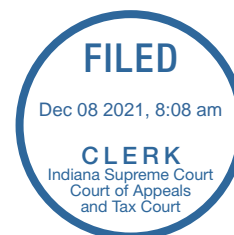


## MEMORANDUM DECISION

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.



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## IN THE COURT OF APPEALS OF INDIANA

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Phillip W. Deckard,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 8, 2021

Court of Appeals Case No.  
21A-CR-817

Appeal from the Lawrence  
Superior Court

The Honorable John Plummer, III,  
Judge

Trial Court Cause No.  
47D01-2008-MR-1325

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Phillip Deckard (Deckard), appeals the sixteen-year sentence imposed following his conviction for aggravated battery, a Level 3 felony, Ind. Code § 35-42-2-1.5.
- [2] We affirm.

## ISSUES

- [3] Deckard presents the court with two issues, which we restate as:
- (1) Whether the trial court abused its discretion when it rejected his proffered mitigating circumstances; and
  - (2) Whether his sentence is inappropriate given the nature of his offense and his character.

## FACTS AND PROCEDURAL HISTORY

- [4] As of the summer of 2020, Deckard and C.S. had been in a romantic relationship for approximately thirteen years. Deckard and C.S. lived together in a trailer on Maul Ridge Road in rural Lawrence County. Deckard owned a substantial collection of firearms which he kept in the trailer. Deckard's and C.S.'s relationship was tumultuous at times, and the couple had been arguing throughout the spring and summer of 2020. On one occasion in July 2020, C.S. telephoned her daughter Shannon during an argument with Deckard, and Shannon heard Deckard tell C.S. that he was going to shoot, to which C.S. responded, "you better not shoot me." (Transcript Vol. IV, p. 20). Shannon

and C.S.'s other daughter, Heather, went to the couple's trailer the next day to help C.S. move. Upon arriving, they observed Deckard throwing an antique chair owned by C.S. on a burn pile outside the trailer. Some of C.S.'s clothing was also in the burn pile. While the daughters helped C.S. with her belongings, Deckard paced the porch of the trailer while holding a shotgun. Before C.S. and her daughters departed, Deckard went inside and started shooting through the walls of the trailer. C.S. stayed elsewhere for a period, during which Deckard called her continuously, sometimes up to ten times per hour. On July 31, 2020, Deckard sent C.S. text messages in which he intimated that C.S. was being unfaithful to him.

[5] On August 26, 2020, C.S. was with Deckard at the trailer on Maul Ridge Road. C.S. telephoned and texted Shannon nine times between 12:56 p.m. and 1:44 p.m. Shannon was at work and did not receive the messages. Later that day just after 2:00 p.m., Deckard brought C.S. to the emergency room at IU Health Hospital in Bedford. C.S. was suffering from a large, gaping gunshot wound on her left forearm and was bleeding from her abdomen. Both bones in C.S.'s left arm were shattered. C.S.'s coloring was ashen, and she was very frightened. C.S. pleaded for help so that she would not die. C.S. reported to a nurse that the man who had brought her to the hospital had shot her. When asked if it had been an accident, C.S. shook her head and said that "this was no accident." (Tr. Vol. II, p. 200). C.S. also told an officer who responded to the hospital that the shooting was not accidental and nodded her head affirmatively when asked if Deckard had purposefully shot her. However, the emergency room treating

physician made a note that C.S. had initially stated that the shooting had been purposeful but then had later changed her mind and had stated that it had been accidental. C.S. was transported from Bedford to Methodist Hospital in Indianapolis, but in the evening of August 26, 2020, she succumbed to her injuries.

[6] Law enforcement responded to IU Health Hospital after being alerted that Deckard was still there as C.S. was being treated. Deckard's initial version of events was that he and C.S. had been arguing all morning because he would not drive her to work, and in the process of arguing, they had both inflicted significant damage to the trailer. C.S. was packing her clothes and other property, and she had entered and exited the trailer several times during the argument. At one point, C.S. had started a fire in one of the trailer's bedrooms which Deckard extinguished. Deckard reported that C.S. had taken a .25 caliber handgun from his pocket, went outside with her dog, crouched behind a car, and fired two shots toward the roof of the trailer. Deckard stated that he knew that C.S. was not shooting at him at the time. C.S. then threw the .25 caliber handgun in a mudpuddle and left it there. Deckard retrieved the handgun from the mudpuddle, and they both went inside. Deckard had a .223 caliber rifle out in the living room that day for protection because, according to him, someone had been tapping on the trailer's windows. In his initial report, Deckard repeatedly stated that C.S. had entered the trailer, shoved him, and the rifle had discharged. Deckard was unable to explain why he had picked up the rifle. Deckard consented to the search of the trailer and his car, provided

genetic samples, surrendered his clothing, and allowed his hands to be swabbed. Investigators found C.S.'s property, including a suitcase containing her clothes as well as food and toys for C.S.'s dog, outside the trailer.

