

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Melisa Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 13, 2023

Court of Appeals Case No.
22A-CR-1124

Appeal from the Monroe Circuit
Court

The Honorable Valeri Haughton,
Judge

Trial Court Cause No.
53C02-1912-F5-1473

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

- [1] In this appeal, Melisa Davis challenges her six-year sentence for domestic battery resulting in injury to a pregnant family member, a Level 5 felony. Davis argues that the trial court abused its discretion in sentencing her by considering an allegedly improper aggravator. She also argues her sentence is inappropriate in light of the nature of the offense and her character. Finding no sentencing error, we affirm.

Facts

- [2] Nine days after being released from prison, Davis became aggressive after drinking nearly a whole bottle of vodka in a hotel room. With Davis were four family members, three minor children ranging in age from 12-17 and an 18-year-old. Davis began screaming at her 15-year-old daughter, S.D., who was 20 weeks pregnant, calling her several derogatory words. Trying to calm Davis down, S.D. attempted to take the bottle away, but Davis resisted and grabbed S.D. by the wrist. S.D. pushed Davis off and tried to leave. But Davis chased S.D. across the room and, after catching her, pulled on the hood of S.D.'s sweater hard enough to leave red marks on S.D.'s neck. Scared and feeling the onset of a panic attack, S.D. fled the hotel room and called her legal guardian.
- [3] S.D.'s guardian came to the hotel to take S.D. and the others back to her house. When police officers met with S.D., they photographed the marks on her neck. S.D. went to a hospital as a precaution. Meanwhile, police went to the hotel

room, where they found a still heavily intoxicated Davis. She was also taken to a hospital.

[4] The State charged Davis with domestic battery resulting in injury to a pregnant woman and strangulation, both Level 5 felonies. A jury found her guilty of battery, but the State dismissed the strangulation charge before the jury rendered its verdict.

[5] At sentencing, the trial court noted numerous aggravating factors. These included Davis's "extensive" criminal history, comprising nearly a dozen prior felony and misdemeanor convictions. Tr. p. 10. Davis had also violated her pretrial release conditions several times by committing additional crimes and failing drug screens. While on pretrial release Davis was charged with another felony battery charge, this time against her mother. Ultimately, after reflecting on the significant number of aggravating factors present, the trial court sentenced Davis to the maximum sentence of six years imprisonment, with the final year suspended to probation.

Discussion and Decision

[6] On appeal, Davis challenges her sentence in two ways. First, she alleges the trial court abused its discretion in relying on an improper aggravator. And second, she asks this court to find her sentence inappropriate under Appellate Rule 7(B). Finding no sentencing error, we affirm.

I. Abuse of Discretion

- [7] Sentencing decisions rest within the sound discretion of the trial court. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218. As long as the sentence is within the statutory range, it is subject to appellate review only for an abuse of discretion. *Id.* at 490. An abuse of discretion occurs if a 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.* (internal quotation omitted). A trial court does not abuse its discretion by failing to properly weigh aggravating and mitigating factors. *Id.* at 491.
- [8] Davis alleges the trial court relied on an improper aggravating factor in sentencing her. An aggravator may be improper if it “comprises a material element” of the defendant’s crime. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (quoting *Manns v. State*, 637 N.E.2d 842, 844 (Ind. Ct. App. 1994)). Davis’s crime required that she knowingly or intentionally touched a “family or household member in a rude, insolent, or angry manner.” Ind. Code § 35-42-2-1.3(a)(1). As committed by Davis, this was a Level 5 felony because it resulted in bodily injury to a known pregnant family member. Ind. Code § 35-42-2-1.3(c)(3). The allegedly improper aggravator snuck in when the trial court said that S.D. being in Davis’s “care and custody” when the battery occurred was “probably” an aggravating factor. Tr. p. 10.

