

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christ Edwin Fenderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 2, 2023

Court of Appeals Case No.
22A-CR-2242

Appeal from the Lake Superior
Court

The Honorable Gina L. Jones,
Judge

Trial Court Cause Nos.
45G03-2107-F3-123
45G03-2107-F5-350

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] Christ Fenderson pled guilty to two counts of Level 5 felony robbery under two separate cause numbers. In exchange for Fenderson's plea, the State agreed to dismiss an additional Level 3 felony robbery charge. The trial court accepted Fenderson's guilty plea and sentenced him, pursuant to the terms of the plea agreement, to concurrent four-and-one-half-year sentences. On appeal, Fenderson contends that the trial court abused its discretion in sentencing him. We affirm.

Facts and Procedural History

- [2] On July 1, 2021, Fenderson went to Angel Beauty Extension Wigs and More store in Gary and forcefully took \$500.00 from Samir Obeidallah. Fenderson "used force or threatened to use force in taking the [\$500.00] by threatening to use a gun and stating 'give me all the money and don't make me pull it out' while lifting up his shirt and patting his lower stomach area." Appellant's App. Vol. II p. 132. On July 7, 2021, the State charged Fenderson with Level 5 felony robbery under Case Number 45G03-2107-F5-350 ("Case No. F5-350").
- [3] The next day, Fenderson went to a Family Dollar store in Gary and forcefully took \$110.00 from James White. Fenderson "used force or threatened to use force in taking the [\$110.00] by threatening to use a gun and demanding to 'give me all the money or he would shoot everyone in the store' while lifting up his shirt." Appellant's App. Vol. II p. 133. On July 12, 2021, the State charged

Fenderson with Level 3 felony robbery¹ and Level 5 felony robbery under Case Number 45G03-2107-F3-123 (“Case No. F3-123”).

- [4] Fenderson agreed to plead guilty as charged under Case No. F5-350 and to the Level 5 felony robbery charged under Case No. F3-123. In exchange, the State agreed to dismiss the Level 3 felony charge in Case No. F3-123. The parties also agreed that Fenderson’s sentence for each of the Level 5 felony charges would be left to the discretion of the trial court but “shall run concurrently.” Appellant’s App. Vol. II p. 130. The trial court accepted Federson’s guilty plea and sentenced him to concurrent four-and-one-half-year sentences.

Discussion and Decision

- [5] Fenderson contends that the trial court abused its discretion in sentencing him to an aggregate four-and-one-half-year term of incarceration. Sentencing decisions rest 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), *modified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2007). “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.* (quotation omitted).

We review for an abuse of discretion the court’s finding of aggravators and mitigators to justify a sentence, but we cannot

¹ The Level 3 felony charge related to a separate robbery which was alleged to have occurred on July 3, 2021.

review the relative weight assigned to those factors. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law.

Baumholser v. State, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (internal citation and quotation omitted), *trans. denied*.

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. The question we must decide is whether we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator.

Id. at 417 (internal quotation omitted).

[6] Fenderson pled guilty to two counts of Level 5 felony robbery. The sentencing range for a Level 5 felony is “between one (1) and six (6) years, with the advisory sentence being three (3) years.” Ind. Code § 35-50-2-6. The trial court sentenced Fenderson within the statutory range, sentencing him to concurrent four-and-one-half-year terms of incarceration on each count.

[7] In sentencing Fenderson, the trial court found the following aggravating factors:

The Court finds that the defendant has significant criminal history, to wit, three misdemeanor and five felony convictions, and the Court finds that the nature and circumstances of the

crime to be a significant aggravating factor in that it was not just one but it was three separate victims in this matter, and the threat of a gun in this day and age is more than enough to cause significant harm to the hearer of that threat.

Tr. Vol. II p. 33. Fenderson does not assert that the trial court abused its discretion by finding his criminal history to be an aggravating factor. He merely argues that the trial court abused its discretion by finding that the nature and circumstances of his actions warranted significant aggravating weight.

[8] “[A] person who knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear; commits robbery, a Level 5 felony.” Ind. Code § 35-42-5-1(a). In arguing that the trial court abused its discretion in sentencing him, Fenderson claims that “[t]here is nothing in the record to indicate that the circumstances of the robberies were anything more than the mere elements of the crime.” Appellant’s Br. p. 10. We disagree.

[9] We have previously concluded that “[t]he nature and particularized circumstances surrounding the offense is a proper aggravating factor.” *Harris v. State*, 163 N.E.3d 938, 955 (Ind. Ct. App. 2021), *trans. denied*.

Although a trial court may not use a material element of the offense as an aggravating circumstance, it may find the nature and circumstances of the offense to be an aggravating circumstance. Further, to enhance a sentence using the nature and circumstances of the crime, the trial court must detail why

the defendant deserves an enhanced sentence under the particular circumstances.

Plummer v. State, 851 N.E.2d 387, 391 (Ind. Ct. App. 2006) (internal citations omitted).

[10] In finding the nature and circumstances of Fenderson’s acts warranted aggravating weight, the trial court noted that there were multiple victims and “the threat of a gun in this day and age is more than enough to cause significant harm to the hearer of that threat.” Tr. Vol. II p. 33. In making his threat of gun violence during the first robbery, Fenderson told the victim “don’t make me pull it out.” Appellant’s App. Vol. II p. 132. The next day, during the second robbery, Fenderson escalated his threat of gun violence, threatening to “shoot everyone in the store” if the victim did not comply with his request. Appellant’s App. Vol. II p. 133. We cannot say that the trial court abused its discretion by finding that Fenderson’s escalating threat of gun violence warranted aggravating weight. Furthermore, even if the trial court could be found to have abused its discretion in considering this factor, Fenderson’s criminal history is sufficient to support his aggravated sentence. *See Baumholser*, 62 N.E.3d at 417. As such, we conclude that the trial court acted within its discretion when it found that the nature and circumstances of Fenderson’s acts warranted significant aggravating weight.

[11] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.