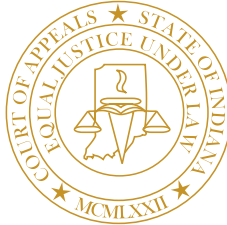


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

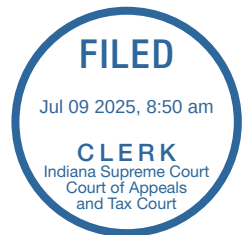


IN THE Court of Appeals of Indiana

Andrew N. Wilhoite,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



July 9, 2025

Court of Appeals Case No.
24A-CR-1559

Appeal from the Boone Superior Court
The Honorable Matthew C. Kincaid, Judge
Trial Court Cause No.
06D01-2203-MR-478

Memorandum Decision by Judge Kenworthy
Judges Bradford and Pyle concur.

Kenworthy, Judge.

Case Summary

- [1] Andrew Wilhoite appeals his sentence for Level 2 felony voluntary manslaughter, claiming the trial court abused its discretion in sentencing him and his sentence is inappropriate given the nature of his offense and his character. We affirm.

Facts and Procedural History

- [2] Andrew and Elizabeth “Nikki” Wilhoite met through mutual friends during Wilhoite’s first divorce and married in 2009 after Nikki became pregnant with their first child together. Wilhoite’s daughter from his previous marriage stayed with the couple every other weekend and on school breaks, while the daughter and son Wilhoite and Nikki shared lived with them. Wilhoite and Nikki frequently argued during their marriage. They both abused alcohol and Nikki also used marijuana.
- [3] In 2021, Wilhoite began an affair that lasted off and on for a year. During the affair, Nikki was diagnosed with breast cancer. Wilhoite decided the affair “has got to be over,” but did have at least one more intimate encounter after her diagnosis. *Tr. Vol. 4* at 87. Nikki became aware of Wilhoite’s affair in early 2022. Nikki decided to separate from Wilhoite and contacted an attorney. On Monday, March 21, 2022, Nikki handed Wilhoite legal separation documents and asked him to sign them. Wilhoite refused and said he needed to talk to an

attorney first. On Tuesday, the couple spent a “great day” together. *Id.* at 92. On Thursday, their typical dynamic returned.

[4] That night, after all three children went to bed, Nikki and Wilhoite went to the garage, where Nikki typically spent her evenings drinking. On this night, Wilhoite and Nikki drank together to the point of intoxication. Nikki grew angry with Wilhoite over his affair but eventually calmed down. Wilhoite went into the house to check on the children and get ready for bed, while Nikki stayed in the garage. When Nikki did not come inside after a few minutes, Wilhoite went back to the garage and helped her into the house. Nikki went into the bathroom, and Wilhoite went to bed.

[5] Wilhoite woke up to Nikki hitting and scratching his face, causing a bloody nose. Wilhoite grabbed her arm and pulled her outside. Nikki and Wilhoite fell to the ground in front of the house, “both yelling, screaming, pushing, [and] scratching.” *Id.* at 102. Wilhoite explained:

I had turned around to go back inside and I ended up falling down into the mulch area right there in front of the porch where the flowerpot was and I caught myself with the flowerpot and she was behind me and I came up and swung it.

Id. Wilhoite struck Nikki in the head with the flowerpot. The flowerpot broke and Nikki fell backwards. Wilhoite shook her, but “[s]he was just so limp,” he did not think she was still alive. *Id.* at 103.

- [6] Wilhoite placed Nikki in the bed of his pickup truck. He went inside, showered, then drove around the countryside until he found a location to dispose of Nikki. He lifted her limp body onto the concrete railing of a bridge, pushed her over, and watched her fall into a creek. Wilhoite's only thought going forward was that he "needed to be normal." *Id.* at 105.
- [7] The next morning, Wilhoite texted Nikki's phone, saying, "Love you, hope [you] made it." *Id.* at 15. He exchanged texts with a friend about the NCAA tournament, then messaged several people seemingly looking for Nikki.
- [8] Nikki's coworkers called 9-1-1 when she did not arrive for work that day. Officer Craig Fouts arrived at the Wilhoite home to conduct a welfare check around 10 a.m. The children greeted him at the door. They had looked for their mom the entire morning. Nikki's car was still in the garage, and her phone and purse were still at the house. Wilhoite, who worked on his family's farm, arrived on his tractor. Officer Fouts asked Wilhoite if he had seen Nikki, and Wilhoite said he and Nikki "had some problems and an argument, and . . . she had taken off." *Tr. Vol. 2* at 65. Officer Fouts observed scratches on Wilhoite's neck.
- [9] Officer Fouts remained on the property and worked with other law enforcement officers to locate Nikki. Wilhoite came and went throughout the day, carrying on the charade that he did not know Nikki's whereabouts. He pretended to help look for Nikki and offered suggestions of places she might have gone.

