hospital after being transported there by police for treatment due to intoxication and, upon finding a sixty-seven-year-old woman at her home, knocked her to the ground and groped her crotch area as well. Hernandez had been adjudicated a juvenile delinquent following each of these incidents.

[6] Hernandez also called witnesses to testify on his behalf, including his mother and Elkhart County Juvenile Detention Center staff member Ellyssa Smith. Following the completion of the State’s cross-examination of Smith, the trial court requested that the attorneys approach the bench and inquired, “How much longer are we going?” Tr. Vol. II p. 79. Hernandez’s counsel confirmed that she had “one or two more” witnesses she intended to call. Tr. Vol. II p. 79. The trial court explained, “I blocked this out for an afternoon and if this was going to be longer than an afternoon that would have been helpful information to have known.” Tr. Vol. II p. 79. The trial court stated, “I’m not trying to artificially limit what you are presenting” but expressed concern that the hearing was “going on beyond what I thought it would go.” Tr. Vol. II p. 79. The trial court concluded the bench conference by admonishing counsel to “move along please” and to “speed up a little bit.” Tr. Vol. II 80. Hernandez’s counsel did not object and began conducting re-direct examination of Smith and called a second Elkhart County Juvenile Detention Center staff member,

Ever Gutterez, to testify. At the conclusion of Gutterez's testimony, Hernandez's counsel announced that she would not be calling a fourth witness, whose name was Joie Wroblewski, and had no further evidence to present. Hernandez made no offer of proof regarding Wroblewski's potential testimony.

[7] During closing argument, Hernandez's counsel requested that the trial court impose a sentence pursuant to Indiana's alternative juvenile sentencing statute. *See* Ind. Code § 31-30-4-2. Specifically, counsel cited Hernandez's age, history of mental illness, and difficult childhood as grounds to support her request. The trial court rejected this request at the time it pronounced its sentence, noting that Hernandez would be turning eighteen approximately one month following his sentencing and that there were "substantial concerns about Mr. Hernandez's risk to the community." Tr. Vol. II p. 104. The trial court ordered Hernandez's convictions merged and sentenced Hernandez to forty years of incarceration with two years suspended to probation.

Discussion and Decision

I. Hernandez's Right to Present Evidence

[8] Hernandez contends that the trial court effectively prevented him from presenting his case at sentencing. According to Hernandez, the trial court's actions had a chilling effect on his counsel, effectively pressuring her into ending her presentation of evidence prematurely. Pursuant to Indiana Code section 35-38-1-3, before a person found guilty of a crime can be sentenced, a trial court must conduct a hearing at which the defendant "is entitled to

subpoena and call witnesses and to present information on his own behalf.”

The admission or exclusion of evidence, however, falls within the sound discretion of the trial court, and its determination regarding the admissibility of evidence is reviewed on appeal only for an abuse of discretion. *Wilson v. State*, 765 N.E.2d 1265, 1272 (Ind. 2002). An abuse of discretion occurs when the trial court’s decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Doolin v. State*, 970 N.E.2d 785, 787 (Ind. Ct. App. 2012), *trans. denied*.

[9] We need not reach the merits of Hernandez’s claim, because he has failed to preserve the issue for appellate review. Although Hernandez now claims that the trial court effectively prevented him from calling witnesses at his sentencing hearing in an effort to save time, he did not object at the time. Generally, to preserve a claim of error for appeal, a party must make a contemporaneous objection before the trial court in order to give it “an opportunity to cure the alleged error” and to ensure that the issue raised on appeal “benefits from a sufficiently-developed record.” *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018). Moreover, Hernandez made no offer of proof indicating what the supposedly-chilled testimony would have been, which must be done to preserve a claim of wrongfully-excluded evidence. *See, e.g., Dowdell v. State*, 720 N.E.2d 1146, 1150 (Ind. 1999) (“It is well settled that an offer of proof is required to preserve an error in the exclusion of a witness’ testimony.”). If Hernandez had believed that he was being improperly cut off from calling further witnesses, he had an

obligation to object and make a record to place the issue before the trial court, which he did not do.

