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

Brett Beatty,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 7, 2022

Court of Appeals Case No. 21A-CR-1517

Appeal from the Lake Circuit Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No. 45G02-1806-F1-000011

May, Judge.

[1] Brett Beatty appeals his sentence following convictions of Level 5 felony reckless homicide[1] and Class B misdemeanor criminal recklessness.[2] Beatty raises two issues on appeal:

> i. Whether the trial court abused its discretion by considering alleged inappropriate aggravating factors in imposing sentence; and
>
> ii. Whether Beatty's sentence is inappropriate given the nature of his offense and his character.

We affirm.

Facts and Procedural History

[2] On August 5, 2017, Beatty was living in a house in Crown Point, Indiana, with his then-girlfriend, Rachel Griffin. Beatty was a friend and co-worker of K.C., and he agreed to watch her two children, five-year-old E.C. and eight-year-old P.C., while K.C. was at work. Beatty and Griffin supervised the children for a while, and then Beatty left the house to run an errand. While Beatty was away, Griffin left the children alone momentarily to use the restroom. During this period, E.C. found a .40 caliber Smith & Wesson handgun under Beatty's bed. E.C. then shot himself in the head with the firearm and died. P.C. was also in

[1] Ind. Code § 35-42-1-5 (2014).

[2] Ind. Code § 35-42-2-2(a) (2014).

the bedroom and witnessed E.C. shoot himself. When Griffin came out of the restroom, she saw E.C. on the bedroom floor and called 911.

[3] On June 11, 2018, the State charged Beatty with Level 1 felony neglect of a dependent resulting in death[3] and Level 6 felony neglect of a dependent.[4] The State and Beatty eventually reached a plea agreement in which the State agreed to dismiss the two charges of neglect of a dependent and Beatty agreed to plead guilty to Level 5 felony reckless homicide and Class B misdemeanor criminal recklessness. The plea agreement left sentencing to the discretion of the trial court. The trial court accepted Beatty's guilty pleas on April 14, 2021, and the trial court held a sentencing hearing on August 30, 2021.

[4] Prior to the sentencing hearing, Beatty filed a memorandum in aid of sentencing along with twenty-seven letters of individuals attesting to his good character. In the memorandum, Beatty explained he purchased the handgun because one of his best friends had a terminal illness and wanted to go target shooting before he died. Even though Beatty was unfamiliar with guns, he chose not to enroll in firearm training after purchasing the handgun. When Beatty and his friend took the gun to go target shooting, Beatty relied on workers at the range to load the firearm for him. After they finished target shooting, Beatty "asked workers at the range to ready the firearm for legal

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[3] Ind. Code § 35-46-1-4(b)(3) (2017).

[4] Ind. Code § 35-46-1-4(a) (2017).

transport back to his residence and they put the firearm back in its case, handed [Beatty] the magazines, and taped the case closed." (App. Vol. II at 124.) Apparently, a bullet remained in the chamber. Beatty chose to keep the firearm for self-protection and stored it in his apartment. He also removed the tape over the closed gun case. In late July 2017, Beatty moved from his apartment to the house where this incident took place. Beatty retained the firearm during the move and placed it underneath his bed in the unlocked case where E.C. found it.

[5] At the sentencing hearing, E.C.'s mother, K.C., read a victim impact statement, in which she stated:

> I don't know how I wake up every morning. It has to be something bigger than me that keeps me here. When you wake up and you constantly feel the physical heartache and the pain in your chest, the pain of not having someone that you birthed with you. It is not in the natural order of things for a parent to bury their four-year-old.[5] I think of all the things I'll never get to experience with him. No kindergarten. Not putting a tooth under his pillow. No riding a big-boy bike. Never teaching him how to drive.

(Tr. Vol. II at 26) (footnote added). She also discussed the traumatic impact E.C.'s death has had on P.C. K.C. asked the court to sentence Beatty "to the maximum allowed time." (*Id.* at 27.) P.C. wrote a letter to the court in which

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[5] We note the stipulated factual basis lists E.C.'s age at the time of his death as five years old. (App. Vol. III at 88.)

she said E.C.'s death "left a giant hole that's been filled with sadness and hate . . . [and] I would be very happy if the people who left an open firearm under their bed should spend the maximum amount in jail." (*Id.* at 30-31.) The State asked that Beatty serve a portion of his sentence incarcerated.

[6] In his statement of allocution, Beatty apologized to E.C.'s family and expressed sympathy for their pain. He also said he wanted to educate other gunowners about his experience to encourage them to practice gun safety. Beatty argued his guilty plea and acceptance of responsibility were entitled to substantial credit because his case is "a close case of culpability given the laws of this State." (*Id.* at 79.) He also noted his history as a law-abiding citizen and the accounts submitted to the trial court in conjunction with his memorandum in aid of sentencing of his many charitable and selfless acts. Beatty asked the trial court to impose a sentence of three years in community corrections followed by a term of probation.