- [10] Wilhoite consented to a search of the residence and property and voluntarily went to the Boone County Sheriff's Department for an interview around 9:00 p.m. Indiana State Police Lieutenant Jeff Hearon and Master Trooper Detective Adam Buell conducted the interview. Initially, Wilhoite indicated Nikki may have "run off, may have went to go look for marijuana, [or h]er sister may have come pick her up[.]" *Tr. Vol. 3* at 114. Lieutenant Hearon asked Wilhoite "roughly twenty times" if he knew where Nikki was. *Tr. Vol. 4* at 40.
- [11] Later in the interview, with counsel present, Wilhoite confessed he killed Nikki. He described striking her with a "cement type gallon sized flowerpot that was off the front porch." *Tr. Vol. 3* at 116. Wilhoite told the interviewers he discarded the pieces of the flowerpot but said there was an identical one at the residence. Police never found the flowerpot pieces but collected a flowerpot that fit the description from the residence. The flowerpot weighed around twenty-eight pounds. When asked if it was possible Nikki was still alive, Wilhoite answered, "I didn't check. I don't know." *Ex. Vol. 1* at 161.
- [12] Wilhoite took police to Nikki's body. The only clothing on Nikki's body were two black socks and a black camisole tank top pulled up above her breasts; the rest of her body was exposed. Dr. Darin Wolfe, a forensic pathologist, performed Nikki's autopsy. Dr. Wolfe documented many bruises on Nikki's body, multiple lacerations on her head and face, and a broken nose. He said the injuries indicated between three and five blunt force impacts, the most severe of which was a frontal head injury. Dr. Wolfe determined Nikki's cause

of death was blunt force trauma of the head and her manner of death was homicide. Dr. Wolfe concluded Nikki did not die instantaneously but could have lived between three and fifteen minutes after she was struck. Dr. Feczko, also a forensic pathologist, independently reviewed Dr. Wolfe's autopsy report and agreed with Dr. Wolfe's findings. A toxicology report showed Nikki's blood alcohol level was .237 and she tested positive for THC.

[13] The State charged Wilhoite with murder. At the end of a four-day jury trial, the trial court instructed the jury not only on the elements of murder, but also on the lesser included offenses of voluntary manslaughter, involuntary manslaughter, and reckless homicide. The jury found Wilhoite guilty of Level 2 felony voluntary manslaughter.

[14] During the sentencing hearing, Wilhoite's two oldest children read their victim impact statements. They spoke of the physical, mental, and emotional abuse Wilhoite directed toward them and Nikki. Wilhoite's oldest daughter, L.W., shared the first time she saw Wilhoite hit Nikki was on the family's way home from a cattle show in 2016. Wilhoite became angry with Nikki and hit her across the chest, then briefly trapped her in the livestock trailer, knowing she was afraid of cattle. *See Tr. Vol. 4* at 204. L.W. said since that incident, she and her siblings "heard loud banging noises from down . . . stairs [and] witnessed the aftermath of fights, bruises on Nikki, [and] rooms which have been destroyed[.]" *Id.* at 205. Nikki and Wilhoite's youngest daughter spoke about how hard Wilhoite was to please and that she and her siblings witnessed physical altercations between their parents many times. Wilhoite's ex-wife also

read her victim impact statement and shared a story L.W. told her about Wilhoite's son being so afraid to leave his room at night, he began urinating in his room. L.W. witnessed Wilhoite rub the child's face in the urine to "teach him a lesson." *Id.* at 213.

[15] In sentencing Wilhoite, the trial court identified the following aggravators: the harm to Nikki was substantial and exceeded the elements required to prove the commission of the offense; Wilhoite has a history of criminal behavior; he knowingly committed a crime of violence in the presence or within the hearing of children under the age of eighteen; he showed his bad character by lying to police and family and attempting to conceal his crime by creating a false narrative; and he had Nikki in his care and custody when he killed her. With respect to Wilhoite's history of criminal behavior, the trial court stated:

[Wilhoite] committed a misdemeanor in [2007] that was alcohol related, operating a vehicle while under the influence of alcohol. The offense for which [he] is being sentenced occurred under the influence of alcohol. The Defendant regularly consumed multiple alcoholic beverages. This prior arrest and conviction is aggravating. It is further an aggravating factor that [] Wilhoite falsely imprisoned [Nikki] in the back of a truck . . . which contained pigs.^[1] It is an aggravating factor that he . . . rubbed . . . his son's face in . . . urine. This is battery.

