MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tynae R. Couts,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 8, 2023

Court of Appeals Case No. 22A-CR-1990

Appeal from the Clark Circuit Court

The Honorable Susan Orth, Senior Judge

Trial Court Cause No. 10C01-2110-MR-7

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Tynae R. Couts appeals her sentence for Level 5 felony reckless homicide.[1] She presents three issues on appeal, which we restate as:

> 1. Whether the trial court violated Indiana Code section 35-38-1-17(e) when it resentenced Couts after it granted her motion to correct error;
>
> 2. Whether the trial court abused its discretion when it resentenced Couts; and
>
> 3. Whether Couts's sentence is inappropriate based on the nature of her offense and her character.

We affirm.

Facts and Procedural History

[2] On October 11, 2021, Couts and Corlaysia Meaux argued about a man. The argument "got out of hand" and Couts stabbed Meaux in the chest. (Tr. Vol. II at 156.) Couts rendered aid to Meaux until emergency personnel arrived.

[3] When officers arrived on the scene, they observed Meaux on the floor in the living room and Meaux's fourteen-year-old sister, K.D., sitting on the couch next to Meaux's body. Couts initially told police Meaux "stabbed herself[.]" (App. Vol. II at 4.) She later told police that she "did have a knife in her hand and [Meaux] ran on it." (Tr. Vol. II at 98.) Couts eventually told Detective

[1] Ind. Code § 35-42-1-5.

Josh Schiller that she "accidentally stabbed Meaux." (App. Vol. II at 4.) Meaux subsequently passed away from her injury. When told of Meaux's death during the police interview following the stabbing, Couts "attempted to harm herself and had to be physically restrained[.]" (*Id.*)

[4] On October 12, 2021, the State charged Couts with murder.[2] The State also charged Couts with Class A misdemeanor resisting law enforcement.[3] On December 17, 2021, Couts pled guilty to Level 5 felony reckless homicide in exchange for the dismissal of the murder and resisting charges. The plea left sentencing to the trial court's discretion.

[5] On January 25, 2022, the trial court held a sentencing hearing. At the end of the hearing, the trial court noted it did not have a report from Community Corrections as part of the Pre-Sentence Report. The trial court then stated:

> The Court's sentence is going to be of, we're going to impose a sentence of five years imprisonment, alright, and that's going to be the sentence and when I get that evaluation in, I want to share it with the lawyers and then the Court would then -- I'll take a look at that evaluation again and determine whether or not any of that is going to be served on Community Corrections or not. I've got to have a complete report and what I got today was complete, but five years is what I got today and was complete, but five years is where we are today and if some of that is in

[2] Ind. Code § 35-42-1-1.

[3] Ind. Code § 35-44.1-3-1(a)(1). The record does not clarify what actions by Couts prompted this charge.

> Community Corrections, that remains to be seen. I want to have a complete evaluation.

(Tr. Vol. II at 76.) The same day, the trial court issued its order sentencing Couts to five years incarcerated.

[6] On February 4, 2022, Couts filed a "Motion for Fu[r]ther Hearing & Motion to Correct Error[.]" (App. Vol. II at 156) (original formatting omitted). Therein, Couts stated:

> 1. On January 25, 2022, a sentencing hearing was conducted on this matter. At the conclusion of the hearing the Court entered a sentencing order but also ordered a Community Corrections evaluation. This Court stated that a modification would be considered when the report was completed.
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> 2. On February 3rd, 2022, Dawn Millspaugh, MAST[4] Coordinator issued a "letter".
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> 3. Pursuant to this Court's previous order, discussed above, another hearing must be set to consider modification.
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> 4. Additionally, further hearing is necessary in order to permit the Defendant the right to confront Dawn Millspaugh. Additional evidence may be offered. Defendant is also entitled to offer legal argument concerning the new evidence.

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[4] Millspaugh explained, "the MAST program is a program that is ran [sic] through Community Corrections . . . [and helps] offenders who have alcohol and drug issues." (Tr. Vol. II at 102.) She testified that, in her capacity as a MAST coordinator, she completes risk assessments for offenders as part of their pre-sentencing reports.

