

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Antroine Laytrell Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 24, 2023

Court of Appeals Case No.
22A-CR-2619

Appeal from the Lake Superior
Court

The Honorable Gina L. Jones,
Judge

Trial Court Cause No.
45G03-2201-F3-1

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

- [1] Antroine Laytrell Brown appeals his four-year sentence imposed following his guilty plea to level 5 felony robbery, arguing that the trial court abused its discretion by giving a reason for his sentence that was improper as a matter of law. We affirm.

Facts and Procedural History

- [2] In May 2021, Samuel Perez parked his car in the parking lot of a Hammond liquor store. As Perez walked toward the store's door, he was approached by Brown and another man. One of the men asked Perez for money. Perez "did not give the man any money and walked into the business." Appellant's App. Vol. 2 at 46. When Perez exited the store and was walking to his car, he was approached by the same two men. Brown's companion pulled out a handgun and told Perez, "[G]ive me all you got." *Id.* Brown's companion struck Perez "in the face with the handgun and knocked him to the ground." *Id.* Perez gave his car keys to Brown's companion. Brown took "Perez's belongings" from his companion and put them in Perez's car. *Id.* Brown and his companion unlocked Perez's car and drove it away. Perez's car was later discovered in Chicago, Illinois, and DNA evidence found in the car was matched to Brown.
- [3] The State charged Brown with level 3 felony robbery, level 5 felony battery by means of a deadly weapon, and level 6 felony auto theft. Later, the State added a count of level 5 felony robbery. Pursuant to a plea agreement accepted by the trial court, Brown pled guilty to level 5 felony robbery in exchange for the

dismissal of the remaining charges with sentencing left open to the trial court's discretion.

- [4] At sentencing, the trial court found one mitigating factor, namely, that Brown “expressed sincere remorse for his crimes which the Court believe[d] to be genuine.” *Id.* at 87. The trial court found two aggravating factors. First, it found that Brown “ha[d] fifteen misdemeanors and three felony convictions and probation ha[d] be[en] revoked on multiple occasions.” *Id.* at 88. Second, the court found “the nature and circumstances of the crime to be a significant aggravating factor in that: threats against people with physical harm over property is at the core of humanity.” *Id.* Regarding the nature and circumstances of the crime, the trial court told Brown, “[Y]ou had no reason to do this ... you had a job. You were working. Crimes against people over property bother me simply because there’s no reason. Especially if you were working, you could have done whatever you needed to do on your own without that.” *Tr. Vol. 2* at 31. The trial court sentenced Brown to four years, with three years executed and one year suspended to probation. This appeal ensued.

Discussion and Decision

- [5] In general, “sentencing decisions are left to the sound discretion of the trial court, and we review the trial court’s decision only for an abuse of this discretion.” *Singh v. State*, 40 N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied* (2016). “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) (quotation marks omitted), *clarified on reh’g*, 875 N.E.2d 218. A trial court may abuse its discretion by: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors 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.

- [6] Brown asserts that the trial court’s reliance on the nature and circumstances of the crime as an aggravating factor was improper as a matter of law. Brown pled guilty to level 5 felony robbery, which is defined as the knowing or intentional taking of property from another person by using or threatening the use of force on any person or putting any person in fear. Ind. Code § 35-42-5-1(a). The trial court sentenced him to four years, which is one year above the advisory for a level 5 felony. Ind. Code § 35-50-2-6(b). While a “trial court may not use a material element of the offense as an aggravating factor,” it “may find the nature and particularized circumstances surrounding the offense to be an aggravating factor.” *Gober v. State*, 163 N.E.3d 347, 354 (Ind. Ct. App. 2021), *trans. denied*. See also Ind. Code § 35-38-1-7.1(a)(1) (permitting trial court to consider the harm, injury or damage suffered by the victim as an aggravating factor where it is significant and greater than the elements of the offense). “[T]o 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).

[7] Specifically, Brown contends that the trial court failed to explain in what manner the nature and circumstances of his part in the crime went beyond the nature of the elements of the offense and that the court’s “statement about how robbery affects society as a whole” is not a proper aggravating factor.

Appellant’s Br. at 9 (citing *Harris v. State*, 824 N.E.2d 432, 441 (Ind. Ct. App. 2005) (crime’s impact on other persons does not qualify as an aggravator unless it is “of a destructive nature that is not normally associated with the commission of the offense in question”))).

[8] Regardless of whether the trial court’s reliance on the nature and circumstances of the crime was improper as a matter of law, Brown does not argue that his criminal history was an invalid aggravating factor. It is well settled that even if “an improper aggravator is used, we remand for resentencing only if we cannot say with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances.” *McCain v. State*, 148 N.E.3d 977, 984 (Ind. 2020). Here, given Brown’s extensive criminal history, which includes two felony convictions for battery and one for pointing a firearm, we can say with confidence that the trial court would have imposed the same sentence even without considering any other aggravators. Therefore, we affirm Brown’s sentence.

[9] Affirmed.

Robb, J., and Kenworthy, J., concur.