¹ Although the trial court said "pigs," L.W. said it was cattle. *See id.* at 204.

Tr. Vol. 5 at 6. And with respect to Wilhoite committing the crime in the presence or hearing of his children, the trial court noted, “The children were point of fact present in the home during the late hours the crime was committed. They were not witnesses . . . , but they were present all the same.” *Id.*

- [16] The trial court also considered the mitigating factors proffered by Wilhoite. The court agreed with Wilhoite the offense was caused by circumstances unlikely to recur but gave that minimal weight. The court disagreed with Wilhoite that he was likely to respond positively to probation or short-term incarceration, or that a lengthy imprisonment would result in undue hardship to his dependents. And the court acknowledged a lack of criminal history “tends to mitigate,” but noted once again “there is not an absolute lack of criminal history” and Wilhoite “has not had a law abiding life . . . prior to the crime.” *Id.* at 8.

- [17] The trial court found the aggravators outweighed the mitigators and ordered Wilhoite to serve the statutory maximum sentence of thirty years in the Indiana Department of Correction.

The trial court did not abuse its discretion in sentencing Wilhoite.

- [18] A trial court may impose any sentence authorized by statute and permitted by the Indiana Constitution “regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” I.C. § 35-38-1-7.1(d) (2019).

Sentencing decisions rest within the discretion of the trial court, and if the sentence imposed by the trial court falls within the statutory range for the offense, we review it only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). That said, trial courts must enter a sentencing statement when imposing a sentence for a felony that includes a “reasonably detailed recitation” of the reasons for imposing the sentence, including the identification of all significant aggravators and mitigators. *Id.* Relevant to Wilhoite’s argument, a trial court abuses its discretion in sentencing if it imposes a sentence based on aggravators or mitigators unsupported by the record; imposes a sentence without considering aggravators or mitigators clearly supported by the record and advanced for consideration; or imposes a sentence based on reasons that are improper as a matter of law. *Id.* at 490–91.

A. The trial court did not abuse its discretion in its analysis of Wilhoite’s history of criminal behavior.

[19] Wilhoite contends the trial court abused its discretion by not viewing his criminal history—consisting of one misdemeanor conviction for operating a vehicle while intoxicated endangering a person in 2007—as a mitigator. *See* I.C. § 35-38-1-7.1(b)(6) (stating a trial court *may* consider that the defendant “has no history of delinquency or criminal activity, or the person has led a law-abiding life for a substantial period before commission of the crime”). Wilhoite must establish the mitigating evidence is both significant and clearly supported by the record to show the trial court abused its discretion. *See Anglemyer*, 868 N.E.2d at 493.

[20] Wilhoite compares his case to *Bacher v. State*, 686 N.E.2d 791 (Ind. 1997) and *Robinson v. State*, 775 N.E.2d 316 (Ind. 2002), arguing the trial court’s decision about Wilhoite’s criminal history is inconsistent with those cases because it used “a single remote misdemeanor conviction” as an aggravator instead of a mitigator. *Appellant’s Br.* at 15. But neither case supports his position. In *Bacher*, the Supreme Court had “sufficient concerns about the trial court’s sentencing statement” to remand for a new sentencing hearing. 686 N.E.2d at 801. One of those concerns was that the trial court failed to discuss the defendant’s proffered mitigator of lack of criminal history at the sentencing hearing or in its sentencing order. And in *Robinson*, the Supreme Court said the defendant’s single misdemeanor conviction “is not a criminal history that supports a significant aggravating factor, [but] neither is the trial court required to give [it] significant mitigating weight.” 775 N.E.2d at 321. Here, the trial court did not ignore Wilhoite’s limited conviction record as in *Bacher*, and it did not use the single conviction alone as a significant aggravator as *Robinson* discouraged.