II. Alternative Juvenile Sentencing

[10] Indiana Code section 31-30-4-2 provides that a child waived into adult criminal court may receive alternative juvenile sentencing for his offense, including suspension of a sentence or placement in a juvenile facility. *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021). Although the purpose of this statute is “to rehabilitate juvenile defendants and prevent them from becoming criminals as adults,” the decision to alternatively sentence a juvenile defendant is ultimately within the trial court’s discretion. *Id.* It is appropriate for appellate courts to consider the statutory factors governing juvenile waivers into adult criminal court when reviewing a trial court’s denial of a defendant’s request to be sentenced pursuant to Indiana Code section 31-30-4-2. *Legg v. State*, 22 N.E.3d 763, 767 (Ind. Ct. App. 2014), *trans. denied*. These factors include the severity of the offense and whether the crime is part of a pattern of acts, whether the child is beyond rehabilitation by the juvenile justice system, and whether it is in the “best interests” of the community that the child be tried as an adult. *Harris*, 165 N.E.3d at 99.

[11] Here, Hernandez’s offense was very severe and only the latest in a pattern of similar offenses. In addition to Hernandez’s forcible rape of C.M. in her home, he has previously committed at least two similar acts. In the first, Hernandez attacked a sixty-one-year-old female at the front door of her home, knocking her to the ground and groping her around her groin before being pushed away. In

the second, Hernandez fled a local hospital after being transported there by police for treatment due to intoxication and, upon finding a sixty-seven-year-old female outside her home, knocked her to the ground and groped her crotch area as well. The severity of Hernandez's offense and the fact that it is part of an escalating pattern of similar offenses weigh against alternative juvenile sentencing.

[12] Moreover, the trial court reasonably concluded that Hernandez is beyond rehabilitation within the juvenile justice system. Hernandez's first involvement with the juvenile justice system occurred when he was fifteen years old, and in the two years between that time and the time he committed the underlying offense, he had been adjudicated a juvenile delinquent for six different offenses, including the two incidents of sexual battery discussed above. In August of 2019, following the first of these sexual-battery adjudications, Hernandez began receiving services. Hernandez nonetheless committed his second sexual battery, after which he was placed in secure detention in September of 2019, where he stayed until November of 2020. Approximately four months later, Hernandez raped C.M., and, while being held pending trial in this case, he had been involved in at least two physical altercations. The trial court did not abuse its discretion in finding that "other forms of sanctions have proved to be unsuccessful in keeping the defendant from engaging in criminal activity." Tr. Vol. II p. 100.

[13] Finally, we cannot say that Hernandez has established that it would be in the best interests of the community or his best interests that he be alternatively

sentenced as a juvenile. Not only does Hernandez have a lengthy juvenile record, but he also has a clear propensity to commit a highly-specific, sexually-violent type of crime against a specific age and gender demographic. Moreover, the severity of these crimes has only increased, progressing from two incidents of groping to an attack involving forceful vaginal and anal penetration and bludgeoning that was sufficiently traumatic to cause his victim to suffer a concussion and a heart attack. Finally, Hernandez's PSI indicates that, pursuant to the Indiana Risk Assessment System, he is at "HIGH risk to reoffend." Appellant's App. Vol. II p. 90. The record is more than sufficient to support a finding that it is in the community's best interests that Hernandez be sentenced as an adult. As for Hernandez's best interests, the record, as mentioned, indicates that the less-restrictive programs in which he has participated have not successfully rehabilitated him. *See Harris*, 165 N.E.3d at 99 (concluding that "Harris was unsuccessful in the many rehabilitative programs made available to him; and accordingly, it was in the best interest of Harris's community that he stand trial as an adult").

[14] While Hernandez attempts to claim that he should have received the benefit of alternative juvenile sentencing because his offenses are linked to his history of mental illness, that contention is undercut by his own statements during a psychiatric evaluation indicating that he committed the offense because he was "just trying to find an escape" and that he did not report experiencing a psychotic episode despite being off his medication at the time. Appellant's App. Vol. II p. 69. Based on the facts available at the time of sentencing, the

trial court did not abuse its discretion in declining to sentence Hernandez pursuant to the alternative juvenile sentencing statute.

III. Whether Hernandez's Sentence is Inappropriate

[15] 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) (citations and quotation marks omitted), *trans. denied*. “[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). The trial court sentenced Hernandez to forty years of incarceration with two suspended to probation, which, in overall length, is the maximum sentence allowed for a Level 1 felony. *See* Ind. Code § 35-50-2-4(b).

