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

Judson K. Hoover,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 3, 2021

Court of Appeals Case No. 20A-CR-2310

Appeal from the Floyd Superior Court

The Honorable Susan D. Orth, Judge

Trial Court Cause No. 22D01-2009-MR-001464

May, Judge.

[1] Judson K. Hoover appeals his sentence for murder.[1] He raises two issues for our review:

1. Whether the trial court abused its discretion by not recognizing Hoover's guilty plea as a significant mitigating factor; and

2. Whether Hoover's sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

We affirm.

Facts and Procedural History

[2] Hoover and R.H. married in 2008. Three children were born of the marriage – fraternal twins, Be.H. and T.H., and a younger sister, Br.H. Between January 2017 and July 2020, the police came to the couple's house multiple times to investigate alleged domestic violence incidents between Hoover and R.H. On January 13, 2017, R.H. called police and reported Hoover "jumped on her back" and "bit her on her left thumb[.]" (App. Vol. II at 27.) The New Albany Police responded, but no charges were brought against Hoover. On February 25, 2020, R.H. reported that "Hoover had forced sexual intercourse with her after she told him no." (*Id.*) However, R.H. stopped cooperating with police, and the investigation was closed without charges being brought against Hoover.

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[1] Ind. Code § 35-42-1-1 (2018).

Hoover was arrested in April 2020 and charged with Level 6 felony domestic battery in the presence of a minor[2] and Level 6 felony strangulation.[3] Those charges were pending against Hoover when he committed the instant offense. On July 27, 2020, R.H. reported to the New Albany Police that Hoover had sexually assaulted her again, but no charges were brought against Hoover based on the report.

[3] Hoover and R.H. both lived at the couple's house, but it was not unusual for one spouse or the other to spend the night at a hotel or somewhere else away from the home. R.H. arrived home late at night on August 2, 2020, and Hoover believed she was under the influence of methamphetamine at the time. The couple began arguing and matters escalated into physical violence, with Hoover battering and strangling R.H. Eight-year-old Be.H. later disclosed to police that he saw

> his father stomp his mother in the head 20 times, wearing black boots, while she was lying on the ground next to a black refrigerator in the basement. The child also observed Judson Hoover punch [R.H.] in the stomach with a set of keys in his hands but she was unresponsive and did not move. The child observed blood coming from [R.H.'s] head and left ear.

(*Id*. at 9.) Hoover initially stored R.H.'s body in the house's garage, but he later put the body inside a deep freezer and moved the freezer into a storage unit he

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[2] Ind. Code § 35-42-2-1.3 (2019).

[3] Ind. Code § 35-42-2-9 (2019).

rented at a facility close to his house in New Albany. He also filed for divorce from R.H. on August 3, 2020. R.H.'s mother contacted the police on August 5, 2020, and reported that R.H. was missing. When police officers arrived to investigate the missing person case, Hoover allowed the officers to search the house. The officers did not find R.H. inside the house, and they left.

[4] Between August 14, 2020, and August 19, 2020, Hoover delivered six fifty-five-gallon barrels to his storage unit. At some point, Hoover cut the legs off R.H.'s corpse and shoved the remainder of her body inside one of the fifty-five-gallon barrels. The Floyd Circuit Court held a provisional hearing in the divorce action on August 21, 2020, and Hoover was the only party who attended. Rather than disclosing that he killed R.H., Hoover testified at the hearing that R.H. left the house to meet friends and run errands during the first week of August and never returned. The court entered a provisional order granting Hoover custody of the children and ordering R.H. to pay child support. The court granted Hoover's request for a protective order against R.H. and dismissed the petition for a protective order R.H. had filed under a separate cause number before her death.