[7] Later, Deckard provided an additional statement in which he reported that he did not know what had happened during the shooting except that “he had went backwards, and the gun went off[,] and [] she had gotten shot.” (Tr. Vol. III, p. 27). Deckard strongly denied that he had previously stated that C.S. had pushed him. Deckard could not remember exactly how he was pointing the rifle when it discharged, but he denied it had been pointed at C.S. and maintained that the shooting had been an accident.

[8] On August 28, 2020, the State filed an Information, charging Deckard with murder, Level 3 felony aggravated battery for knowingly inflicting an injury on C.S. that created a substantial risk of death, Level 5 felony reckless homicide, Level 5 felony involuntary manslaughter, and Level 5 felony domestic battery by means of a deadly weapon. On March 8, 2021, the trial court convened Deckard's five-day jury trial. Deckard's videotaped statement in which he repeatedly stated that the shooting was an accident was admitted into evidence. An expert in domestic violence testified that the likelihood of a homicide occurring increases significantly when a survivor of domestic violence attempts to leave the abusive relationship. A firearms examiner for the Indiana State Police related that he had tested the .223 caliber rifle and had not found anything that rendered it unusually susceptible to an accidental discharge. Evidence was also admitted that C.S. had overdosed earlier in August 2020 and

that she had an extremely high level of methamphetamine in her blood at the time of her death. The jury found Deckard not-guilty of murder but guilty of the remaining charges.

[9] On March 31, 2021, the Lawrence County Probation Department filed its presentence investigation report pertaining to Deckard, who was fifty-nine years old at the time of sentencing. Deckard had one prior misdemeanor conviction in 1995 for operating while intoxicated. Deckard had been arrested for Class A misdemeanor battery in 2003 and for Class D felony theft in 2009, but the State had dismissed both cases. Deckard reported being addicted to prescription medications, including Xanax, Percocet, and Lortab. Deckard admitted that he had begun using methamphetamine at the age of fifty-two but denied being addicted. Deckard did not feel that his drug abuse caused him any problems and had never sought treatment.

[10] On April 6, 2021, Deckard filed his presentencing memorandum. On April 9, 2021, the trial court held Deckard's sentencing hearing. Due to double jeopardy concerns and pursuant to a concession by the State, the trial court entered judgment of conviction on the Level 3 felony aggravated battery conviction only. The State had text messages from March 2020 admitted into evidence in which Deckard stated to C.S. that "I'm just going to get back on the dope" and arranged to purchase drugs for C.S. (Exh. Vol. II, p. 198). Prior to rendering its sentence, the trial court acknowledged that Deckard had advanced his arguments regarding mitigating circumstances and that the court had given "very careful consideration to those suggestions, recommendations, and

argument.” (Tr. Vol. V, p. 32). The trial court found as a substantial and significant aggravating circumstance that Deckard had caused the death of C.S. The trial court found that Deckard’s criminal history was a second aggravating circumstance but declined to accord it weight due to its remoteness in time. The trial court rejected all of Deckard’s proposed mitigators. The trial court observed that it had presided over Deckard’s trial and heard Deckard’s videotaped statement in which he professed repeatedly that the shooting was accidental. The trial court found that those statements did not equate to remorse or an acceptance of responsibility. The trial court rejected Deckard’s proposed mitigator that C.S. contributed to or provoked her own death, finding that, “if things were as bad as they appeared to be that day, on both sides, that [Deckard] could have walked away instead of ever picking up that gun.” (Tr. Vol. V, p. 35). The trial court specifically declined to find as a mitigating circumstance that Deckard had not contemplated C.S.’s death because it did not find the evidence adequately clear to support that finding. The trial court sentenced Deckard to sixteen years, with one year suspended to probation.

[11] Deckard now appeals. Additional facts will be provided as necessary.