[16] The forty-year, enhanced sentence Hernandez received is not inappropriate in light of the nature of his offense. The offense at issue in this case was a premeditated, violent, unprovoked sexual assault involving a defenseless, elderly victim. *See Krempetz v. State*, 872 N.E.2d 605, 616 (Ind. 2007) (concluding that the nature of the offense did not merit a lesser sentence under Rule 7(B) when the facts showed a “carefully planned” offense “against a defenseless victim”). Hernandez drove his family’s car to a neighborhood and apparently began actively searching for a victim to rape. When Hernandez arrived at C.M.’s home, he watched her through her sliding-glass door, observing her as she went about her evening activities. After being unable to open that door, Hernandez rang C.M.’s doorbell, forced himself inside the house, pushed C.M. to the ground, struck her in the head, removed her underwear, and inserted his fingers into her vagina and anus, all while holding her mouth closed with his other hand. Hernandez continued to rape her even after she told him that she could not breathe. Based on the record, Hernandez’s offense was not only an egregious and violent crime, but it was also committed against a victim he did not know in her home, which was where she should have felt most safe.

[17] Moreover, C.M. suffered significant injuries as a result of the rape. When C.M. was evaluated by medical personnel at a local hospital, she was found to be having a heart attack and had a “high probability of imminent or life-threatening deterioration,” which required prompt medical intervention. Appellant’s App. Vol. II p. 3. Moreover, C.M. had been “smothered” by

Hernandez during the assault, arrived at the hospital with “acute hypoxic respiratory failure[,]” and suffered a concussion that caused continued headaches even at the time of the sentencing hearing. Appellant’s App. Vol. II p. 3. While the statute governing the offense of Level 1 felony rape requires evidence of a serious bodily injury, the facts of record in Hernandez’s case show that the injuries C.M. sustained went far beyond what was required to satisfy this requirement. Ind. Code § 35-42-3-1(a)(1), -(b)(3). Because the harm Hernandez caused C.M. was far greater than that required for a Level 1 felony, the record does not support Hernandez’s claim that the nature of his offense weighs in favor of a reduced sentence.

[18] Moreover, Hernandez has also failed to overcome his burden of showing that his character merits a reduced sentence. *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). For Rule 7(B) purposes, “[t]he character of the offender is found in what we learn of the offender’s life and conduct.” *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). This includes an evaluation of the factors like the defendant’s prior criminal history, *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *modified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2007), the possibility that defendant will be deterred from committing new criminal offenses, *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005), and whether the defendant has expressed remorse for his crimes. *Gibson v. State*, 51 N.E.3d 204, 216 (Ind. 2016).

[19] Despite being only seventeen years old at the time of his offense, Hernandez already had a well-established history of sexually assaulting women,

particularly older women. Hernandez’s history in the juvenile justice system dates back to 2015, and includes delinquency adjudications for theft, two counts of sexual battery, burglary, attempted residential entry, battery, and public indecency. The victim in this incident was in her seventies, and his two previous sexual-battery victims had been in their sixties. Moreover, a search of Hernandez’s mobile telephone following the first of the 2019 sexual batteries uncovered evidence that Hernandez had previously conducted internet searches for terms like “granny porn, aunt porn, [and] mom porn[.]” Tr. Vol. II p. 46. As the record demonstrates, not only is C.M. the latest in a series of victims that Hernandez has targeted for sexual assault, but she is also the victim of criminal activity that has escalated from acts of unwanted groping and fondling to forced vaginal and anal penetration. Hernandez’s character does not warrant a reduction in his sentence.

[20] Although Hernandez argues that his history of mental illness warrants a sentence reduction, we cannot agree. Hernandez has been diagnosed with schizophrenia, which has manifested itself in the form of auditory and visual hallucinations, paranoid delusions, and believing that he had the ability to breathe fire. Despite being off of his medication for approximately three weeks before the underlying offense took place, however, Hernandez denied that he had been hearing voices, seeing things, or feeling paranoid when he raped C.M. Instead, Hernandez attempted to explain the incident to an examiner as the result of a ““sexual problem[,]” which he attributed to having ““too much time alone—like not working and I felt like I needed to get out.”” Appellant’s App.

Vol. II p. 79. Hernandez further explained that “I could have had a girlfriend and had sex but maybe things would be going too slowly with my girlfriend—she wanted to go too slow so I needed more.” Appellant’s App. Vol. II p. 79. Rather than being the result of an episode of psychosis, Hernandez’s crime was a conscious, purposeful assault on a defenseless victim by a person who was apparently frustrated that his sexual appetites were not being satisfied. Neither the nature of Hernandez’s crime nor his character merits a lesser sentence. Hernandez has failed to carry his burden of demonstrating that his sentence is inappropriate.

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

Pyle, J., and Foley, J., concur.