> 5. This Court is required to set further hearing on the matter, issue an appropriate judgement and enter an Order Correcting Error.

(*Id*.) (footnote added). On February 15, 2022, Couts filed legal authority to support her motion to correct error. Therein, she argued, based on statutory authority and case law precedent, that the trial court erred because it had not included a statement indicating why it imposed the sentence ordered, including discussion of aggravators and mitigators.

[7] On July 25, 2022, the trial court held a hearing on Couts's motion to correct error. At the beginning of that hearing, the trial court stated:

> We are here today due to the Court's granting of the Defendant's Motion to Correct Error regarding the January 25, 2022 sentencing of Ms. Couts. In particular, the Court relied on the Defendant's February 15th tender of authority supporting the Motion to Correct Error. The reasoning for granting the Motion to Correct Error were [sic] two-fold. After listening to the recording of the Sentencing Hearing and reading the submitted pleadings and case law that both the parties tendered, first, the presiding Judge sentenced Ms. Couts to five years and then at the end of the hearing ordered a Community Corrections Evaluation to determine how much of that sentence should be executed, which I agree is not a definitive, appealable sentence. Secondly, after reviewing the Sentencing Hearing, the Court agrees with the Defense that the record did not reflect that Ms. Couts' increased sentence was based on an enumerated or weighing of any mitigating or aggravating factors found at the Sentencing Hearing. The record did not indicate a clear weighing process of any criteria for sentencing factors when the Court imposed an aggravated sentence. The record did not reflect a clear sentencing statement. So in light of those facts and omissions

> and relying upon the tendered case law . . . we are here today then for sentencing.

(Tr. Vol. II at 82-3.) The trial court then held a sentencing hearing. At the end of the hearing, the trial court noted its consideration of the sentencing factors found in Indiana Code section 35-38-1-7.1.

[8] Regarding the aggravating circumstances it used to determine Couts's sentence, the trial court said:

> In looking at the statutory factors and applying them to the facts of this case I find in [Indiana Code section 35-38-1-7.1(a)(4)(A)], the person committed a crime of violence and knowingly committed the offense in the presence or within hearing of an individual, who is not a victim of the offense, and is less than eighteen years of age. Here, [K.D.] was fourteen when she was present and within hearing range when her older sister was stabbed to death. The effect of the event would undoubtedly have an effect on her, which certainly can be easily argued that would be with her a very long time, if not forever. No fourteen year old should ever have to be present or within hearing distance of such a horrible event. There was argument here that this was a stupid argument that got out of hand. Stupid arguments don't typically occur with a death so I find them to be a significant aggravating factor that I give great weight.

(Tr. Vol. II at 156-7.) Regarding the mitigating circumstances the trial court considered, the trial court said:

> There are also a number of mitigating factors I'm considering today, some statutory and some not. Mitigators [in Indiana Code section 35-38-1-7.1(b)(1)-(5)] do not apply. There is no indication that the victim induced or provoked the Defendant

> and there are no grounds to excuse or justify the death. [Indiana Code section 35-38-1-7.1(b)(6)], the person has no history of delinquency or criminal activity, at only twenty-one years of age albeit, I do find it to be a mitigator I am considering and I give this moderate weight. The person is likely to respond affirmatively to probation or short term imprisonment, there is little way to know what the future holds but I'm looking at Ms. Couts' lack of prior criminal history and the time that she has served to date as indicators and I give this mitigator moderate weight. [Indiana Code section 35-38-1-7.1(b)(10)], the imprisonment of the person will result in undue hardship to the dependent of the Defendant. The Defendant's four year old child will undoubtedly be affected by not having his mother and I give this indicator moderate weight. There are also non-statutory mitigators I'm considering. Ms. Couts graduated high school. While she did give several different accounts of the events to the police, she was actively rendering aid to Ms. Meaux and tried to save her at the scene when police arrived. She has expressed remorse at the time of the event, which I also find mitigating as well. She attempted to harm herself once she was told Ms. Meaux had passed away, which to me indicates remorse or taking responsibility. Her grandmother is a source of stability and support and she testified here today as well and I give all of those non-statutory aggravators moderate weight.