## **DISCUSSION AND DECISION**

### *I. Mitigating Circumstances*

[12] Deckard first argues that the trial court abused its discretion when it rejected his proposed mitigating circumstances, all of which he argues were offered and clearly supported by the record. Sentencing decisions are within the sound discretion of the trial court, and we review those decisions 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 (Ind. 2007). It is well-established that a trial court is not obligated to accept a defendant's proposed mitigators. *Sandleben v. State*, 22 N.E.3d 782, 796 (Ind. Ct. App. 2014), *trans. denied*. However, an abuse of discretion can arise if a trial court does not recognize mitigators that are clearly supported and are advanced for consideration. *McElfresh v. State*, 51 N.E.3d 103, 111 (Ind. 2016) (citing *Anglemyer*, 868 N.E.2d at 490-91).

[13] Here, Deckard advanced his proposed mitigating circumstances through his sentencing memorandum and his argument at the sentencing hearing. Deckard contends that the trial court should have recognized as a mitigating circumstance that he did not contemplate C.S.'s death at the time of the offense because the evidence clearly showed that his "act of shooting the rifle was accidental, and he did not harbor any intent to kill C.S., which is why the jury acquitted him of murder." (Appellant's Br. p. 12). However, Deckard had threatened to shoot C.S. in the past, had fired shots from inside the trailer during the July 2020 incident, and the couple had been engaged in a heated argument during the morning of August 26, 2020. C.S. provided conflicting statements regarding the nature of the shooting. In his various statements to law enforcement, Deckard changed his story about how the shooting occurred, as he first stated that C.S. had pushed him, causing the rifle to discharge, but then later denied ever having made that statement. In addition, Deckard never explained why he had picked up the rifle or how the shooting had actually occurred. "An allegation that the trial court failed to identify or find a



mitigating factor require the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.” *Anglemyer*, 868 N.E.2d at 493. Given these circumstances, we agree with the trial court’s assessment that the evidence was not clear that Deckard did not contemplate C.S.’s death, and we find no abuse of the trial court’s discretion in rejecting that mitigating circumstance.

[14] Deckard also argues that the trial court should have found as mitigators that C.S. induced or facilitated the offense, substantial grounds existed to excuse or justify the offense, and that he acted under extreme provocation. In support of these mitigators, Deckard directs our attention to evidence that the circumstances on that day were “erratic, chaotic, heated, destructive, reckless, and dangerous” and that C.S. was a willing participant in the conduct that preceded the shooting. (Appellant’s Br. p. 12). In addressing this argument, we first observe that evidence was admitted at trial that Deckard knew C.S. was not shooting at him when she discharged the .25 caliber handgun and that he did not feel physically threatened by C.S. In addition, prior to the shooting, Deckard had retrieved the .25 caliber handgun from the mudpuddle, so he knew that C.S. was not armed. As previously noted, Deckard never explained why he felt he needed to arm himself in the moments prior to the shooting, nor did he explain exactly how the shooting occurred. After considering all the evidence, we cannot conclude that these proffered mitigators were so clearly supported by the evidence that it constituted an abuse of the trial court’s discretion to decline to recognize them. *See Anglemyer*, 868 N.E.2d at 493.

[15] Lastly, Deckard contends that the trial court should have found that the offense was the result of circumstances that were unlikely to recur, as he will no longer be able to legally possess firearms after having been convicted of the instant offense. However, the principal reason the offense will not recur is because C.S. is dead as a result of Deckard's actions. The trial court found the fact that Deckard had caused C.S.'s death to be a significant and substantial aggravating circumstance, and Deckard does not contest that finding on appeal. We cannot conclude that the trial court abused its discretion in failing to find a mitigating circumstance which chiefly resulted from the circumstance it found to be most aggravating. As we find that none of Deckard's proposed mitigators were clearly supported by the record, we do not disturb the trial court's sentencing order.

## II. *Appropriateness of Sentence*

[16] Deckard requests that we review the appropriateness of his sentence in light of the nature of his offense and his character. "Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of this sentencing decision." *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019). Thus, we may revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offenses and the character of the offender. *Id.* The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The defendant

bears the burden to persuade the reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018).