[7] The trial court found three aggravating factors: (1) E.C. and P.C. were under twelve years of age; (2) Beatty was in a position of having care, custody, and control over the victims; and (3) P.C. witnessed E.C.'s death. The trial court also found nine mitigating factors: (1) the crimes were the result of circumstances unlikely to recur; (2) Beatty had no previous criminal history; (3) Beatty is likely to respond affirmatively to probation or short-term imprisonment; (4) Beatty's character and attitudes indicate he is unlikely to commit another crime; (5) Beatty has volunteered to pay for E.C.'s funeral expenses and encouraged his insurance company to pay the full limits on the

associated civil claim; (6) Beatty's imprisonment will impose an undue hardship on the children of Beatty's deceased close friend; (7) Beatty admitted his guilt by way of a plea agreement; (8) Beatty expressed remorse; and (9) Beatty has volunteered for charitable causes. With respect to Beatty's reckless homicide conviction, the trial court imposed a five-year sentence. The trial court ordered the sentence to be served as two years executed in the Indiana Department of Correction, two years in Lake County Community Corrections, and one year on probation. With respect to Beatty's criminal recklessness conviction, the trial court sentenced Beatty to an executed term of 180 days incarceration. The trial court ordered the two sentences to run concurrently.

Discussion and Decision

I. Victim Impact as Factor in Sentencing

[8] Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions for an abuse of discretion. *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). "An abuse of discretion will be found where 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.* For example, 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. "In cases where the trial court has abused its discretion, we will remand for resentencing only 'if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.'" *Bryant v. State*, 959 N.E.2d 315, 322 (Ind. Ct. App. 2011) (quoting *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007)). Trial courts are not required to explicitly weigh aggravators against mitigators, *Anglemyer*, 868 N.E.2d at 491, and one aggravating factor may justify imposing an enhanced sentence. *Deane v. State*, 759 N.E.2d 201, 205 (Ind. 2001).

[9] Beatty points to the trial court's statement:

> The aggravators necessarily far outweigh the mitigating circumstances. However, muriate [sic] the mitigating circumstances are because how—how can any number of mitigators really outweigh such a devastating and incomparable loss? There just is no greater loss in life.
>
> However, the tragic and lifelong loss of the [C.] family and the suffering Mr. and Mrs. [C.] that you are going through, obviously, this has to be met with punishment. It has to be met with punishment because, Mr. Beatty, you are responsible. But it should not—it cannot also result entirely in great losses to other people. And so the challenge that the Court has is to fashion a sentence that meets both of those needs.

> There is no sentence today, no sentence today, that the Court could impose that will ever seem just to the [C.] family, I'm sure. But the law does require that the Court balance aggravating and mitigating circumstances.

(Tr. Vol. II at 83.) Beatty argues this statement mistakenly indicates "that regardless of how many mitigating circumstances existed, that those mitigators could never outweigh a loss of life." (Appellant's Br. at 11.) He asserts "the fact that a life was lost, should not in and of itself warrant an enhanced sentence." (*Id*. at 12.)

[10] Causing death is an element of reckless homicide. *See* Ind. Code § 35-42-1-5 ("A person who recklessly kills another human being commits reckless homicide, a Level 5 felony."). Thus, Beatty's argument follows from the proposition that it is generally improper for a trial court to use an element of the offense as an aggravating factor to justify imposing an above-advisory sentence, absent something unique about the circumstances of the offense, because the legislature accounts for the elements of an offense when it sets the advisory sentence. *Gomillia v. State*, 13 N.E.3d 846, 852-53 (Ind. 2014). However, rather than simply saying a loss of life justifies an enhanced sentence, the trial court's listing of the aggravating factors it considered highlights the unique circumstances that make Beatty's offenses particularly egregious. In its sentencing order, the trial court found three aggravators:

> 1. The victims of the crimes were less than twelve (12) years of age at the time the defendant committed the offenses.

2. The defendant was in a position of having care, custody, or control of the victims of the offenses. As the children were under ten (10) years of age, particularly vulnerable and dependent on his care, custody and control.

3. The [reckless homicide offense] was committed in the presence of another child [E.C.'s] sister, [P.C.]

(App. Vol. III at 112.) Neither the age of the victim nor the victim's dependent status are necessary elements of either reckless homicide or criminal recklessness. *See* Ind. Code § 35-42-1-5 & Ind. Code § 35-42-2-2(a) (2014) ("A person who recklessly, knowingly, or intentionally performs an act that creates a substantial risk of bodily injury to another person commits criminal recklessness."). Thus, the tender ages of the victims and their dependent status make Beatty's offenses uniquely worse than the typical version of each crime. *See Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) ("The younger the victim, the more culpable the defendant's conduct. A harsher sentence is also more appropriate when the defendant has violated a position of trust that arises from a particularly close relationship between the defendant and the victim[.]").