[21] Although Wilhoite focuses solely on his one prior misdemeanor conviction, the trial court considered Wilhoite’s history of criminal behavior as a whole. The court noted alcohol was involved in both his prior conviction and his current offense and determined he had not been leading a law-abiding life in the interim despite not being charged with other offenses. *See* I.C. § 35-38-1-7.1(a)(2) (stating a trial court may consider that the defendant “has a history of criminal or delinquent behavior” as an aggravator). The trial court acknowledged a

limited arrest and conviction record tends to be considered a mitigator. But a 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) (quotation omitted), *cert. denied*. The trial court did not abuse its discretion in determining Wilhoite’s history of criminal behavior did not warrant significant mitigating weight but was instead an aggravator. *See Chastain v. State*, 165 N.E.3d 589, 599 (Ind. Ct. App. 2021) (noting uncharged allegations of prior criminal activity “may be considered during sentencing even if the defendant has not been convicted of an offense related to the activity” and holding the trial court did not abuse its discretion in using uncharged allegations to “diminish the weight of the lack of criminal history mitigator”), *trans. denied*.

[22] Relatedly, Wilhoite argues the trial court should not have considered specific allegations of misconduct from the victim impact statements when analyzing Wilhoite’s history of criminal behavior. *See Tr. Vol. 5* at 6 (court referencing the livestock trailer and urine incidents from the victim impact statements).

[23] Victim impact statements are “an integral part of the sentencing process” intended to “guarantee that the interests of the victim of a crime are fully and effectively represented at the sentencing hearing.” *Keene v. State*, 118 N.E.3d 801, 803 (Ind. Ct. App. 2019) (quotation omitted), *trans. denied*. In *Cloum v. State*, a panel of this Court directed a trial court to keep the following in mind when resentencing the defendant on remand:

[W]hen a victim impact statement strays from the effect that a crime had upon the victim and others and begins delving into substantive, unsworn, and otherwise unsupported allegations of other misconduct or poor character on the part of the defendant, caution should be used in assessing the weight to be given to such allegations, especially where the defendant is not provided an opportunity to respond directly to them.

779 N.E.2d 84, 93 (Ind. Ct. App. 2002).

[24] As *Cloum* noted, victim impact statements are unsworn by design and a defendant has no right to cross-examine a victim who has provided a victim impact statement. *Id.* But the defendant “must be given the opportunity to refute any information he claims is inaccurate.” *Id.* at 92. In *Cloum*, the defendant—who pleaded guilty to voluntary manslaughter in the death of his wife—requested and was denied an opportunity to respond to the victim impact statement of the victim’s mother. The statement made “substantive factual allegations against [him] that reflect[ed] poorly on his character” in direct conflict with other testimony regarding his good character, “epitomized by his lack of any criminal or arrest record, and the lack of domestic conflict in his marriage.” *Id.* Here, there was no evidence about the specific incidents referenced by the court other than the unsworn victim impact statements. But the evidence at trial was that the Wilhoites’ marriage was riddled with domestic strife, including physical altercations, and Wilhoite himself admitted to striking Nikki at least once. *See Tr. Vol. 4* at 82. And Wilhoite had the opportunity to dispute the victim impact statements regarding his behavior at the sentencing hearing. In his argument at sentencing, he specifically refuted a couple of

incidents relayed in those statements, but not the incidents the trial court mentioned.

- [25] Even if the trial court should not have named specific incidents from the victim impact statements as aggravators, the trial court was still within its discretion to find Wilhoite's single conviction was not representative of his pattern of criminal behavior.

B. The trial court properly found as an aggravator that Wilhoite committed the crime in the presence or within the hearing of the children.

- [26] Wilhoite also argues the trial court abused its discretion in finding as an aggravator that the crime was committed in the presence or within the hearing of his children because there was no evidence his children saw or heard him killing Nikki. Wilhoite's two daughters testified at trial they did not hear anything after they went to bed that night. The youngest child did not testify. But "this aggravator does not require that a child under eighteen actually see or hear the offense taking place." *Kedrowitz v. State*, 199 N.E.3d 386, 405 (Ind. Ct. App. 2022) (quotation omitted), *trans. denied*. Wilhoite knew his children were in their rooms on the second floor that night because he checked on them before he went to bed. According to the floor plans of the home introduced into evidence, the youngest child's room overlooked the front of the house where the crime took place. Wilhoite knew of the possibility the children could have seen or heard the crime, and it is only by grace they did not. *See Abrajan v. State*, 917 N.E.2d 709, 712 (Ind. Ct. App. 2009) (holding it was "entirely reasonable"

for the trial court to find the defendant committed a violent crime within the hearing of a child because the child was in her bedroom next to where the crime was committed). Therefore, the trial court did not err in finding as an aggravator the proximity of the children to Wilhoite's crime.

