

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Luis Eduardo Posso, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 18, 2023

Court of Appeals Case No.
22A-CR-2602

Appeal from the Monroe Circuit
Court

The Honorable Christine Talley
Haseman, Judge

Trial Court Cause No.
53C02-1905-MR-602

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

[1] Luis Posso, Jr., tortured to death his 12-year-old son, E.P. For at least a month, Posso kept E.P. chained inside a series of hotel bathrooms, deprived E.P. of food and water, and savagely battered E.P. until he eventually died from a complication of severe malnutrition, dehydration, and soft tissue injuries. Posso pleaded guilty to E.P.'s murder pursuant to a plea agreement with the State, and the trial court sentenced him to the maximum of 65 years in prison. Posso now appeals this sentence as inappropriate under Indiana Appellate Rule 7(B). We affirm.

Facts

[2] On May 24, 2019, Posso carried E.P. into a Bloomington hospital emergency room, claiming the child had become unresponsive after choking in his sleep. E.P. was not breathing and did not have a pulse. He also appeared to have been “horribly, horribly abused.” Exhs. Vol. I, p. 70. According to the emergency room’s attending physician, E.P.’s body was emaciated and contracted; “he looked similar to . . . people who [were] held in Nazi concentration camps.” *Id.* at 62. He was also covered in bruises. Attempts to resuscitate E.P. were unsuccessful, and he was pronounced dead less than 25 minutes after he arrived at the hospital.

[3] An autopsy later revealed that E.P. was “severely malnourished” and “severely dehydrated” at the time of his death. *Id.* at 103. E.P. had lost 40 to 50% of his body weight and had a body mass index less than the third percentile of

children his age. The fat under E.P.'s skin had been depleted, his eyes were sunk into their sockets, and his ribs and bones were prominent. E.P.'s organs were also small for his age, suggesting that his body had been "feeding on itself." *Id.* at 106.

- [4] The autopsy further revealed blunt force injuries of variable ages all over E.P.'s body. These included bruises, scrapes, and lacerations on his head, neck, back, chest, shoulders, arms, and legs. According to the forensic pathologist who performed E.P.'s autopsy, the injuries were in an "indiscriminate pattern" and seemed to have been "calibrated to inflict pain and suffering" *Id.* at 111, 129. The pathologist ultimately ruled E.P.'s death a homicide caused by "a complication of severe malnutrition, dehydration, and soft tissue injuries." *Id.* at 42-43.
- [5] Further investigation into E.P.'s death revealed that Posso; his wife, Dayana Medina-Flores; and their four children had been living out of a series of hotel rooms while Posso and Medina-Flores traveled for work. In addition to E.P., the children consisted of E.P.'s 9-year-old sister, 5-year-old stepbrother, and 2- or 3-year-old half-brother. Only E.P. showed signs of neglect or physical abuse.
- [6] When police interviewed Posso about E.P.'s condition, Posso admitted to spanking E.P. on the buttocks with a belt and identified some of E.P.'s bruises as the result of those spankings. But Posso denied knowing how E.P. sustained bruises all over his body and could not explain E.P.'s emaciated state.

According to Posso, E.P. ate normally and was a strong, healthy child who had been able to run and jump only one day earlier.

[7] Medina-Flores provided a different story after police searched the family's hotel room. Police found chains, padlocks, ankle restraints, and an electric shock dog training collar under one of the hotel beds. They also found a wireless surveillance camera that appeared to have been previously mounted in the bathroom. When police confronted Medina-Flores with this evidence, she admitted that she and Posso occasionally chained E.P. in the bathroom and monitored him with the surveillance camera while they went to work. Medina-Flores also admitted that Posso would shock E.P. with the dog training collar.

[8] On Medina-Flores's cellphone and Google Drive account, police found a video and several still images of E.P. confined in various bathrooms on five different days between April 25 and May 23, 2019. Nearly all of these depict E.P. chained by the ankles inside a bathtub, lying shirtless and in the fetal position. In some, E.P.'s chains are attached to the bathtub's "washcloth bar" in such a way that his feet are elevated to prevent him from standing. App. Vol. II, p 33. One image also hauntingly depicts E.P. the day before died, hunched over in a shower with his bones visibly protruding through his emaciated body.

[9] E.P.'s 9-year-old sister, R.P., would later testify that Posso and Medina-Flores chained up E.P. every night and shocked E.P. with the dog training collar almost every day. Posso and Medina-Flores also withheld food from E.P., and when they fed him, it was only spoiled food or "[l]ike one half of a sandwich."

Exhs. Vol. I, p. 23. Once, they even fed E.P. cat food and a dog bone.

Meanwhile, there was a locked box full of food inside the family's hotel room, and E.P.'s stepbrother and half-brother were fed "McDonald's, Chick-Fil-A, anything they wanted." *Id.* at 24.

[10] In addition to confining, starving, and neglecting E.P., Posso and Medina-Flores savagely battered him in various ways. They regularly punched and kicked E.P., beat him with a metal bat, and shoved a broken toothbrush down his throat. Posso also shot staples into E.P.'s feet using a staple gun. According to R.P., the abuse got "really bad" the night before E.P. died. *Id.* at 13. R.P. lay awake in the hotel bedroom and listened as Posso and Medina-Flores punched, slapped, and kicked E.P.; stripped him naked; and left him whimpering in the shower with the cold water running.