(*Id*. at 157-8.) Based thereon, the trial court concluded:

> After weighing the aggravator, which I give great weight against the mitigators, which I give less weight, I find the aggravators outweigh the mitigators and sentence you as follows, to six years at the Indiana Department of Corrections [sic] with one year suspended and five years to be executed, with credit time served from October the 11th of 2021.

(*Id*. at 158.)

Discussion and Decision

1. Resentencing

[9] Couts argues the trial court erred because it resentenced her to a higher sentence than it originally imposed. In support, Couts cites Indiana Code section 35-38-1-17(e), which states:

> (e) At any time after:
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> > (1) a convicted person begins serving the person's sentence; and
> >
> > (2) the court obtains a report from the department of correction concerning the convicted person's conduct while imprisoned;
>
> the court may reduce or suspend the sentence and impose a sentence that the court was authorized to impose at the time of sentencing. However, if the convicted person was sentenced under the terms of a plea agreement, the court may not, without the consent of the prosecuting attorney, reduce or suspend the sentence and impose a sentence not authorized by the plea agreement. The court must incorporate its reasons in the record.

[10] However, Indiana Code section 35-38-1-17(c) states, "[e]xcept as provided in subsections (k) and (m), this section does not apply to a violent criminal." Couts pled guilty to and was convicted of reckless homicide, which makes her a "violent criminal" as defined by Indiana Code section 35-38-1-17(d)(5). Therefore, Indiana Code section 35-38-1-17(e) does not apply to Couts and

could not be relevant to the manner in which the court resentenced her. Couts has not demonstrated the trial court erred when it increased her sentence.[5]

2. Abuse of Discretion

[11] The trial court sentenced Couts to five years incarcerated and one year suspended to probation for Level 5 felony reckless homicide. The sentencing range for a Level 5 felony is between one and six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). Couts argues the trial court abused its discretion when it imposed the maximum sentence because one aggravator was not supported by the evidence and one unidentified mitigator was supported by evidence.

[12] "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Gleason v. State*, 965 N.E.2d 702, 710 (Ind. Ct. App. 2012). 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." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). A trial court abuses its discretion by: "(1) issuing

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[5] Furthermore, we note that, in the trial court, Couts did not file a request for modification of her sentence pursuant to Indiana Code section 35-38-1-17. Instead, she filed a motion to correct errors and outlined the two errors the trial court made with respect to her original sentence, which the trial court acknowledged and corrected at the second sentencing hearing. As the trial court vacated the earlier sentence at Couts's request, the trial court was within its discretion to resentence Couts as it determined appropriate based on the sentencing factors set forth in Indiana Code section 35-38-1-7.1. *See*, *e.g.*, *Flowers v. State*, 518 N.E.2d 1096, 1098 (Ind. 1988) (trial court did not err in resentencing defendant to a higher sentence because the new sentence was within the sentencing range required by the relevant statutes).

an inadequate sentencing statement, (2) finding aggravating or mitigating factors that are not supported by the record, (3) omitting factors that are clearly supported by the record and advanced for consideration, or (4) finding factors that are improper as a matter of law." *Gleason*, 965 N.E.2d at 710.

[13] 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." *Anglemyer*, 868 N.E.2d at 490-1. "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." *Hackett v. State*, 716 N.E.2d 1273, 1278 (Ind. 1999) (internal citations omitted). 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. *See Edrington v. State*, 909 N.E.2d 1093, 1101 (Ind. Ct. App. 2009) (proper to affirm sentence even if improper aggravator is considered, if we have "confidence the trial court would have imposed the same sentence" regardless), *trans. denied*.

[14] When sentencing Couts, the trial court found two aggravators. First, that K.D., who was fourteen at the time of the crime, "was present and within hearing range when her older sister was stabbed to death." (Tr. Vol. II at 156.) Second, the trial court noted the crime was a "stupid argument that got out of hand"

and "[s]tupid arguments don't typically occur with a death[.]" (*Id*. at 156-7.) The trial court gave the second aggravator "great weight." (*Id*. at 157.)

