MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Patrick Joseph Ross,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 26, 2022

Court of Appeals Case No. 22A-CR-773

Appeal from the Lake Superior Court

The Honorable Diane R. Boswell, Judge

Trial Court Cause No. 45G03-1801-F1-3

Altice, Judge.

Case Summary

[1] Patrick Ross appeals the aggregate twenty-year sentence that was imposed following his convictions for criminal confinement, a Level 3 felony, and battery resulting in serious bodily injury, a Level 5 felony. Ross claims that the trial court abused its discretion in sentencing him because it did not identify his alleged mental illness as a mitigating factor. Ross further contends that the sentence is inappropriate when considering the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] Ross and his wife, Vanessa Espinoza, lived together in Hammond with their middle-school-aged son, J.R. Espinoza also had a four-year-old son from a previous relationship with Timothy Mecyssne.

[4] On the morning of January 25, 2018, Ross took some Xanax and started drinking alcohol. At some point, Ross and Espinoza began to argue about Mecyssne. The two engaged in a physical altercation, and Ross continued drinking and "popping Xanax like Tic Tacs" until he became intoxicated. *Transcript Vol. II* at 53.

[5] Law enforcement was called, and several Hammond Police Department officers arrived at the residence. Ross was instructed to leave the home, and one of the officers drove Ross to a family member's house because he was too intoxicated to drive.

[6] Espinoza then called Mecyssne and asked for a ride to the middle school to pick up J.R. Mecyssen agreed and arrived at the residence with their four-year-old son. While on the way to the school, Espinoza fell asleep after taking some prescription medication. Once at the school, Mecyssne parked his car and waited for J.R.

[7] A relative told Ross that Mecyssne was at the middle school. In response, Ross drove to the school, saw Mecyssne, and parked directly in front of him, thus preventing Mecyssne from leaving. Ross then exited his vehicle and approached the driver's side of Mecyssne's car wielding a sledgehammer. Ross broke one of Mecyssne's car windows and struck Mecyssne in the head seven times with the sledgehammer. Ross then fled the scene, and although Mecyssne briefly lost consciousness, he heard his son in the backseat screaming and was able to drive away. The child was "covered in [Mecyssne's] blood and glass" from the broken window. *Transcript Vol. II* at 39-40.

[8] As a result of the attack, Mecyssne "suffered severe facial and scalp lacerations, requiring stitches and staples" and was in extreme pain. *Id.* at 42; *State's Exh.* 8, 10. Mecyssne also needed a cane to walk because of neurological damage that he had sustained in the attack.

[9] Ross was apprehended and arrested later that day, and on January 26, 2018, the State charged him with Count I, attempted murder, a Level 1 felony; Count II, criminal confinement, a Level 3 felony; Count III, battery by means of a deadly weapon, a Level 5 felony; Count IV, battery resulting in serious bodily injury, a Level 5 felony.

[10] Ross entered into plea agreement with the State on September 24, 2021, where he agreed to plead guilty to Level 3 felony criminal confinement and Level 5 felony battery resulting in serious bodily injury, in exchange for dismissal of the remaining charges. The plea agreement also provided that the parties could argue about the sentence that should be imposed.

[11] The trial court accepted the plea agreement, and at Ross's October 8, 2021 sentencing hearing, the following three aggravating factors were identified by the trial court: a) the offenses were committed on school property in the presence of Mecyssne's four-year-old son; b) this was the second time that Ross had attacked Mecyssne; and c) Ross showed no remorse for committing the crimes. The trial court found no mitigating circumstances and sentenced Ross to a fifteen-year term of incarceration on the criminal confinement conviction and to five years of incarceration on the battery resulting in bodily injury conviction. The sentences were ordered to run consecutively for an aggregate term of twenty years. Ross now appeals.

Discussion and Decision

I. Abuse of Discretion

[12] Ross argues that the trial court abused its discretion in sentencing him because it did not identify his alleged mental illness as a significant mitigating factor. Thus, Ross contends that the cause must be remanded for resentencing.

[13] Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions for an abuse of discretion. *Hudson v. State,* 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). An abuse of discretion will be found where 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.* A sentencing court may abuse its discretion 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.

Id.