[11] The State charged Posso with murder and alleged that he qualified for an enhanced sentence of life imprisonment without parole (LWOP). The State also charged Posso with neglect of a dependent resulting in death, a Level 1 felony, and criminal confinement, neglect of a dependent, and battery resulting in bodily injury to a person younger than 14, all Level 5 felonies.

[12] Posso and the State eventually entered into an open plea agreement, pursuant to which Posso pleaded guilty to murder in exchange for the State's dismissal of the LWOP enhancement and three lesser felony charges. The agreement also indicated that the United States Attorney's Office would agree not to prosecute Posso on related federal charges if he pleaded guilty to the state murder charge.

And before Posso’s plea hearing, he and the United States Attorney’s Office executed an agreement to that effect.

[13] The trial court approved the plea agreement, accepted Posso’s guilty plea, and entered a judgment of conviction against him for murder.¹ At sentencing, Posso presented a mitigation expert’s opinion that Medina-Flores instigated the abuse of E.P. and that Posso had diminished culpability in E.P.’s murder. According to the expert, an array of overwhelming “stressors” in Posso’s life gave rise to several involuntary “psychological defense mechanisms” that prevented Posso from standing up to Medina-Flores and preventing E.P.’s death. Exhs. Vol. II, p. 22. The trial court rejected this narrative and sentenced Posso to the maximum of 65 years in prison.

Discussion and Decision

[14] Posso appeals his sentence under Indiana Appellate Rule 7(B), which permits an appellate court to revise a sentence if, “after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” In reviewing the appropriateness of a sentence, our principal role is to attempt to leaven the outliers, not to achieve a perceived “correct” sentence. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Accordingly, we give “substantial deference” to the trial

¹ In a separate case, Medina-Flores also pleaded guilty to E.P.’s murder. The trial court sentenced her to the maximum of 65 years in prison, which this Court affirmed on appeal. *Medina-Flores v. State*, Case No. 21A-CR-2259 (Ind. Ct. App. July 20, 2022) (mem.).

court's sentencing decision. *Id.* The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015).

[15] In assessing the appropriateness of a sentence, we first look to the statutory range established for that class of offense. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Posso pleaded guilty to murder, which has a sentencing range of 45 to 65 years and an advisory sentence of 55 years. Ind. Code § 35-50-2-3. The trial court sentenced Posso to the maximum of 65 years in prison, which we do not find inappropriate.

Nature of the Offense

[16] Posso rightfully acknowledges the nature of his offense as "terrible and heartbreaking." Appellant's Br., p. 19. That said, we find the State's characterization more accurate: "The scale of horror [that Posso] inflicted upon [E.P.] . . . is nearly unspeakable." Appellee's Br., p. 11. Posso tortured his 12-year-old son for at least a month and ultimately murdered him while his 9-year-old daughter lay awake in the next room. Aggravating circumstances abound. *See* Ind. Code § 35-38-1-7.1(a) (identifying presence of child and position of trust as aggravating factors); *see also Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) ("The younger the victim, the more culpable the defendant's conduct."); *Bailey v. State*, 763 N.E.2d 998, 1004 (Ind. 2002) ("Infliction of grave injury and pain over an extended period of time is sufficient to support an aggravating factor.").

[17] As he did at sentencing, Posso argues that he has diminished culpability in E.P.'s death because of his "involuntary psychological defense mechanisms, including a strong occurrence of denial." Appellant's Br., p. 21. Put simply, Posso contends he was under such immense stress in the month leading up to E.P.'s death that he was psychologically unable to recognize the severity of his actions or E.P.'s deteriorating condition. Posso also claims he eventually fed E.P. protein bars, Ensure, and Pedialyte in an attempt to restore E.P.'s health.

[18] We are not persuaded. Posso himself acknowledged—"This is child abuse"—in a text message to Medina-Flores one month before E.P. died. Exhs. Vol. I, p. 213. Posso's actions and E.P.'s condition only grew worse after that, and any ameliorative efforts Posso may have provided toward the end of E.P.'s life were too little, too late.

Character of the Offender

[19] As to his character, Posso emphasizes his guilty plea as warranting a reduced sentence. But Posso pleaded guilty to murder in exchange for the State's dismissal of an LWOP enhancement and three other felony charges. The U.S. Attorney's Office also agreed not to prosecute Posso federally if he pleaded guilty to the state murder charge. Thus, Posso received substantial benefits from his plea. *See Anglemeyer v. State*, 875 N.E.2d 218, 221 (Ind. 2007) (observing that a guilty plea is not significantly mitigating where the defendant receives a substantial benefit from it).

[20] Posso also asserts, without explanation, that he cooperated with police in their investigation of E.P.'s death. He cites to *Beason v. State*, 690 N.E.2d 277 (Ind. 1998), in which our Supreme Court observed that a defendant's voluntary confession to police "should be entitled to some mitigating weight." *Id.* at 283. Posso, however, gave no such confession. During his police interview, Posso denied or otherwise lied about nearly every fact material to E.P.'s death.

[21] Finally, Posso highlights his lack of criminal history and remorse as portraying his character in a positive light. Posso indeed has no criminal history, and his mitigation expert testified that Posso was "very . . . remorseful" about his role in E.P.'s death. Tr. Vol. II, p. 110. These factors alone, however, do not compel us to override the trial court's judgment in this case.

[22] Finding Posso's maximum 65-year sentence is not inappropriate in light of the nature of the offense and his character, we affirm the trial court's judgment.

Riley, J., and Bradford, J., concur.