MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT

Miriam Huck
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James P. Snodgrass,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 9, 2021

Court of Appeals Case No. 20A-CR-1548

Appeal from the Bartholomew Circuit Court

The Honorable G. Thomas Gray, Senior Judge

Trial Court Cause No. 03C01-2004-CM-1812

Darden, Senior Judge.

Statement of the Case

[1] James Snodgrass pleaded guilty to three counts of Class A misdemeanor invasion of privacy.[1] He was sentenced to consecutive terms of 364 days for each count to be served in the Bartholomew County Jail. He appeals his sentence. We affirm.

Issues

[2] Snodgrass raises two issues for our review:

1. Whether the trial court abused its discretion at sentencing by failing to consider certain mitigating circumstances; and
2. Whether Snodgrass's sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] A.L., the oldest of six children, lived on a farm with her father, mother, and five siblings. In 2014 or 2015, A.L.'s father purchased a house that was adjacent to the farm. Snodgrass, who was a friend of A.L.'s father, moved into the house and began to remodel it. Snodgrass was approximately sixty years old at the time. He was on parole after serving a substantial prison sentence for a sex offense, and he had previously participated in a recovery program.

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[1] Ind. Code § 35-46-1-15.1(a)(2) (2019).

[4] A.L.'s family wanted to provide Snodgrass with support. Snodgrass exhibited good behavior for several years and became very close to the family—especially A.L. However, he changed and became manipulative, angry, and hostile toward the family.

[5] When A.L. was only sixteen years old, Snodgrass asked her to manage his money, including paying his bills. He also gave her his credit card. On one occasion, a neighbor stated that they had seen Snodgrass fondling A.L. Another individual noticed Snodgrass speaking to A.L. in church in an inappropriate manner and "started raising cane" about his behavior. Tr. Vol. 2, p. 18. She was so upset about what she had heard/observed about the incident that she reported her concerns to the police.

[6] On multiple occasions, Snodgrass sent text messages to A.L., discussing the topic of them living together. Snodgrass sent A.L. one text message that said, "Where else will you go? You could come here. There is plenty of room." Tr. Vol. 3, p. 21. In another, he typed, "How about we find a place of our . . ." *Id.* at 22. In response to this message, A.L. replied, "I cannot live with you. It is wrong. That is always my answer." *Id.* at 23. Snodgrass replied, "I doubt I say much more about it for another year and four months" when A.L. would turn eighteen years old. *Id.* at 24. In yet another text message that he sent to A.L., Snodgrass typed, "[W]hat do I have to do; go get us a place to live?" Tr. Vol. 2, p. 18.

[7] In September 2019, A.L.'s parents eventually sought and obtained a protective order against Snodgrass. However, on September 25, 2019, less than two hours after Snodgrass was served with the protective order, he sent three text messages to A.L. He also texted A.L. on September 26 and twice on September 29.

[8] At some point, Snodgrass was admitted to a mental health unit for suicidal thoughts. On the day that he was released, almost immediately he went to A.L.'s workplace, knowing that the protective order was in place. Snodgrass asked A.L. to come to the counter, and he spoke with her until her manager, who was aware of the protective order, intervened. In total, Snodgrass violated the protective order approximately twenty-four different occasions after being served.

[9] On April 6, 2020, Snodgrass was charged with six counts of invasion of privacy, all as Class A misdemeanors. On April 27, 2020, Snodgrass pleaded guilty, pursuant to a plea agreement, to three counts of invasion of privacy. In exchange, the State agreed to dismiss the three remaining invasion of privacy counts as well as counts charged in a separate case; all sentences to run consecutively to one another. On July 24, 2020, the trial court sentenced Snodgrass to 364 days in the Bartholomew County Jail for each count with the sentences to be served consecutively. Snodgrass appeals.