[11] Indiana Code section 35-38-1-7.1 lists aggravating factors the trial court may consider at sentencing, including:

> (3) The victim of the offense was less than twelve (12) years of age or at least sixty-five (65) years of age at the time the person committed the offense.

* * * * *

> (8) The person was in a position having care, custody, or control of the victim of the offense.

Therefore, the trial court did not abuse its discretion when it considered these two aggravating factors in imposing sentence. *See Gober v. State*, 163 N.E.3d 347, 354-56 (Ind. Ct. App. 2021) (holding trial court did not abuse its discretion when it considered the nature and circumstances of the crime, the trauma suffered by the surviving victim, and the youthful ages of the victims as aggravating factors at sentencing), *trans. denied*.

II. Appropriateness of Sentence

[12] Beatty argues his aggregate five-year sentence is inappropriate given the nature of his offenses and his character. Our standard of review regarding claims of inappropriate sentence is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We consider both the total number of years of a sentence and the way the sentence is to be served in assessing its appropriateness. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[13] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider 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." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-6 provides that a Level 5 felony is punishable by imprisonment "for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." A Class B misdemeanor is punishable by imprisonment for a term of up to 180 days. Ind. Code § 35-50-3-3. Here, Beatty's aggregate sentence is two years longer than the advisory sentence for his highest-level offense but it is not the maximum sentence for that crime.

[14] Beatty argues this episode "is nothing more than a fateful culmination of unintended consequences" and his offenses are "nothing more than the garden variety" version of each crime. (Appellant's Br. at 16.) We do not fully agree. It is true Beatty was not convicted of a crime in which the State was required to prove he intended to kill E.C. *See* Ind. Code § 35-42-1-5 ("A person who recklessly kills another human being commits reckless homicide, a Level 5 felony.") & Ind. Code § 35-41-2-2(c) ("A person engages in conduct 'recklessly' if he engages in the conduct in plain, conscious, and unjustifiable disregard of harm that might result and the disregard involves a substantial deviation from acceptable standards of conduct."). However, as we explained above, Beatty's

offenses were more egregious than the typical version of each crime. E.C. died before he could attend school, ride an adult bicycle, learn to drive, get a job, or experience any of the other meaningful activities we associate with coming of age. His death was also witnessed by his young sister. She referred to E.C.'s death as leaving a "giant hole" in her life, (Tr. Vol. II at 30), and K.C. described the trauma P.C. must carry for the rest of her life because of witnessing E.C.'s death.

[15] There is much about Beatty's character which is commendable. Many of his friends, family, and coworkers wrote the trial court in support of him. (*See* App. Vol. II at 136-148 & App. Vol. III at 17-52.) He was never arrested prior to the instant offense and had no criminal history. He graduated from high school and attended college. He was gainfully employed prior to his incarceration and won several awards for his work performance. He also agreed to help raise his close friend's children after the friend passed away. While this matter was pending before the trial court, he sought permission to travel out of state to volunteer for charity and attend retreats put on by his church. We acknowledge these traits reflect positively upon Beatty's character, and Beatty has received the benefit of being allowed to serve the majority of his sentence in community corrections and on probation. *See Cox v. State*, 850 N.E.2d 485, 488 (Ind. Ct. App. 2006) ("Probation is a favor granted by the State, not a right to which a criminal defendant is entitled.").

[16] However, a gun is a dangerous instrument, and Beatty was an irresponsible gun owner. Beatty purchased a handgun but declined to receive training on how to

properly use and store it. While he relied on workers at the shooting range to load and pack the firearm, he failed to ensure the gun was unloaded before leaving the range. Despite his unfamiliarity with firearms, Beatty chose to retain the handgun in an unlocked case. Rather than placing the case in a safe, locked room, or out of the reach of small children, he stored it on the floor underneath his bed. This reflects negatively upon his character. Thus, we cannot say in light of the nature of Beatty's offenses and his character that his sentence is inappropriate. *See Custance v. State*, 128 N.E.3d 8, 11 (Ind. Ct. App. 2019) (holding defendant's above advisory sentence was not inappropriate despite his lack of criminal history).

Conclusion

[17] The trial court did not abuse its discretion when it considered as aggravating factors at Beatty's sentencing the tender ages of E.C. and P.C. and Beatty's responsibility for the children at the time of the offenses because neither the age of the victim nor the victim's dependent status were elements of the crimes for which Beatty was convicted. We also hold his sentence is not inappropriate given the nature of his offenses and his character. While many positive things can be said about Beatty's character, his irresponsible gun ownership resulted in a truly horrific tragedy. Therefore, we affirm the trial court.

[18] Affirmed.

Brown, J., and Pyle, J., concur.