[15] Couts argues the State did not present evidence Couts knew K.D. was in the residence at the time of the stabbing. Additionally, Couts contends there existed no evidence K.D. was physically present when Couts stabbed Meaux or that K.D. heard Couts stab Meaux. However, K.D. testified she was "present when [her] sister died" and was "in the apartment when the event happened[.]" (*Id*. at 45.) Additionally, Detective Samuel Moss testified at the first sentencing hearing that K.D. "was present and witnessed the incident." (*Id*. at 89.) Therefore, the trial court did not abuse its discretion when it found K.D.'s presence during the crime as an aggravating circumstance.

[16] Regarding mitigators, the 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) (quoting *Wilkes v. State*, 917 N.E.2d 675, 690 (Ind. 2009)). "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Anglemyer*, 868 N.E.2d at 493.

[17] Couts argues[6] the trial court abused its discretion when it sentenced her to the maximum sentence for a Level 5 felony because it did not consider her guilty plea as a mitigating circumstance when sentencing her.

> [A] defendant who pleads guilty deserves "some" mitigating weight be given to the plea in return. But an allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is not only supported by the record but also that the mitigating evidence is significant. And the significance of a guilty plea as a mitigating factor varies from case to case. For example, a guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility, or when the defendant receives a substantial benefit in return for the plea.

Anglemyer, 875 N.E.2d at 220-1 (internal citations omitted). Additionally, "a guilty plea is necessarily a mitigating factor where . . . evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic." *Amalfitano v. State*, 956 N.E.2d 208, 212 (Ind. Ct. App. 2011), *trans. denied*.

[18] Here, the trial court found seven mitigators – Couts's lack of criminal history; the likelihood Couts would respond "affirmatively to probation or short term imprisonment[;]" undue hardship on Couts's son; the fact Couts graduated from high school; that Couts rendered aid to Meaux until emergency personnel

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[6] Couts also argues in passing that the trial court should not have sentenced her to the maximum sentence for a Level 5 felony because the mitigating factors the trial court found outweighed any aggravators. We cannot review the relative weight the trial court assigned to aggravators and mitigators during sentencing. *See*, *e.g.*, *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*. Thus, this argument cannot present reversible error.

arrived; Couts's remorse; and Couts's grandmother's willingness to provide Couts with stability and support. (Tr. Vol. II at 157.) It is true the trial court did not find Couts's guilty plea as a mitigating factor despite the fact there was evidence thereof in the record. However, Couts received substantial benefit from her plea. The State originally charged Couts with murder. The terms of her plea agreement dismissed the murder charge, which could have resulted in a sentence of at least forty-five years, *see* Indiana Code section 35-50-2-3(a), and in exchange Couts pled guilty to Level 5 felony reckless homicide, for which Couts received a six-year sentence. Based thereon, we conclude the trial court did not abuse its discretion when it did not find Couts's guilty plea as a mitigator because she did not demonstrate it was significant. *See Anglemyer*, 875 N.E.2d at 220-1 (trial court did not abuse its discretion when it did not find defendant's guilty plea to be a mitigator because he did not demonstrate his guilty plea was significant).

3. Inappropriate Sentence

[19] Lastly, Couts argues her six-year sentence is inappropriate given the nature of her offense and her character. We evaluate inappropriate sentence claims using a well-settled standard of review.

> We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. App. R. 7(B). Our role in reviewing a sentence pursuant to Appellate Rule 7(B) "should be to attempt to leaven the outliers, and identify some guiding principles for the trial courts and those charged with

> improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "The defendant bears the burden of persuading this court that his or her sentence is inappropriate." *Kunberger v. State*, 46 N.E.3d 966, 972 (Ind. Ct. App. 2015). "Whether a sentence is inappropriate ultimately 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." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014).

Belcher v. State, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019), *trans. denied*. A defendant's life and conduct are illustrative of her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.

[20] When considering the nature of the offense, we first look at the advisory sentence for the crime. *Anglemyer*, 868 N.E.2d at 494. The sentencing range for a Level 5 felony is between one and six years with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). Thus, Couts received the maximum sentence for a Level 5 felony.

