MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Paul L. Ray, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 6, 2022

Court of Appeals Case No. 22A-CR-97

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley, Judge

Trial Court Cause No. 73D01-2104-F5-23

Weissmann, Judge.

[1] Paul Ray, Sr. was convicted of Level 5 felony operating a motor vehicle with a lifetime forfeiture of driving privileges. Observing that this was Ray's sixth driving-related felony as a habitual traffic violator, the trial court sentenced him to four years executed, split between the Department of Correction and home detention. Ray appeals this sentence, arguing the trial court abused its discretion and his sentence was inappropriate. Finding no error, we affirm.

Facts

[2] Between October 2002 and May 2013, Ray was convicted of five felony traffic offenses—three Level D felonies for operating a vehicle as a habitual traffic violator and two Level C felonies for operating a vehicle with a lifetime forfeiture of driving privileges. Eight years later, in April 2021, Ray was arrested driving himself home from the casino. The State charged Ray with operating a vehicle with a lifetime forfeiture of driving privileges, now a Level 5 felony, and Ray pleaded guilty without the benefit of a plea agreement.

[3] At sentencing, the trial court found Ray's significant criminal history to be an aggravating circumstance, observing that this was Ray's sixth driving-related felony as a habitual traffic violator. The trial court sentenced Ray to four years executed, with two years in the Department of Correction and two years on home detention. Ray now appeals, arguing that the trial court abused its discretion in sentencing him and that his sentence is inappropriate under Indiana Appellate Rule 7(B).

Discussion and Decision

I. Abuse of Discretion

[4] Ray argues that the trial court abused its discretion at sentencing by failing to consider certain mitigating circumstances. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs when a decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions drawn therefrom." *Id.* at 490 (internal quotation omitted). One way a trial court can abuse its discretion is by failing to recognize mitigators that are clearly supported by the record and advanced for consideration. *Id.* at 491.

A. Law-Abiding Life

[5] Ray first contends that the trial court should have considered that he lived a law-abiding life for eight years prior to the subject offense, during which time he maintained his sobriety, employment, and housing. "The significance of a criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Williams v. State*, 838 N.E.2d 1019, 1021 (Ind. 2005) (internal quotation and citations omitted). It is within the trial court's discretion to "view the remoteness of the defendant's prior criminal history as a mitigating circumstance, or . . . it could find the remoteness to not affect the consideration of the criminal history as an aggravating circumstance." *Buchanan v. State*, 767 N.E.2d 967, 972 (Ind. 2002).

[6] At sentencing, the trial court acknowledged that Ray's offenses were older but was concerned with their repetitive nature. Tr. Vol. II, p. 39. And despite Ray's lack of recent arrests, he admitted to participating in regular illegal acts when he spoke of borrowing the vehicle he was driving to get back and forth to work despite having a suspended license. *Id.* at 31. This is not an abuse of discretion. *See McElfresh v. State* 51 N.E.3d 103,112 (Ind. 2016) (finding no abuse of discretion when the trial court considered the defendant's criminal history from over ten years ago to show a pattern of offenses and disregard for the law).

B. Undue Hardship

[7] Next, Ray contends that the court did not consider the undue hardship that would result from his two years of imprisonment. But "trial courts are not required to find that imprisonment will result in undue hardship" absent special circumstances. *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). Ray did not argue circumstances beyond loss of housing and employment, hardships regularly suffered by convicted felons. The trial court did not abuse its discretion in declining to consider undue hardship a mitigating circumstance.

C. Cooperation with Law Enforcement & Guilty Plea

[8] Lastly, Ray contends that the court did not consider his cooperation with police during their initial encounter or his guilty plea without a plea agreement. But the trial court explicitly stated that Ray's guilty plea was a mitigating factor. Tr. Vol. II, p. 38. And a court is not required to consider pragmatic cooperation with police—like Ray's—a mitigator. *See Georgopulos v. State*, 735 N.E.2d 1138,

1146 (Ind. 2000) (finding no abuse of discretion when the trial court failed to consider cooperation with the police as a mitigator when there was additional evidence linking him to the crime). The trial court did not abuse its discretion in declining to afford Ray's cooperation and guilty plea the weight he thought it was owed.

II. Inappropriate Sentence

[9] Ray next challenges the appropriateness of his sentence under Appellate Rule 7(B), which allows us to revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. We conduct this review with substantial deference to the trial court's sentencing decision. *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021). The purpose of our review is to "attempt to leaven the outliers," not to achieve a "correct sentence." *Id.*

[10] The advisory sentence is the starting point for determining what sentence is appropriate. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, the advisory sentence for Ray's offense is three years with a one-year minimum and a six-year maximum. Ind. Code § 35-50-2-6(b). Ray's four-year sentence is one year higher than the advisory sentence but two years below the maximum. This is in keeping with the nature of the offense and the character of the offender. Ignoring his status as a habitual traffic violator without a valid license, Ray chose to drive to a casino "to have a good time with [his] son." Tr. Vol. II, p.

21. The trial court mentioned it might have been moved to leniency if Ray was driving to go to work or to take his son to the hospital. Tr. Vol. II, pp. 37-38. We agree and do not find Ray's sentence inappropriate in light of the nature of his offense.

[11] Turning to his character, Ray's criminal history alone supports his four-year sentence. Ray has eight felony and three misdemeanor convictions in the last twenty-four years, and almost all of them relate to driving. Moreover, this is Ray's sixth conviction as a habitual traffic violator and third with a lifetime suspension of driving privileges. Ray has been to the Department of Correction at least five different times and has been placed on probation six times—with violations filed each time. Moreover, Ray's pre-sentence investigation report indicates that he is at a moderate risk to re-offend. App. Vol. II, p. 38. At the sentencing hearing, Ray suggested that he was likely to re-offend when he stated: "I don't know what can make a person quit driving" and "man-made law states that I … can't get behind the wheel." Vol. II, pp. 28-30. Ray's significant criminal history and probation violations suggest that previous attempts at rehabilitation have failed.

[12] In summary, the trial court did not abuse its discretion in sentencing Ray, and his sentence is not inappropriate under Appellate Rule 7(B). We therefore affirm the trial court's judgment.

Robb, J., and Pyle, J., concur.