

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Timothy P. Broden
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana
Caroline G. Templeton
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kyle M. Davies,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 18, 2023

Court of Appeals Case No.
23A-CR-1472

Appeal from the Tippecanoe
Superior Court

The Honorable Kristen E. McVey,
Judge

Trial Court Cause No.
79D05-2302-F6-192

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] Kyle M. Davies appeals his sentence following his convictions of Level 6 felony resisting law enforcement,¹ Level 6 felony failure to return to lawful detention,² two counts of Class C misdemeanor possession of drug paraphernalia,³ and the finding that he is a habitual offender.⁴ Davies presents one issue for our review, which we restate as whether the trial court abused its discretion in failing to find as a mitigating circumstance that he suffers from post-traumatic stress disorder (“PTSD”). We affirm.

Facts and Procedural History

[2] At approximately 7:45 a.m. on February 14, 2023, officers transported Davies from the Tippecanoe County Jail to the county’s community corrections facility so that Davies could enroll in a work release program. After Davies completed the enrollment paperwork, he was escorted to the lobby where he was to wait to receive a GPS ankle unit and provide a drug screen. Instead of waiting in the lobby, Davies absconded from the facility. At approximately 9:45 a.m., the community corrections staff realized Davies was missing. They searched the building and grounds of the facility but could not find him.

¹ Ind. Code § 35-44.1-3-1(d)(1) (2021).

² Ind. Code § 35-44.1-3-4(d) (2022).

³ Ind. Code § 35-48-4-8.3(b)(1) (2015).

⁴ Ind. Code § 35-50-2-8 (2017).

[3] Davies also had an open arrest warrant to answer charges alleging he committed invasion of privacy, and on February 17, 2023, Lafayette police officers served the warrant at Davies’s apartment. The officers repeatedly knocked on the apartment door, announced their presence, and rang the doorbell, but Davies did not answer the door. The officers eventually obtained a search warrant to enter the apartment, and they used a battering ram to open the apartment door. The officers remained in the hallway after opening the door, and Davies did not make himself known until the officers threatened to release a canine into the apartment. At that point, Davies “began to walk [into] view in an agitated and verbally challenging manner. He held his hands in view, spewed insults, and at one point stopped in view of the doorway and challenged the police to enter and apprehend him.” (App. Vol. II at 76.) Davies eventually exited the apartment into the hallway, and the officers arrested him. The police officers then searched Davies’s apartment. They found one pipe with marijuana residue on it and a second pipe with methamphetamine residue on it.

[4] On February 22, 2023, the State charged Davies with Level 6 felony resisting law enforcement and two counts of Class C misdemeanor possession of paraphernalia. On March 13, 2023, the State filed an information alleging Davies qualified for a habitual offender sentence enhancement. On March 17, 2023, the State amended the charging information to add a charge of Level 6 felony failure to return to lawful detention. On May 8, 2023, Davies pled guilty

without the benefit of a plea agreement to all four of the charges pending against him and the habitual offender enhancement.

[5] The trial court held Davies's sentencing hearing on June 5, 2023. In his pre-sentence investigation report interview with the probation department, Davies self-reported that he had been diagnosed with PTSD, depression, anxiety, and a panic disorder in 1993. Joel Milligan, a retired clinical social worker, testified at Davies's sentencing hearing. Milligan explained that he had known Davies for approximately twenty years. He stated that Davies "has some substance abuse issues that need to be addressed and that's pretty severe. He has post traumatic stress disorder and I don't think that he's really ever gotten the treatment he needs for that either." (Tr. Vol. II at 23.) Davies also testified that he believed he would benefit from participation in a drug treatment program.

[6] In his argument before the court, Davies highlighted his work history and lack of criminal history over a period of several years. In its argument, the State outlined Davies's criminal history which included five previous felony convictions. The State noted that Davies's seventeen-year-old son was present in the apartment when Davies committed resisting law enforcement and that Davies was on probation and pre-trial release when he committed that offense. The State also observed that Davies had participated in drug treatment programs in the past but continued to use drugs.

[7] The trial court both orally announced Davies's sentence at the conclusion of the sentencing hearing and issued a written sentencing order memorializing its

findings. The trial court listed three mitigating factors in the written sentencing order: “[Davies’s] plea of guilty, a decent prior work history, and a portion of adulthood without arrest.” (App. Vol. II at 24.) The trial court also listed four aggravating factors: “the Defendant was on pre-trial release and probation when this offense occurred, the Defendant was on probation at the time of arrest, the Defendant has incurred multiple petitions to revoke probation in prior cases, [and] prior attempts at rehabilitation have failed.” *Id.* With respect to Davies’s Level 6 felony resisting law enforcement conviction, the trial court sentenced him to a term of two years. Regarding his Level 6 felony failure to return to lawful detention conviction, the trial court sentenced Davies to a term of two years, enhanced by an additional three years because of the habitual offender finding. The trial court ordered the two sentences to be served consecutively, and ordered Davies to serve the sentences in the following manner:

a. The Defendant is to serve 2005 days executed in the Indiana Department of Corrections [sic] with credit for good time. 180 days of the sentence is to be served on Tippecanoe County Community Corrections at a level to be determined by Community Corrections. The Defendant is a direct transfer from the Department of Corrections [sic] to Tippecanoe County Community Corrections. The Defendant is advised that if he fails to qualify for TCCC or becomes removed for rules violations that he will waive service of the sentence on TCCC and will instead serve the sentence in the Tippecanoe County Jail.

b. 365 days of the sentence for [Level 6 felony failure to return to lawful detention] is stayed upon completion of the Trinity Mission Program. If the Defendant fails to complete the

program exactly as ordered, he will serve 365 days in the Tippecanoe County Jail.