[9] As Davis successfully argues, this was indeed an improper aggravator. First, as a factual matter, the record reveals Davis exercised little care and custody over S.D. given her recent release from prison and that S.D. had a legal guardian caring for her. The only fact supporting the aggravator is Davis being S.D.’s mother. Being the victim’s mother, alongside the care and custody it entails, is materially related to the “family member” element of domestic battery. Ind. Code § 35-42-2-1.3(a)(1). To properly consider care and custody as an aggravator the trial court needed to have picked out “particularized circumstances” separate from the “factual elements” of the crime. *Manns*, 637 N.E.2d at 844. Because the trial court did not establish any basis for this aggravator beyond an element of the crime—Davis being S.D.’s mother—it erred.

[10] That said, when a trial court relies on an improper aggravating factor, remand is not proper when this Court “can say with confidence that the trial court would have imposed the same sentence if it considered only the proper aggravators.” *Robertson v. State*, 871 N.E.2d 280, 287 (Ind. Ct. App. 2007). We have such confidence here.

[11] Davis’s conviction for domestic battery causing injury to a pregnant family member, a Level 5 felony, carries with it an advised sentence of 3 years with a maximum sentence of 6 years. Ind. Code § 35-42-2-1.3 (domestic battery); Ind. Code. § 35-50-2-6 (Level 5 felony). Davis received the maximum sentence of 6 years, with the last year suspended to probation. Davis’s extensive criminal record, history of alcohol and substance abuse, and circumstances of the battery

all support the imposed sentence. Davis was still on probation for a prior offense when the battery occurred and had only been released from jail for nine days. Although Davis expressed remorse for her actions at the sentencing hearing and a desire to act differently, we cannot say that the trial court abused its discretion in finding that these words rang hollow. Thus, we are confident the trial court would have imposed the same sentence even without considering Davis's care and custody over S.D. as an aggravating factor.

II. Appellate Rule 7(B)

[12] Davis also asks this court to revise her sentence under Indiana Appellate Rule 7(B). We may revise a sentence “if after due consideration of the trial court’s consideration the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. App. R. 7(B). These are “separate inquiries that we ultimately balance to determine whether a sentence is inappropriate.” *Turkette v. State*, 151 N.E.3d 782, 786 (Ind. Ct. App. 2020). We give the trial court’s imposed sentence “substantial deference” because the “principal role of [our] review is to attempt to leaven the outliers, and not to achieve a perceived correct sentence.” *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017) (internal quotations and citations omitted).

[13] “The advisory sentence is the starting point to determine the appropriateness of a sentence.” *Baumholser v. State*, 62 N.E.3d 411, 418 (Ind. Ct. App. 2016). A Level 5 felony carries with it an advised sentence of 3 years with a maximum sentence of 6 years. Ind. Code § 35-42-2-1.3 (domestic battery); Ind. Code. § 35-

50-2-6 (Level 5 felony). Here, the trial court gave Davis the maximum sentence of 6 years, with the last year suspended to probation.

[14] The nature of Davis’s offense aligns with the sentence. The teenager Davis battered was not only pregnant—but her own daughter. Although S.D. was under the care of a legal guardian at the time, arguably lessening Davis’s responsibility towards her, battering a pregnant family member is a serious offense. And beyond the physical injuries Davis inflicted, which were serious enough to send S.D. to the hospital, Davis also screamed abusive words at S.D. Like the trial court judge remarked, we agree that this was “not the worst battery we have ever seen,” Tr. p. 6, but we find nothing inappropriate in Davis’s sentence after considering the nature of the offense.

[15] Davis’s character likewise supports the imposed sentence. Her nearly dozen prior criminal offenses, ranging from misdemeanor battery to a felony conviction for dealing in narcotics, are more than enough to justify the maximum sentence here. “The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Indeed, Davis was even charged with two other crimes while this case was pending. Her issues with alcohol and substance abuse, past failures at completing probation, and prior prison sentences all support the trial court’s decision. *See Turkette*, 151 N.E.3d at 788-89.

Conclusion

[16] Finding no sentencing error, we affirm the trial court's judgment.

May, J., and Crone, J., concur.