Discussion and Decision

I. Abuse of Discretion at Sentencing

[10] Snodgrass argues that the trial court abused its discretion by failing to consider certain proffered mitigating circumstances. "[S]entencing 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), *clarified on reh'g*, 875 N.E.2d 218. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion." *Id.* 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.* (citation omitted).

[11] A trial court is not required to accept a defendant's argument as to what is a mitigating factor or to provide mitigating factors the same weight as does a defendant. *Conley v. State*, 972 N.E.2d 864, 873 (Ind. 2012). "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Anglemyer*, 868 N.E.2d at 493. However, a court abuses its discretion if it does not consider significant mitigators advanced by the defendant and clearly supported by the record. *Id.* at 490. An allegation that the trial court failed to find a mitigating circumstance requires Snodgrass to show the mitigating circumstance is "both significant and clearly supported by the record." *Anglemyer*, 868 .E.2d at 493.

[12] Snodgrass argues that the trial court should have found as mitigating circumstances (1) that Snodgrass's offenses did not cause or threaten serious harm to persons—namely, A.L.—or property, and (2) that Snodgrass "did not contemplate that [the committed offenses] would do so." Appellant's Br. p. 7. Snodgrass maintains that, while only a portion of the text message exchanges between him and A.L. were introduced at sentencing, "there was no evidence that the texts sent in violation of the protective order were of a sexual, violent, or threatening nature." *Id.* at 8. We are unpersuaded by Snodgrass's arguments.

[13] Here, the record established that Snodgrass's crime was not a victimless one. A.L.'s father, without objection, provided a victim impact letter to the trial court, which was admitted into evidence at sentencing.[2] In the letter, A.L.'s father described that although Snodgrass was only charged with invasion of privacy, his crime had a much greater impact on A.L. and the rest of the family than one could imagine. The father explained that Snodgrass tried to convince A.L. to run away with him; that Snodgrass tracked A.L. using family members' social media sites and would follow her to work, home, friends' houses, and church; that he threatened to commit suicide if barred from seeing A.L. and her siblings; and, that he ruined birthdays and holidays with the use of manipulation, anger, and hostile words imposed on the entire family. At the

[2] A.L. did not appear at the sentencing hearing or provide the trial court with a statement.

close of his letter, the father informed the trial court that A.L. had withdrawn from society because she believed the "system" could not protect her. Tr. Vol. 3, p. 28.

[14] As stated by our Supreme Court in *Anglemyer*, whether or not to accept offered mitigating circumstances is "the trial court's call." 868 N.E.2d at 493. In Snodgrass's case, the trial court heard the testimony and considered the evidence presented at sentencing and found no mitigating circumstances; and, the trial court was under no obligation to explain why. *See id.* ("the trial court is not obligated to explain why it has found that the factor does not exist"). Therefore, the trial court did not abuse its discretion when it did not consider as mitigating circumstances Snodgrass's contention (1) that his offenses neither caused nor threatened serious harm and (2) that he did not contemplate that the offenses would do so. No error occurred here.

II. Inappropriate Sentence

[15] Snodgrass was sentenced to three consecutive 364-day sentences to be served in the Bartholomew County Jail. He argues that his sentence is inappropriate in light of the nature of his offenses and his character and asks that his sentences be revised downward.

> We may review and revise criminal sentences pursuant to the authority derived from Article 7, Section 6 of the Indiana Constitution. Indiana Appellate Rule 7(B) empowers us to revise a sentence "if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Because

> a trial court's judgment "should receive considerable deference[,]" our principal role is to "leaven the outliers." *Cardwell v. State*, 895 N.E.2d 1219, 1222-25 (Ind. 2008). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). The defendant bears the burden to persuade this court that his or her sentence is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record for such a determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*.

Reis v. State, 88 N.E.3d 1099, 1101-02 (Ind. Ct. App. 2017). The question under Appellate Rule 7(B) analysis is "not whether another sentence is *more* appropriate" but rather "whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Whether a sentence is inappropriate "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224.