[5] On August 27, 2020, Be.H. told a guidance counselor at his school that he had witnessed Hoover kill R.H. The school contacted the Department of Child Services ("DCS"), and DCS in turn notified the New Albany Police Department. Police officers met Hoover when he arrived at the school to pick up Be.H. The officers questioned Hoover, and he consented to allowing the officers to search his house. The officers found blood splatter on the basement

steps, and they noticed that, while the basement was generally cluttered, the area where Be.H. reported the murder occurred was neat and tidy. The basement was wood paneled, and the officers also observed that there was "fresh boarding" around where Be.H. said R.H. died. (Tr. Vol. II at 35.) The police did not allow Hoover to return to the house that evening. Instead, he stayed at a nearby hotel. Early the next morning, Hoover rented a minivan and moved R.H.'s body from his New Albany storage unit to a second storage unit in Louisville, Kentucky.

[6] The police learned of Hoover's New Albany storage unit, and they obtained a warrant to search the unit. The officers "immediately smelled . . . a strong odor of a decomposing body" when they opened the storage unit, but R.H.'s body was not inside the unit. (*Id*. at 38.) The police reviewed the storage unit facility's video surveillance footage, which showed:

- Hoover brought a "freezer and what appeared to be a tote . . . with an object in it . . . [that] appeared to be a body" to the storage unit on August 4, 2020;
- Hoover delivered five fifty-five-gallon barrels to the unit on August 14, 2020;
- Hoover delivered another fifty-five-gallon barrel to the unit on August 19, 2020; and

- Hoover removed a fifty-five-gallon barrel from the unit on August 28, 2020, and placed the unit inside a minivan.

(*Id*. at 39.)

[7] The police learned about Hoover's Louisville storage unit, and they obtained a warrant to search the unit. Officers detected the smell of a decomposing body emitting from the unit before they even opened the unit's door. In the storage unit, the officers found a blue fifty-five-gallon barrel with R.H.'s body inside. R.H.'s body was so badly decomposed by the time police discovered her that the doctors who performed the autopsy were required to use R.H.'s tattoos to identify her. The autopsy concluded that R.H. died from blunt force trauma to the head and torso.

[8] The police questioned Hoover again, and he confessed to the murder. The State charged Hoover with murder on September 3, 2020. The trial court entered a preliminary plea of not guilty on Hoover's behalf during the initial hearing. However, the trial court allowed Hoover to change his plea to guilty after the parties informed the court that they had reached a deal in which Hoover agreed to plead guilty to one count of murder, with sentencing left to the trial court's discretion, and in exchange, the State agreed not to file additional charges against Hoover. On September 22, 2020, the court appointed Dr. Daniel Hackman, a forensic psychiatrist, to "complete a psychological evaluation for the Mitigation Phase of the sentencing." (App. Vol. II at 23.) Dr. Hackman submitted his report to the court on October 18,

2020. Dr. Hackman diagnosed Hoover with alcohol use disorder and cannabis use disorder. While Hoover reported audio and visual hallucinations and cognitive deficits in his interview with Dr. Hackman, Dr. Hackman concluded that Hoover was malingering.

[9] The trial court held Hoover's sentencing hearing on November 13, 2020. After hearing evidence, the court found three significant aggravating factors: (1) the harm R.H. suffered was significant and greater than the elements necessary to prove commission of the crime; (2) Hoover committed the crime in the presence of Be.H.; and (3) the murder occurred while domestic violence charges were pending against Hoover. The court did find Hoover's decision to plead guilty to be a "moderate mitigator," and the court took note of Hoover's employment history, his education, his self-reported depression, and his claim that he was physically abused as a child. (Tr. Vol. II at 100.) The court then sentenced Hoover to a sixty-five-year term in the Indiana Department of Correction.

Discussion and Decision

I. Abuse of Discretion

[10] Our standard of review regarding a trial court's sentencing decision is well-settled:

> 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*.

Mehringer v. State, 152 N.E.3d 667, 673 (Ind. Ct. App. 2020), *trans. denied.* For instance, a trial court may abuse its discretion when imposing sentence by:

> (1) failing to enter a sentencing statement, (2) entering a sentencing statement that explains reasons for imposing the sentence but the record does not support the reasons, (3) the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or (4) the reasons given in the sentencing statement are improper as a matter of law.