[14] Although a sentencing court must consider all evidence of mitigating circumstances presented by a defendant, the finding of mitigating circumstances rests within the sound discretion of the court. *Banks v. State*, 841 N.E.2d 654, 658 (Ind. Ct. App. 2006), *trans. denied*. That is, the trial court has no obligation to accept alleged mitigating factors that are highly disputable in nature, weight, or significance, nor to agree with the defendant as to the value of proffered

mitigating circumstances. *Sipple v. State,* 788 N.E.2d 473, 480 (Ind. Ct. App. 2003), *trans. denied.* Moreover, the trial court is not required to afford the same weight to proffered mitigating factors as the defendant does, nor is it obligated to explain why it did not find a factor to be significantly mitigating. *Williams v. State*, 997 N.E.2d 1154, 1163-64 (Ind. Ct. App. 2013). Trial courts are not required to explicitly weigh aggravators against mitigators, *Anglemyer v. State,* 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007), and one aggravating factor may justify imposing an enhanced sentence. *Deane v. State,* 759 N.E.2d 201, 205 (Ind. 2001). Finally, we note that in cases where the sentencing court has abused its discretion—such as the finding of an improper aggravating factor—we will remand for resentencing "only if we cannot say with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances." *McCain v. State,* 148 N.E.3d 977, 984 (Ind. 2020).

[15] At the sentencing hearing, Ross requested the trial court to consider his "mental illness." *Transcript Vol. II* at 81. Ross's counsel informed the court that a competency examination conducted by clinical psychologist Douglas Caruana (Ph. D. Caruana) on May 16, 2020, determined that:

> Data generated in this examination do not highlight a condition of severely abnormal mental functioning with grossly demonstrable impaired perceptions in relation to the incident in question. A finding of insanity at the time of the alleged event is not indicated as defined by statute. The history and nature of events do support a finding of mentally ill at the time of the alleged event as defined by statute.

Id. at 82.

[16] However, when clinical psychologist Gary Durak (Ph. D. Durak) interviewed Ross on June 7, 2020, it was established that Ross had no history of psychiatric hospitalizations, other than one or two months of outpatient treatment a decade earlier to "deal with the stress in [his] life." *Appellant's Appendix Vol. III* at 37. Also during that interview, Ross indicated that, at the time of the offense, "he knew that the behaviors he engaged in were wrong . . . [and] he was under the influence of a significant amount of alcohol." *Id.* at 39. In sum, Ph. D. Durak found that at the time of the offense, [Ross] was able to appreciate the rightfulness and wrongfulness of his behaviors" and "[t]here was no interfering serious mental illness influencing his behavior choices." *Id.*

[17] Notwithstanding Ph. D. Durak's conclusion, Ross relies on Ph. D. Caruana's determination in support of his contention that the trial court was required to find his alleged mental illness as a significant mitigating factor. But Ph. D. Caruana's correspondence does not show that Ross had been diagnosed with any particular mental illness, what the diagnosis was, or that any alleged mental illness caused Ross to commit the charged offenses. Instead, the evidence demonstrated that Ross was motivated by anger and substance abuse at the time he committed the offenses. In other words, it was not a mental illness that impaired Ross's inhibitions. And at best, the circumstances show that Ross's claim that he suffered from a mental illness was highly disputable in nature, weight, and significance, and the trial court was not required to agree with Ph. D. Caruana's report and identify Ross's purported mental illness as a significant

mitigating factor. *See, e.g.*, *Healey v. State*, 969 N.E.2d 607, 616 (Ind. Ct. App. 2012) (stating that a trial court does not err by "failing to find a mitigating factor where that claim is highly disputable in nature, weight, or significance"), *trans. denied.*

[18] We also note that even if Ross had been diagnosed with a mental illness, there must be a "nexus between the defendant's mental health and the crime in question" for the illness to be considered a significant mitigating circumstance. *Steinberg v. State,* 941 N.E.2d 515, 534 (Ind. Ct. App. 2011). Ross presented no evidence to establish that his purported mental illness played a role in his decision to drive to the school and attack Mecyssne. In other words, Ross did not show that his ability to control his behavior was impaired by any mental health problem.

