MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Marvin McClinton,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 7, 2024

Court of Appeals Case No. 23A-CR-1970

Appeal from the Lake Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No. 45G02-2212-F1-45

Memorandum Decision by Judge Pyle

Judges Bailey and Crone concur.

Pyle, Judge.

Statement of the Case

[1] Marvin McClinton ("McClinton") appeals, following a guilty plea, his sentence for Level 5 felony intimidation.[1] McClinton argues that the trial court abused its discretion when it sentenced him. Concluding that the trial court did not abuse its discretion, we affirm the trial court's judgment.

[2] We affirm.

Issue

> Whether the trial court abused its discretion when sentencing McClinton.

Facts

[3] In December 2022, forty-seven-year-old McClinton was in a relationship with S.A. ("S.A."). While at S.A.'s house, McClinton learned that S.A.'s son, twenty-four-year-old T.J. ("T.J."), was living with S.A. McClinton and T.J. began arguing about T.J. living at S.A.'s residence. During the argument, McClinton drew a handgun, pointed it at T.J.'s head, and threatened to shoot him if he did not move out of S.A.'s residence.

[4] The State charged McClinton with Level 1 felony attempted murder, Level 5 felony intimidation, two counts of Level 6 felony criminal recklessness, and two counts of Level 6 felony pointing a firearm. In June 2023, McClinton entered

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[1] IND. CODE § 35-45-2-1.

into a plea agreement with the State. McClinton agreed to plead guilty to the Level 5 felony intimidation charge. In exchange, the State agreed to dismiss all of the remaining charges. The plea agreement further provided that McClinton's sentence could not exceed four (4) years. The trial court took the plea agreement under advisement and ordered a pre-sentence investigation report ("PSI"). The PSI included a copy of the probable cause affidavit, which detailed McClinton's actions on the night of the offense.

[5] At McClinton's July 2023 sentencing hearing, the trial court found McClinton's extensive criminal history, which spanned nearly thirty years and included six felony and three misdemeanor convictions, to be a significant aggravating circumstance. The PSI revealed that McClinton had convictions in Illinois for violent crimes, including multiple residential burglaries. The trial court also found the nature and circumstances of the offense to be an aggravating circumstance. The trial court described the offense as a "violent, unprovoked act." (Tr. Vol. 2 at 33). The trial court found McClinton's remorse to be a mitigating circumstance. The trial court sentenced McClinton to four (4) years at the Indiana Department of Corrections.

[6] McClinton now appeals.

Decision

[7] McClinton argues that the trial court abused its discretion when it sentenced him. Sentencing decisions are 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). A trial court abuses its discretion when it fails to enter a sentencing statement at all, its stated reasons for imposing the sentence are not supported by the record, its sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or its reasons for imposing the sentence are improper as a matter of law. *Id.* at 490-91.

[8] McClinton specifically argues that the trial court abused its discretion when it found the nature and circumstances of the offense to be an aggravator due to McClinton's use of the handgun. We disagree.

[9] Our review of the record reveals that the trial court found that the nature and circumstances of McClinton's offense showed that it was a violent, unprovoked act. McClinton argues that this finding is nothing more than "an iteration of the elements of the crime itself" because the use of a firearm was an element of his offense. (McClinton's Br. 9). We note, that the intimidation statute, INDIANA CODE § 35-45-2-1, provides that the charged offense is a Level 5 felony if "while committing it, the person draws or uses a deadly weapon[.]" I.C. § 35-45-2-1(b)(2)(A). The trial court did not specifically rely upon the use of the handgun when discussing the nature and circumstance's aggravator. Instead, the trial court's focus was on the nature of McClinton's actions being unprovoked. Forty-seven-year-old McClinton was angry that T.J., the son of his girlfriend S.A., was living with S.A. McClinton drew and pointed a handgun at T.J. in an attempt to force him to leave S.A.'s home. Our review of the record reveals that the trial court's focus was on this unprovoked act, not simply the use of a deadly weapon, when finding the nature and circumstances

of the offense to be an aggravator. *See Caraway v. State*, 959 N.E.2d 847, 850 (Ind. Ct. App. 2011) (holding that trial courts may find the nature and particularized circumstances surrounding the offense to be an aggravating factor at sentencing), *trans. denied*.

[10] Further, even if the trial court had erred, McClinton's extensive criminal history was a sufficient aggravator for his sentence. "'A single aggravating circumstance may be sufficient to enhance a sentence. When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld.'" *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016) (quoting *Hackett v. State*, 716 N.E.2d 1273, 1278 (Ind. 1999)), *trans. denied*. Thus, even if the trial court's finding that the nature and circumstances of the offense was an invalid aggravating circumstance, McClinton's extensive criminal history would still support the four-year sentence imposed. Accordingly, we affirm the trial court's sentence.

[11] Affirmed.

Bailey, J., and Crone, J., concur.