MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel S. Louvier,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 20, 2021

Court of Appeals Case No. 20A-CR-2283

Appeal from the Kosciusko Superior Court

The Honorable David C. Cates, Judge

Trial Court Cause No. 43D01-2001-F4-111

Friedlander, Senior Judge.

[1] A jury found Daniel Louvier guilty of two counts of Level 4 felony child molesting,[1] and he was sentenced to twelve years for each count to be served consecutively in the Indiana Department of Correction. He appeals his sentence, presenting the following restated issue for review: Did the trial court abuse its discretion by imposing the maximum sentence for the Level 4 felony child molesting convictions and failing to consider certain mitigating circumstances?

[2] We affirm.

[3] Louvier and B.P. are the biological parents of A.A. Louvier and B.P. were married while B.P. was pregnant with A.A. but divorced when A.A. was an infant. A.A. did not have a relationship with Louvier until she was eight years old, at which time B.P. began to supervise visits between Louvier and A.A. B.P. eventually allowed A.A. to stay overnight with Louvier, on alternating weekends, at Louvier's home in Silver Lake, Indiana.

[4] At the time A.A. was spending weekends with Louvier, Louvier lived with his (then) fiancée and his fiancée's child B.B. Although Louvier was not B.B.'s biological father, B.B. called him "dad." Tr. Vol. 2, p. 78. When A.A. was visiting at Louvier's home, A.A. and B.B. would play together.

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[1] Ind. Code § 35-42-4-3(b) (2015).

[5] In 2018, Louvier began touching A.A. inappropriately when she visited him. When the inappropriate touching began, Louvier was around thirty-five years old; A.A. was eight or nine; and B.B. was ten or eleven. A.A. testified that during her visits, she and Louvier would sit on the couch and watch television. Louvier would pull her close to him and put his hand inside A.A.'s pants, inside of her underwear. He would then rest his hand against her "private" – skin-to-skin – for the entire length of the television program. *Id.* at 69. A.A. testified that between 2018 and 2019, the inappropriate touching occurred "[s]omewhere close to" ten times. *Id.* at 73.

[6] During the same time period, Louvier was also touching B.B. inappropriately, mostly on the couch and in the same manner in which he touched A.A. B.B. testified that Louvier would pull her close to him, place his bare hand inside her underwear – skin-to-skin – and then press hard against her "lower part" to the point where "it would kinda hurt." *Id.* at 83, 84. B.B. testified that Louvier touched her in this way approximately fifteen times.

[7] B.B. testified to other incidents of inappropriate touching. On one occasion, Louvier touched B.B. in her bedroom when she asked him for help with a school assignment. He sat next to her, put his hand down her pants, and pressed so hard that she moved away from him because he was hurting her.

[8] On a separate occasion, while Louvier and B.B. were home alone, Louvier helped B.B. use mayonnaise to remove lice from her hair. B.B. and Louvier put on swimsuits and showered together to remove the mayonnaise from B.B.'s

hair. When B.B. exited the shower, she wrapped a towel around herself, removed her suit, and placed it in the bathtub. Louvier did the same. Louvier then picked B.B. up and her foot touched the tip of his "private spot." *Id.* at 88. Louvier told B.B., "I know how it's awkward and I'm sorry." *Id.* He apologized and put her down.

[9] After that, Louvier asked B.B. if she needed help putting on lotion. B.B. answered "sure" because she thought Louvier would apply lotion to her "arms and stuff[.]" *Id.* Louvier followed B.B. to her bedroom and while B.B. lay naked on her bed, he rubbed lotion all over her body – front and back – touching her "top area[,]" meaning breasts, and her back area[,]" meaning buttocks. *Id.* at 89.

[10] The girls did not disclose to an adult what Louvier was doing to them. B.B. testified, however, that she and A.A. talked to each other about what Louvier had done to them. She further testified that, one time, she saw Louvier touch A.A. and A.A. saw Louvier touch her.

[11] By the summer of 2019, A.A. and B.B. were no longer in contact with each other. That summer, B.P. stopped taking A.A. to visit with Louvier because Louvier stopped calling and stopped answering B.P.'s text messages.

[12] In December 2019, A.A. overheard her mother, B.P., discussing dangerous or risky sexual content on social media. Later that same day, at dinner, A.A. told her mother that Louvier had touched her inappropriately. B.P. took A.A. to the local police station, where an investigator arranged for a forensic interview

with an interviewer from the county's Department of Child Services. B.B. separately disclosed the inappropriate touching when she was questioned by her mother and the police.

[13] On January 31, 2020, the State charged Louvier with two counts of Level 4 felony child molesting. Following a jury trial held on October 13, 2020, Louvier was found guilty as charged. He was sentenced to an aggregate sentence of twenty-four years – specifically, twelve years for each conviction with the sentences to be served consecutively. Louvier now appeals.

[14] Louvier argues that the trial court abused its discretion in sentencing him.[2] "[S]entencing decisions rest within the sound discretion of the trial court[.]" *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Id.* An abuse of discretion occurs "if 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.* (citation omitted). A trial court may abuse its discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors

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[2] Louvier's sentencing argument appeared to conflate the abuse-of-discretion standard with the inappropriateness standard under Indiana Appellate Rule 7(B) (which provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender). In his reply brief, however, Louvier clarifies that the sole issue he raises on appeal is whether the trial court abused its discretion at sentencing.

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.* at 490-91.

