MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher C. Voegel,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 5, 2022

Court of Appeals Case No. 21A-CR-2381

Appeal from the Elkhart Superior Court

The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No. 20D03-1909-F3-41

Mathias, Judge.

[1] Christopher C. Voegel appeals his sentence after he pleaded guilty to two counts of Level 3 felony neglect of a dependent. Voegel raises a single issue for

our review, namely, whether the trial court abused its discretion when it found as aggravating factors that the victims were each one-month old and that Voegel was their father. We affirm.

Facts and Procedural History

[2] On April 10, 2018, Elkhart Police Department Officers were dispatched to the Elkhart General Hospital on a report of possible child battery. At the hospital, officers located twin one-month-old infants S.V and B.V. Officers observed that S.V. had bruising near S.V.'s temple and that S.V.'s nose had been "crusted over . . . with dried blood." Appellant's App. Vol. 2 p. 7. S.V. also had a broken left arm and a broken leg. Hospital personnel also examined B.V. They found that B.V. had "fractures in her right ankle[] and left lower leg at the shin bone." *Id.* at 8.

[3] Doctors advised officials with the Indiana Department of Child Services that S.V. and B.V.'s injuries were likely "caused by violent jerking on the extremit[ies]." *Id.* The children's mother reported that Vogel, the father of S.V. and B.V., had "mishandl[ed]" the children. *Id.*

[4] Law enforcement officers and DCS officials spoke with Voegel. He admitted that "he might have squeezed S.V. too hard," and he stated that "S.V. had head butted him." *Id.* Voegel also indicated "that he might have shook S.V. on one of the nights." *Id.* And in a text message to the children's mother, Voegel stated that he "can think of a time [he] could have accidentally hurt" B.V. *Id.*

[5] The State charged Voegel with two counts of Level 3 felony neglect of a dependent. Voegel pleaded guilty to both of those counts pursuant to a plea agreement. The plea agreement provided that Voegel's executed sentence on his convictions would be capped at ten years, with the sentences on both counts to run concurrently. The agreement further provided that "[a]ll other terms" of sentencing would be "left to the discretion of the Court." *Id.* at 78.

[6] The trial court accepted Voegel's guilty plea. Following a sentencing hearing, the court found as follows:

> As aggravating circumstances, the Court notes the victims were both one month old at the time of the incident and the injuries inflicted upon the one month old babies[.] The defendant had the care, custody[,] and control over the victims as he was the victims' father. As mitigators, the Court notes that the defendant has no criminal history and accepted responsibility for his criminal conduct through his guilty plea. The Court further finds that the defendant served in the National Guard. The Court further takes into account counsel's comments and the numerous letters of support on behalf of the defendant. The Court finds that the mitigating circumstances taken as a whole do not outweigh one of the aggravating circumstances[,] namely, the victims were one month old; therefore, the Court finds an aggravated sentence is appropriate in this case.

Id. at 142. The court then ordered Voegel to serve concurrent terms of sixteen years on each count, with ten years executed either in the Indiana Department of Correction or Elkhart County Community Corrections and six years suspended on probation. This appeal ensued.

Discussion and Decision

[7] Voegel asserts that the trial court abused its discretion when it sentenced him. As we have explained:

> Sentencing decisions are within the purview of the trial court's sound discretion and are reviewed on appeal only for an abuse of discretion. An abuse of discretion occurs when the sentencing 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. There are several ways a trial court may abuse its discretion, including failing to enter a sentencing statement at all, articulating reasons in a sentencing statement that are not supported by the record, omitting reasons in a sentencing statement that are clearly supported by the record, *or articulating reasons that are improper as a matter of law*.

Grimes v. State, 84 N.E.3d 635, 643-44 (Ind. Ct. App. 2017) (citing *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218) (internal quotations omitted), *trans. denied*.

[8] Voegel contends that the two aggravating factors found by the trial court—the victims' especially young ages and Voegel's care over them as their father—were improper as a matter of law. Specifically, he asserts that each of those aggravating factors is already included as an element of the offense of neglect of a dependent. Voegel is not correct.

[9] We have repeatedly recognized that "[i]t is proper for trial courts to consider the particularized individual circumstances of the crime as an aggravating factor." *Robinson v. State*, 894 N.E.2d 1038, 1043 (Ind. Ct. App. 2008) (citing

Townsend v. State, 498 N.E.2d 1198, 1201 (Ind. 1986)). For example, in *Gober v. State*, we held that the trial court did not abuse its discretion when it found as an aggravator that the defendant's neglect-of-a-dependent victims were six years old, four years old, and two years old. 163 N.E.3d 347, 355-56 (Ind. Ct. App. 2021), *trans. denied*. In so holding, we stated that the victims' ages "were much younger than the threshold" statutory requirement for neglect of a dependent. *Id.* at 356.

[10] Similarly, in *Robinson*, we affirmed the trial court's finding as an aggravator that the defendant was the mother of her neglect-of-a-dependent victim. 894 N.E.2d at 1042-43. In so holding, we stated that "it is clear that the trial court was addressing the particularized individual circumstances that the newborn was more vulnerable than other potential victims protected by the neglect of a dependent statute" because of the defendant's status as the victim's mother. *Id.* at 1043.

[11] Nonetheless, on appeal Voegel relies exclusively on *Nybo v. State* for the position that a trial court errs when it finds a victim's age to be an aggravating factor following a conviction for neglect of a dependent. 799 N.E.2d 1146, 1151 (Ind. Ct. App. 2003). However, *Nybo* does not clearly support Voegel's position. Although the trial court in that case did find as an aggravator that the victim was an infant, in reversing the defendant's sentence a divided panel of our court stated only that the trial court erred when it used the victim's "status as a dependent as an aggravating factor." *Id.* Further, insofar as *Nybo* might be read strictly as Voegel contends, the majority's analysis did not discuss the well-

established precedent that a trial court may consider the particularized factual circumstances of the case in sentencing a defendant. Thus, we decline to follow *Nybo*.

[12] Here, the trial court found as aggravating circumstances that the victims were one-month old at the time of Voegel's acts of neglect and also that Voegel was the victims' father. The trial court's findings identified particularized individual circumstances of Voegel's crimes, which was within the court's discretion. Therefore, the trial court did not abuse its discretion when it found those aggravators and considered them when it sentenced Voegel. We affirm his sentence.

[13] Affirmed.

Bailey, J., and Altice, J., concur.