Kimbrough v. State, 979 N.E.2d 625, 628 (Ind. 2012).

[11] Hoover argues the trial court abused its discretion "because the trial court only recognized [his] willingness to plead guilty as a 'moderate' mitigating circumstance rather than a significant one." (Appellant's Br. at 12.) However, a claim that the trial court improperly weighed aggravating and mitigating factors is not available for appellate review. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) ("Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court cannot now be said to have abused its discretion in failing to 'properly weigh' such factors."), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). We look to whether the trial court properly identified aggravating and mitigating factors, but we do not review the weight assigned to each of the factors. *Healey v. State*, 969 N.E.2d 607, 616

(Ind. Ct. App. 2012), *trans. denied*. The trial court did not ignore Hoover's decision to plead guilty. The court listed Hoover's guilty plea as a "moderate mitigator." (Tr. Vol. II at 100.) While Hoover feels his decision to plead guilty should be reflected by a lesser sentence, "a trial court is not obligated to weigh or credit a mitigating factor as the defendant suggests." *Lindsey v. State*, 887 N.E.2d 190, 198 (Ind. Ct. App. 2007), *trans. denied*. Therefore, we hold the trial court did not abuse its discretion at sentencing regarding its consideration of Hoover's guilty plea.[4] *See id.* at 198-99 (holding trial court did not abuse discretion by failing to attribute significant weight to defendant's guilty plea).

II. Appropriateness of Sentence

[12] Hoover also argues his sentence is inappropriate given the nature of his offense and his character. Our standard of review on this issue is similarly well-settled:

> We "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] the sentence is inappropriate in light of the nature of the offense and the

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[4] Our holding notwithstanding, we cannot agree with Hoover's characterization that his decision to plead guilty "reflects a selflessness that demonstrates [his] acceptance of responsibility" and desire not to force his son to testify, rather than a pragmatic choice. (Appellant's Br. at 14.) For one, the State chose not to seek the death penalty or a sentence of life imprisonment without the possibility of parole even though Hoover dismembered R.H.'s corpse. *See* Ind. Code § 35-50-2-9(10) (2016) (listing dismemberment of body as an aggravating circumstance making murder offense eligible for death penalty or a life sentence without parole). The State also limited the charges brought against Hoover to one count of murder. Further, the evidence against Hoover was significant. The murder occurred inside Hoover's house, and his eight-year-old son witnessed the crime. Surveillance footage showed Hoover moving R.H.'s remains into and out of a storage unit, and the police found R.H.'s remains inside a second storage unit rented by Hoover. He also confessed to police that he killed R.H. We accordingly cannot say his plea was entitled to significant weight. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("A guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one."), *trans. denied*.

> character of the offender." Ind. App. R. 7(B). Our role in reviewing a sentence pursuant to Appellate Rule 7(B) "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "The defendant bears the burden of persuading this court that his or her sentence is inappropriate." *Kunberger v. State*, 46 N.E.3d 966, 972 (Ind. Ct. App. 2015). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014).

Belcher v. State, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019), *trans. denied*.

[13] When considering the nature of the offense, the advisory sentence is the starting point for determining the appropriateness of a sentence. *Anglemyer*, 868 N.E.2d at 494. If the State alleges that a murder included certain aggravating circumstances, the State may seek the death penalty or a sentence of life without the possibility of parole. Ind. Code § 35-50-2-9 (2016). However, when the State chooses not to pursue such penalties, murder is punishable by a fixed term of imprisonment between forty-five years and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3 (2015).