(*Id.* at 25.) The trial court also ordered that Davies’s two Class C misdemeanor possession of paraphernalia convictions “are entered as convictions only.” (*Id.*) Thus, Davies’s aggregate sentence is a term of seven years, with approximately five-and-a-half years ordered to be served in the Indiana Department of Correction.

Discussion and Decision

[8] Davies contends the trial court abused its discretion by failing to find his PTSD as a significant mitigating factor. We afford trial courts broad discretion in fashioning sentences, and we review a trial court’s sentencing decision for an abuse of discretion. *Gober v. State*, 163 N.E.3d 347, 353 (Ind. Ct. App. 2021). A trial court may abuse its discretion at sentencing by: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes reasons for imposing a sentence that are not supported by the record; (3) leaving factors out that were advanced for consideration and supported by the record; or (4) providing reasons for imposing a sentence that are improper as a matter of law. *Addis v. State*, 212 N.E.3d 183, 185 (Ind. Ct. App. 2023). “To support the allegation that the trial court failed to find a valid mitigating circumstance, a defendant must demonstrate that mitigating evidence is both significant and clearly supported by the record.” *Id.* (internal quotation marks and brackets omitted).

[9] The Indiana Code provides that trial courts “may consider” several statutorily listed factors as mitigating circumstances in imposing sentence, including that “[t]he person has posttraumatic stress disorder, traumatic brain injury, or a postconcussive brain injury.” Ind. Code § 35-38-1-7.1(b)(13) (2019). However, “[t]he trial court is not obligated to accept the defendant’s argument as to what constitutes a mitigating factor, and a trial court is not required to give the same weight to proffered mitigating factors as does a defendant.” *Healey v. State*, 969 N.E.2d 607, 616 (Ind. Ct. App. 2012), *trans. denied*. For example, a trial court does not abuse its discretion when it fails to find as a mitigating factor a claim that “is highly disputable in nature, weight, or significance.” *Id.*

[10] Moreover, a defendant waives the right to claim that the trial court abused its discretion by failing to consider a mitigating factor if the defendant did not advance the factor for consideration at sentencing. *Bryant v. State*, 984 N.E.2d 240, 252 (Ind. Ct. App. 2013) (“Failure to present a mitigating circumstance to the trial court waives consideration of the circumstance on appeal.”), *trans. denied*. While Davies mentioned in his summation at sentencing several potential mitigating factors, including his work history, periods of time in which he was not arrested, and his struggles with substance abuse, Davies did not mention his PTSD. Thus, given that Davies did not view his PTSD as sufficiently significant to recommend it as a standalone mitigating factor, he has waived any argument that the trial court abused its discretion in failing to list it as a mitigating factor. *See, e.g., Carter v. State*, 711 N.E.2d 835, 838-39 (Ind. 1999) (holding trial court did not abuse its discretion in failing to find

defendant's low IQ and alleged behavior disorder were mitigating circumstances when defendant's counsel "did not view either factor as significant enough to warrant any mention").

[11] Waiver notwithstanding, Davies's father passed away when Davies was young, and he self-reported PTSD based thereon in his pre-sentence investigation interview. In addition, a retired social worker who had known Davies for a long period of time testified that he believes Davies has untreated PTSD. Yet, as the State notes, "Davies provided no documentation from a mental health professional treating him confirming that he had PTSD. Further, Davies presented no evidence concerning his inability to control his behavior, limits on function, or any nexus between his PTSD and his offenses." (Appellee's Br. at 8.) Davies did not explain how his PTSD played any role in his decision to walk away from the community corrections facility instead of waiting to receive a GPS monitor. Likewise, while we agree with Davies that "a number of heavily armed officers seeking to gain entry to one's residence would certainly create a stressful situation for anyone," (Appellant's Br. at 8), Davies does not explain how or why his PTSD contributed to his failure to follow the officers' commands and exit the apartment. Davies's decision to insult and challenge the officers rather than comply with their requests suggests obstinance rather than distress. We fail to see the nexus between Davies's PTSD and his crimes. *See, e.g., Weedman v. State*, 21 N.E.3d 873, 894 (Ind. Ct. App. 2014) (holding trial court did not abuse its discretion in not finding defendant's mental illness

as a mitigating factor because the defendant failed to establish a nexus between his mental health and his offense), *trans. denied*.

Conclusion

[12] The trial court did not abuse its discretion when it did not find Davies's PTSD to be a mitigating factor at sentencing. Accordingly, we affirm the trial court.

[13] Affirmed.

Bailey, J., and Felix, J., concur.