[16] We begin with the advisory sentence in determining the appropriateness of a sentence. *Childress*, 848 N.E.2d 1073. The sentencing range for a Class A misdemeanor is "a fixed term of not more than one (1) year." Ind. Code § 35-50-3-2 (1977). Snodgrass's sentences for the Class A misdemeanors were one day shy of the maximum possible sentence that could be imposed for each of his convictions.

[17] To determine the nature of the offense, we examine the details and circumstances surrounding the offense. *Washington v. State*, 940 N.E.2d 1220, 1222 (Ind. Ct. App. 2011), *trans. denied*. Here, a protective order was issued on September 25, 2019. Yet, Snodgrass, a sixty-four-year-old man at the time, immediately and repeatedly violated the protective order by contacting seventeen-year-old A.L. On the day the protective order was personally served, Snodgrass sent A.L. three text messages, the first of which he sent less than two hours after he was served with the protective order. The text messages that Snodgrass sent on September 25 referenced when A.L. would turn eighteen years old and that, once she reached that age, it would be her choice as to whether to keep the protective order in place. Snodgrass sent another text message the following day, September 26, and then two additional text messages on September 29. Snodgrass also confronted A.L. at her workplace.

[18] In total, Snodgrass violated the protective order approximately twenty-four times. He was charged with six counts of invasion of privacy, and, ultimately, pleaded guilty to three counts. Snodgrass maintains that because his offenses were nonviolent and nonthreatening, he should not have been sentenced to three consecutive terms of 364 days each. However, we find that nothing about the nature and circumstances of his offenses leads us to the conclusion that his sentence is inappropriate.

[19] The character of the offender is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When considering the character of the offender, one relevant fact is the defendant's

criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Snodgrass's criminal history is extensive and involves—among other crimes and violations—incest, inappropriate contact with children, and multiple instances of public indecency.

[20] In 1988, Snodgrass was convicted of public indecency and sentenced to 365 days in jail. In 1990, he was convicted of criminal recklessness and sentenced to 180 days in jail. Three years later, in 1993, he was convicted of criminal trespass and public indecency and sentenced to 180 days for each offense. Later that year, he was again convicted of public indecency and sentenced to 365 days in jail. In 1996, Snodgrass was convicted of Level B felony incest and was sentenced to twenty years executed in the Department of Correction. Upon release to parole in 2010, he violated his parole that same year by receiving obscene material over the internet and having contact with a child. He was returned to incarceration. After being re-released, he again violated his parole—this time by taking a picture of a child. Between 2017 and 2019, Snodgrass was convicted of one count of public indecency and two counts of driving while suspended. At the time of his sentencing in the instant case, Snodgrass had several charges pending against him, including stalking, invasion of privacy, and driving while suspended. Snodgrass's criminal history reflects poorly on his character and shows he was not deterred by previous contacts with the criminal justice system from committing the current offenses. Given Snodgrass's criminal history, we cannot say that his sentence is inappropriate for his character.

[21] Snodgrass argues that his sentence is inappropriate as to his character because: he pleaded guilty and admitted that he violated the protective order; he had a positive relationship with A.L. and her family until "a fellow churchgoer started gossiping" about him; he did not have any sexual intentions toward A.L.; and, the reason he violated the protective order was because "he cared about [A.L.'s] well-being[.]" Appellant's Br. p. 9. We are unpersuaded. It is clear that Snodgrass does not appreciate the wrongfulness of his actions.

[22] Under these facts and circumstances, we find that both the nature of the offense and Snodgrass's character support the sentence imposed by the trial court. Snodgrass's sentence is not inappropriate.

Conclusion

[23] For the reasons stated, we conclude that the trial court did not abuse its discretion in sentencing Snodgrass, and his sentence of three consecutive terms of 364 days is not inappropriate in light of the nature of the offenses and his character.

[24] Affirmed.

May, J., and Brown, J., concur.