[15] Louvier first argues that the trial court abused its discretion by imposing the maximum sentence for his Level 4 felony child molesting convictions because the prosecution failed to prove that he is the "worst of the worst" of offenders. Appellant's Br. p. 21. A person who commits a Level 4 felony faces a sentence of two to twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5 (2014). Louvier received the maximum sentence allowed by statute for each of his convictions and was ordered to serve the sentences consecutively with no time suspended.

[16] Our supreme court has explained that, while "the maximum possible sentences are generally most appropriate for the worst offenders," this is not "a guideline to determine whether a worse offender could be imagined" as "it will always be possible to identify or hypothesize a significantly more despicable scenario." *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (citations and internal quotation marks omitted). Thus, in reviewing a maximum sentence, "[w]e concentrate less on comparing the facts of this case to others . . . and more on focusing on the nature, extent, and depravity of the offense . . . and what it reveals about the defendant's character." *Wells v. State*, 904 N.E.2d 265, 274 (Ind. Ct. App. 2009), *trans. denied.*

[17] Here, we cannot say that the trial court abused its discretion by imposing the maximum sentence possible for Louvier's convictions. Louvier was in a position of trust and care when he molested two young girls – his daughter, with whom he had not had a relationship for the first eight years of her life, and his fiancée's daughter who considered and called Louvier her "dad." Tr. Vol. 2, p. 78; *see Middlebrook v. State*, 593 N.E.2d 212, 214 (Ind. Ct. App. 1992) ("[a] reasonable person could conclude that the imposition of the maximum sentence" is appropriate for molesting of daughter and stepdaughter); *see also Singer v. State*, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996) ("Abusing a 'position of trust' is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting."). He touched the girls inappropriately at least twenty-five times. A.A. testified that the inappropriate touching felt "weird[,]" and B.B. testified that the touching made her feel uncomfortable. Tr. Vol. 2, p. 75. B.B. testified that Louvier pressed his hand against her female sex organ with such force that it hurt her. The girls testified that they were afraid to tell an adult about the inappropriate touching because they did not think they would be believed.

[18] At the sentencing hearing, A.A.'s victim statement was read to the trial court by her mother, B.P. A.A. told the court the following regarding how her life has been altered because of what Louvier did to her:

> I feel like this has affected my personality because . . . before this happened I was always talking to [my classmate] and [was] so energetic. Now I'm quiet and I really don't talk to people because of what he did. It made me lose trust in people. He

> made me lose a lot of sleep because I thought about what he did to me at night a lot and it scared me. In the beginning, what he was doing to me, made me think that it was normal for someone's dad to touch their daughter like that and I was confused at first when he started. My mom was on her phone one day and she saw something on Facebook . . . about someone who got arrested for molesting a kid and then I realized that's what was happening to me.

Id. at 136. B.B.'s mother told the court, "[B.B.] said she had nothing left to say but [that] she did what she needed to do[, and Louvier] and the events he caused were no longer worth her time." *Id.* at 137-38. B.B.'s mother added that Louvier's crimes "caused trust issues and nightmares . . . [and] lost friendships. *Id.* at 138.

[19] Under the facts and circumstances of the case before us, we find the trial court did not abuse its discretion by imposing the maximum sentence allowed by statute for Louvier's convictions.

[20] Louvier also argues that the trial court abused its discretion by failing to consider certain mitigating circumstances. A trial court is not required to accept a defendant's argument as to what is a mitigating factor or to provide mitigating factors the same weight as does a defendant. *Conley v. State*, 972 N.E.2d 864 (Ind. 2012). "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Anglemyer*, 868 N.E.2d at 493 (citation and internal quotation marks omitted). A court abuses its discretion, however, if it does not consider significant

mitigators advanced by the defendant and clearly supported by the record. *Id.* at 490-91. An allegation that the trial court failed to find a mitigating circumstance requires Louvier to show the mitigating circumstance is "both significant and clearly supported by the record." *Id.* at 493.

[21] At sentencing, Louvier presented the following mitigating circumstances: he was employed; he used his resources to help support his family; and although he had a criminal record, he had not committed a crime in nearly ten years. The trial court stated that it was "glad" that Louvier was able to rebuild broken relationships with his father, mother, and sister, but ultimately determined that it could not "find a mitigating factor of any importance[.]" Tr. Vol. 2, pp. 142, 143. Louvier takes issue with what he characterizes as the trial court "overlook[ing]" and failing to "properly consider the mitigators" in his case. Appellant's Br. p. 21 (internal quotation marks omitted).

[22] In its sentencing statement, the trial court noted Louvier's criminal history, which included three prior probation violations out of the four times he was placed on probation, and stated that it did not "see how probation [would] do anything in this case[.]" Tr. Vol. 2, p. 143. The court cited to Louvier's position of trust and care with the victims and that he had violated that trust. The court also noted Louvier's juvenile adjudication for child molesting. The court determined that significant harm had been done to the victims and also noted the multiple acts of molestation that gave rise to the two counts charged. The court stated that it considered all of these circumstances to be aggravating

and found no mitigating circumstances that it believed were important enough to give weight.

[23] As stated by our Supreme Court in *Anglemyer*, whether or not to accept offered mitigating circumstances is "the trial court's call." 868 N.E.2d at 493. In Louvier's case, the trial court heard the testimony and considered the evidence presented at sentencing and found no mitigating circumstances of any importance; and, the trial court was under no obligation to explain why. *See id.* ("the trial court is not obligated to explain why it has found that the factor does not exist"). Therefore, the trial court did not abuse its discretion when it did not consider as mitigating circumstances Louvier's contentions that he was employed; he used his resources to help support his family; and he had not committed a crime in nearly ten years. No error occurred here.

[24] Judgment affirmed.

Bailey, J., and Brown, J., concur.