[14] Hoover's crime was particularly egregious. Hoover strangled his wife, knocked her down, and stomped on her head twenty times while wearing heavy black boots. He also punched her in the torso with a set of keys in his hand. Hoover did all this while Be.H. watched, and Hoover did not call for medical help even though R.H. was unresponsive and had blood coming from her head. Hoover

attempted to cover up the murder by cleaning the area of the basement where the murder occurred and replacing some of the basement's wood paneling. He also dismembered R.H.'s corpse and moved R.H.'s decomposing body to a storage unit. When he realized the police were on his trail, he moved the body to a second storage unit in Kentucky. Hoover also lied under oath in the divorce proceeding he filed immediately after murdering R.H. Thus, we cannot say that the nature of Hoover's offense renders his sentence inappropriate. *See Wert v. State*, 121 N.E.3d 1079, 1085 (Ind. Ct. App. 2019) (holding nature of offense supported maximum sentence), *trans. denied*.

[15] We are similarly unpersuaded that Hoover's sentence is inappropriate given his character. "On review, our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, and remorse." *Brown v. State*, 160 N.E.3d 205, 221 (Ind. Ct. App. 2020) (internal citation and quotation marks omitted). Even though Hoover pled guilty to murdering R.H., he attempted to shift blame to R.H. in his statement of elocution. (Tr. Vol. II at 95) (R.H. "was my best friend until the drugs took her from me. She went downhill and I was just trying to protect the kids from what she was becoming."). He also lamented the negative consequences to him personally that resulted from his crime, but he failed to acknowledge the lasting harm he caused his children and R.H.'s family. (*Id.*) ("I cannot [turn back time]. That will forever haunt and hurt me for the rest of my days . . . Not only did I lose [R.H.], but I lost the kids as well. I have [to] live with that every minute of every day.").

[16] A history of similar offenses also does not reflect well on a defendant's character. *See Reis v. State*, 88 N.E.3d 1099, 1105-06 (Ind. Ct. App. 2017) (defendant's previous operating while intoxicated convictions reflected poorly on his character). While Hoover does not have a significant criminal history, his past interactions with law enforcement nonetheless indicate a pattern of domestic violence. The State of Ohio filed two cases against Hoover in 2002 charging him with domestic violence against a woman Hoover dated before meeting R.H. These charges resulted in one conviction of disorderly conduct, and Hoover subsequently served thirty days in jail when he violated the terms of his probation. Further, R.H. reported three domestic violence incidents to the New Albany Police without any charges being filed, and the police arrested Hoover for domestic violence mere months before R.H.'s murder.

[17] We acknowledge that Hoover has maintained employment for most of his adult life and pled guilty early in the proceedings. However, these facts are a far cry from the "substantial virtuous traits or persistent examples of good character" necessary to convince us that a defendant's character renders his sentence inappropriate. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Similarly, we are not persuaded to find error based on Hoover's claim that his father beat him as a child because a difficult childhood does not excuse a person from living a law-abiding life as an adult. *See Pelissier v. State*, 122 N.E.3d 983, 991 (Ind. Ct. App. 2019) ("We have consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.") (internal quotation marks omitted), *trans. denied*. Therefore, the trial court's imposition of a sixty-five-year

sentence is also not inappropriate given Hoover's character. *See Flowers v. State*, 154 N.E.3d 854, 873 (Ind. Ct. App. 2020) (holding aggregate eighty-five-year sentence, including sixty-five years for murder, was not inappropriate given defendant's character), *trans. denied*.

Conclusion

[18] The trial court properly considered Hoover's decision to plead guilty as a mitigating factor when imposing sentence, and we will not second-guess the trial court's weighing of mitigating and aggravating factors. Hoover's sentence is also not inappropriate given the nature of his offense and his character. The New Albany Police Department repeatedly responded to calls reporting domestic violence at Hoover's house, and the facts surrounding Hoover's murder of R.H. are particularly egregious, as he attempted to cover-up his crime by dismembering and hiding her corpse and falsely informed the court in a divorce proceeding that he was unaware of R.H.'s whereabouts. Therefore, we affirm Hoover's sentence.

[19] Affirmed.

[20] Kirsch, J., and Vaidik, J., concur.