[19] For all these reasons, we conclude that the trial court acted within its discretion in declining to identify Ross's alleged mental illness as a mitigating factor.

II. Inappropriate Sentence

[20] Ross next claims that the twenty-year aggregate sentence was inappropriate when considering the nature of the offenses and his character. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The principal role of App. R. 7(B) review "should be to attempt to leaven the outliers and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes." *Cardwell v. State,* 895 N.E.2d 1219, 1225 (Ind. 2008).

App. R. 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate. *Conley v. State,* 972 N.E.2d 864, 876 (Ind. 2012). Further, we exercise deference to a trial court's sentencing decision, both because App. R. 7(B) requires us to give due consideration to that decision, and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Gleason v. State*, 965 N.E.2d 702, 712 (Ind. Ct. App. 2012).

[21] Whether a sentence is inappropriate turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Cardwell*, 895 N.E.2d at 1224. The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The defendant must show that his sentence is inappropriate with "compelling evidence portraying in a positive light the nature of the offense[s] (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). "The 'nature of the offense' compares the defendant's actions with the required showing to sustain a conviction under the charged offense, while the 'character of the offender' permits for a broader consideration of the defendant's character." *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied.*

[22] In 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. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). Ross pled guilty to a Level 3 felony and a Level 5 felony. The sentencing range for a Level 3 felony is between three and sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5. The trial court ordered Ross to serve fifteen years on this conviction. The range for a Level 5 felony is between one and six years, with a three-year advisory sentence. I.C. § 35-50-2-6(b). Ross was ordered to serve five years for this offense. Rather than ordering Ross to serve the maximum consecutive sentence of twenty-two years on the offenses, the trial court decided to impose an aggregate term of twenty years.

[23] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant's participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). In this case, the evidence showed that Mecyssne was unarmed and on the school premises to pick up Ross's child because Ross was too intoxicated to do so. Ross approached Mecyssne, who was seated in his parked vehicle, and struck him in the head seven times with a sledgehammer. Mecyssne required stitches and staples as a result of the extensive injuries he sustained to his head and face and needed a cane to walk after the attack.

[24] The evidence further established that Ross did not demonstrate any restraint or lack of brutality during the attack. Mecyssne's four-year-old son, who was in the backseat of the vehicle, suffered emotional trauma after witnessing the incident and being covered in his father's blood. Given these circumstances, it is readily apparent that Ross has failed to present any "compelling evidence

portraying in a positive light the nature of the offense[s]." *Stephenson,* 29 N.E.3d at 122. In short, Ross's offenses were extremely brutal and violent, and a reduction of his sentence is not warranted when considering the nature of the offenses.

[25] When examining Ross's character, we note that character is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. When assessing the character of an offender, one relevant factor is the offender's criminal history. *Denham v. State,* 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied.* The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Rutherford v. State,* 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).

[26] Ross has a lengthy juvenile and adult criminal history. As a juvenile, Ross was adjudicated a delinquent for burglary and was ordered to participate in probation. As an adult, Ross has been convicted of two felonies and four misdemeanors. Those convictions include possession of paraphernalia, domestic battery (twice), possession of marijuana, battery, and criminal recklessness.

[27] In previous cases, Ross has been incarcerated in the Indiana Department of Correction and has participated in probation. His probation was revoked in

two cases, and he was ordered to complete his sentence on work release and in jail. Ross has been provided numerous opportunities to reform his behavior and has failed to do so by continuing to commit new crimes, which reflects poorly on his character. *See Norton v. State,* 137 N.E.3d 974, 989 (Ind. Ct. App. 2019) (affirming the defendant's sentence when it was established that he had been given numerous opportunities to avoid incarceration in the past through alternative sentences, but he continued to commit crimes), *trans. denied.*

[28] Ross has also been identified as someone who is a high risk to reoffend. He has repeatedly demonstrated his disregard for the laws of this state and his inability to abide by them. The repeated nature of Ross's criminal offenses and the escalation in the severity of his crimes demonstrates that Ross poses a risk to the community.

[29] In sum, Ross has failed to convince us that his twenty-year sentence is inappropriate in light of either the nature of his offense or his character.

[30] Judgment affirmed.

Vaidik, J. and Crone, J., concur.