[27] Even if Wilhoite did prove there was an abuse of discretion in the trial court's consideration of one or more of these factors, any such error would not warrant resentencing. When a defendant challenges some, but not all, of the aggravators found by the trial court, we will not remand for resentencing if we can say with confidence the trial court would have imposed the same sentence had it not considered the allegedly erroneous factors. *Owen v. State*, 210 N.E.3d 256, 269 (Ind. 2023). We are confident that, even excluding the court's finding referencing information from the victim impact statement and the proximity of the children to the crime, the trial court would have imposed the same sentence based on the other aggravators found, any one of which would have supported the sentence.

Wilhoite's sentence is not inappropriate.

[28] Wilhoite asks us to revise his sentence. The Indiana Constitution authorizes this Court to review and revise a trial court's sentencing decision as provided by rule. Ind. Const. art. 7, § 6. Indiana Appellate Rule 7(B) provides 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." The principal role of appellate review is to leaven the outliers, not to achieve a perceived correct

sentence in each case. *Conley v. State*, 183 N.E.3d 276, 288 (Ind. 2022).

Therefore, “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) (per curiam).

[29] “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “Such deference 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). The two prongs of 7(B) review are “separate inquiries to ultimately be balanced in determining whether a sentence is inappropriate.” *Lane v. State*, 232 N.E.3d 119, 126 (Ind. 2024) (quoting *Conner v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016)). “[T]o the extent the evidence on one prong militates against relief, a claim based on the other prong must be all the stronger to justify relief.” *Id.* at 127.

[30] The question “is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” *Helsley v. State*, 43 N.E.3d 225, 228 (Ind. 2015) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)) (emphasis omitted). Whether we regard a sentence as 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.” *Cardwell*, 895 N.E.2d at 1224. The defendant

bears the burden of persuading us a revised sentence is warranted. *Cramer v. State*, 240 N.E.3d 693, 698 (Ind. 2024).

[31] The sentencing range for a Level 2 felony is ten to thirty years, with an advisory sentence of seventeen-and-one-half years. I.C. § 35-50-2-4.5 (2014). The trial court sentenced Wilhoite to the maximum term of thirty years.

[32] “Our analysis of the ‘nature of the offense’ requires us to look at the nature, extent, heinousness, and brutality of the offense.” *Dean v. State*, 222 N.E.3d 976, 990 (Ind. Ct. App. 2023), *trans. denied*. Wilhoite contends his sentence is inappropriate because “there was instability in the relationship for which there was a nexus to the offense, that was not entirely attributable to [him].” *Appellant’s Br.* at 21. And in an effort to paint his offense in a more positive light, he suggests ways his crime could have been worse. *See id.* (stating the “worst offense would involve no admission and no assistance recovering the body”). But Wilhoite killed his wife by slamming a twenty-eight-pound flowerpot into her head. The forensic examiners testified Nikki could have lived up to fifteen minutes after that, time in which her life could have been saved had Wilhoite checked for a pulse or summoned aid. Instead, Wilhoite immediately placed her body in the bed of his truck and took the time to shower before driving to a bridge and tossing her mostly naked body into a creek. When he finally admitted to police he knew where Nikki was, the interviewer asked if there was any chance she was still alive. Wilhoite responded, “I didn’t check. I don’t know.” *Ex. Vol. 1* at 161. We discern no compelling evidence portraying Wilhoite’s offense as anything other than heinous and brutal.

- [33] When analyzing the character of the offender, we broadly consider the defendant's qualities, including age, criminal history, background, past rehabilitative efforts, and remorse. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). Wilhoite argues he is not the "worst offender," directing us to his career as a farmer, supportive statements from family members and fellow inmates, his affliction of alcohol use disorder, and his lack of criminal history. *Appellant's Br.* at 20. Although Wilhoite has only one prior misdemeanor conviction, his family recounted several instances of emotional and physical abuse, which does not reflect favorably on his character. Wilhoite not only lied to the police and his family when he said he did not know Nikki's whereabouts, but he affirmatively misdirected their efforts to find her for several hours.
- [34] Wilhoite has failed to convince us the nature of his offense or his character warrants revising his sentence.

Conclusion

- [35] The trial court did not abuse its discretion in sentencing Wilhoite, and his sentence is not inappropriate.
- [36] Affirmed.

Bradford, J., and Pyle, J., concur.

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