[21] Regarding the nature of her offense, Couts argues her sentence is inappropriate because "this was not an intentional killing[,]" (Br. of Appellant at 8), and she rendered aid to Meaux, which, Couts contends, indicates "she was not trying to kill her and tried to save her." (*Id*. at 9.) However, Couts stabbed Meaux, her friend, over an argument about a man. While Couts did render aid to Meaux, Couts gave several explanations for Meaux's injuries to Detective Moss, including that Meaux stabbed herself or ran into the knife while Couts was

holding it. Meaux's fourteen-year-old sister, K.D., was present during the crime and watched Meaux die. K.D. testified at sentencing that she was negatively affected because she had a close relationship with Meaux. Based thereon, we cannot say Couts's sentence was inappropriate based on the nature of her offense. *See*, *e.g.*, *Barber v. State*, 862 N.E.2d 1199, 1208 (Ind. Ct. App. 2007) (defendant's sentence for reckless homicide was not inappropriate for the nature of his offense because he knew his conduct carried the risk of harming his victims, against whom he harbored anger), *trans. denied*.

[22] When assessing the defendant's character, one factor we consider is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). "The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id*. Couts argues the seven mitigating factors found by the trial court made her sentence inappropriate. However, we cannot review the relative weight the trial court assigned to aggravators and mitigators during sentencing. *Baumholser*, 62 N.E.3d at 416.

[23] Furthermore, while Couts did not have a criminal history and the risk assessment completed as part of her pre-sentencing report indicated she was likely to respond to probation, the nature of the crime reflects poorly on her character. Couts points to other mitigators the trial court found to support her contention that her good character makes her sentence inappropriate, but we are not convinced.

[24] Couts contends we should consider that her incarceration will cause an undue hardship for her family because she has a four-year-old child. Yet, at the sentencing hearing, Couts's grandmother testified she would be taking care of the child. We cannot say incarceration will cause undue hardship for the child. *See Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999) ("incarcerated people have children, so just having children does not amount to an undue hardship meriting a lesser sentence"). Couts also contends she is of good character because she was employed. However, many people who are employed do not stab a friend. *See Holmes v. State*, 86 N.E.3d 394, 399 (Ind. Ct. App. 2017) (stating "many people are gainfully employed; therefore, a defendant's employment is not necessarily a mitigating factor"), *trans. denied*.

[25] There are many positive aspects of Couts's character, and the trial court acknowledged those. However, Couts engaged in an argument about a man with her friend, Meaux, stabbed Meaux in the presence of Meaux's fourteen-year-old sister, and then initially lied to police as to how Meaux obtained her fatal injury. Based thereon, we conclude Couts's six-year sentence for Level 5 felony reckless homicide is not inappropriate based the nature of the offense and her character.[7] *See Harlan v. State*, 971 N.E.2d 163, 172 (Ind. Ct. App. 2012) (defendant's sentence not inappropriate because, despite his lack of

[7] Couts also asks this court to modify her sentence based on Article I, Section 18 of the Indiana Constitution, which states, "[t]he penal code shall be founded on the principles of reformation, and not of vindictive justice." However, long ago our Indiana Supreme Court held that provision of our Constitution "applies only to the penal code as a whole, *not to individual sentences*." *Henson v. State*, 707 N.E.2d 792, 796 (Ind. 1999) (emphasis added). Thus, Couts's argument fails.

criminal history, the nature of his crime, including telling police several versions of the crime inconsistent with his eventual confession, reflected poorly on his character).

Conclusion

[26] Couts has not demonstrated that, after the trial court granted Couts's motion to correct error, it erred when it imposed a longer sentence upon resentencing. Further, evidence existed to support the trial court's determination that Meaux's fourteen-year-old sister's presence during the crime was an aggravating factor. Additionally, the trial court's failure to list Couts's guilty plea as a mitigating circumstance was not an abuse of discretion because Couts received a substantial benefit by pleading guilty. Finally, Couts's sentence was not inappropriate based on the nature of the offense and her character. Accordingly, we affirm Couts's six-year sentence for Level 5 felony reckless homicide.

[27] Affirmed.

Mathias, J., and Bradford, J., concur.