#### A. *Nature of the Offense*

- [17] Deckard argues that his sentence is inappropriate given the nature of the offense. When reviewing the nature of offenses, we look to the “the details and circumstances of the offenses and the defendant’s participation therein.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). In conducting our review, we determine whether there is “anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.” *Id.* The advisory sentence is the starting point that the legislature selected as an appropriate sentence for the particular crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Madden*, 162 N.E.3d at 564. Deckard was convicted of Level 3 felony aggravated battery for knowingly inflicting an injury on C.S. that created a substantial risk of death. A Level 3 felony carries a sentencing range of between three and sixteen years, with an advisory sentence of nine years. I.C. § 35-50-2-5(b). The trial court sentenced Deckard to sixteen years, with one year suspended to probation.
- [18] Deckard maintains that his sentence is inappropriate due to the same factors he argued constituted mitigating circumstances, namely that C.S. took part in the fighting and chaos that day and the shooting was accidental. He also reminds us that he was acquitted of murdering C.S. We find these factors to be equally unpersuasive for assessing the appropriateness of Deckard’s sentence as they

were in persuading us regarding Deckard's abuse of discretion claims. While the jury found Deckard not-guilty of murder, it convicted him of knowingly inflicting injury on C.S. that created a substantial risk of her death. Therefore, the jury rejected Deckard's claim that the shooting was purely accidental. Deckard's actions resulted in C.S.'s death, which was not an element of the offense, and constituted the ultimate of aggravated batteries. I.C. § 35-42-2-1.5.; *see also Paul v. State*, 888 N.E.2d 818, 823 (Ind. Ct. App. 2008) (affirming Paul's maximum sentence for Class B felony aggravated battery resulting in a substantial likelihood of death where the victim had died, after the court concluded that the "'substantial risk' has been realized."), *trans. denied*. According to Deckard, C.S. had packed her belongings and was attempting to leave prior to the shooting. Indeed, C.S.'s suitcase and provisions for her dog were found in the driveway. Deckard admitted to officers that he knew that C.S. did not shoot at him and that he did not feel physically threatened by C.S. Deckard knew that C.S. was not armed when she re-entered the trailer just before the shooting. We arrive at the same conclusion as did the trial court: Deckard could have left the trailer at any time and disengaged from C.S. Instead, he picked up a loaded rifle, an act that ultimately resulted in C.S.'s death. In light of these facts, we cannot conclude that Deckard's sentence is inappropriate given the nature of the offense.

### *B. Character of the Offender*

[19] Deckard further argues that his sentence is inappropriate given his character. Deckard directs our attention to his "relatively law-abiding life[,]" the fact that

as a child he shielded his siblings from abuse, he has a strong family support system in place, and he cared for his elderly mother. (Appellant's Br. p. 15). Upon reviewing a sentence for inappropriateness in light of the character of the offender, we look to a defendant's life and conduct. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.

[20] While we acknowledge that Deckard has only one criminal conviction dating from 1995, Deckard was also arrested for battery in 2003 and for theft in 2009, which we conclude does not reflect well on his character. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (holding that a record of arrests may be considered for sentencing as it may reveal that the defendant has not been deterred from breaking the law even after being subjected to the State's police authority). In addition, evidence was admitted at Deckard's sentencing hearing which indicated that Deckard not only purchased drugs for himself but that he also supplied C.S. with illegal drugs, further undercutting his claim to have led a largely law-abiding life. We also observe that Deckard has never sought treatment for his admitted addiction to multiple prescription medications, and he did not feel that his long-term use of methamphetamine presented any issues in his life.

[21] Although Deckard directs our attention to his positive interactions with his family, C.S. was also a part of his domestic life, as they had been in a relationship for thirteen years and lived together. There is abundant evidence before us that Deckard engaged in abusive behavior towards C.S. through accusations of infidelity, burning her belongings, and menacing her with

firearms. Deckard maintained that the shooting was accidental and that he was distraught following the offense, but we agree with the trial court's assessment that these protestations do not equate to true remorse or acceptance of responsibility. As such, Deckard has failed to meet his burden to persuade us that his sixteen-year sentence is inappropriate in light of his character. *See Robinson*, 91 N.E.3d at 577.

## CONCLUSION

- [22] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it rejected Deckard's proposed mitigating circumstances which were not clearly supported by the record. We also decline to revise Deckard's sentence, as we conclude it is not inappropriate in light of the nature of his offense and his character.
- [23] Affirmed.
- [24] Robb, J. and Molter, J. concur