MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Alan Dale Morgan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 20, 2023

Court of Appeals Case No. 22A-CR-3103

Appeal from the LaPorte Circuit Court

The Honorable Thomas Alevizos, Judge

Trial Court Cause Nos.
46C01-2110-MR-12
46C01-2108-F6-983

Memorandum Decision by Judge Crone
Judge Brown and Senior Judge Robb concur.

Crone, Judge.

Case Summary

[1] Alan Dale Morgan appeals the seventy-year aggregate sentence imposed by the trial court following his guilty plea to murder, level 5 felony battery, and level 6 felony resisting law enforcement. He asserts that the trial court abused its discretion during sentencing and that his sentence is inappropriate in light of the nature of the offenses and his character. Finding no abuse of discretion and that he has not met his burden to establish that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] In August 2021, the State charged Morgan under cause number 46C01-2108-F6-983 with class C misdemeanor operating a vehicle while intoxicated with a schedule I or II controlled substance, class C misdemeanor operating while intoxicated, class A misdemeanor operating while intoxicated in a manner that endangered a person, class C misdemeanor reckless driving, level 6 felony resisting law enforcement, class C misdemeanor possession of paraphernalia, and class B misdemeanor possession of marijuana. In October 2021, the State charged Morgan under cause number 46C01-2110-MR-12 with murder, level 5 felony battery, three counts of level 6 felony neglect of a dependent, and class A misdemeanor cruelty to an animal. The State further requested a sentence of life without parole.

[3] On September 21, 2022, pursuant to a consolidated plea agreement, Morgan agreed to plead guilty to murder, level 5 felony battery, and level 6 felony

resisting law enforcement in exchange for dismissal of all other charges and the life without parole request. Sentencing was left to the trial court's discretion. During the plea hearing, Morgan admitted that on July 31, 2021, he was driving a vehicle and speeding when police officers attempted to perform a traffic stop by activating their lights and sirens. Rather than stop, Morgan sped away with officers in pursuit, reaching speeds of up to 119 miles per hour. Morgan also admitted that on October 8, 2021, he lived in LaPorte County with, among other children, his four-year-old son, J.M. On that date, Morgan angrily struck J.M. in the stomach causing him bruising and/or pain. Lastly, Morgan admitted that on October 11, 2021, he struck J.M. "about his body, including his head." Tr. Vol. 2 at 11. This caused J.M. to suffer "from a massive frontal brain subdural hematoma, along with a retroperitoneal hemorrhage resulting in his death." *Id*.

[4] A sentencing hearing was held on November 29, 2022. The State called multiple witnesses. Dr. John Feczko, the forensic pathologist who performed the autopsy on J.M., testified that, at the time of his death, J.M. weighed only thirty-six pounds, which was "way underweight" and indicated that he had been malnourished over at least a six-month period. *Id.* at 19-20. In addition to observing extensive and serious blunt force trauma injuries sustained by J.M. that caused his death, Dr. Feczko observed that J.M. suffered diffuse bruising from trauma that covered his chest and abdomen and an older clavicular fracture that was likely sustained within three to six months before his death. Dr. Feczko testified that during his twenty-eight-year career, and after having

performed approximately 600 autopsies per year, which included at least 1,000 deaths of children from homicide and trauma, J.M.'s injuries "rank[] up there with one of the worst cases of blunt force trauma to the entire body that [he had] ever seen in [his career]." *Id*. at 22.

[5] The State next called Jenna Hullett, J.M.'s second cousin. She testified that the Department of Child Services (DCS) placed J.M. in her care after he was removed from Morgan's home when he was just four months old. It was her understanding that J.M. was removed from the home due to drug use and domestic violence. She stated that she "raised" J.M. as her own son "for almost his entire life" until roughly six months before the murder. *Id.* at 23. Hullett stated that she was extremely concerned for J.M.'s well-being after he was returned to Morgan's home, but she was powerless to intervene because DCS had determined that J.M. needed to "go back to [his] parents" and Morgan's home met DCS's "minimum requirements." *Id*. 27, 28.

[6] As its final witness, the State called LaPorte County Sheriff's Office Detective Jacob Koch. Detective Koch testified that as the lead detective in this case, he obtained security camera footage from Morgan's home for the days prior to J.M.'s death that had recorded several videos of the living room and hallway area by the kitchen and bedrooms of the home. Detective Koch testified in great detail to the torture inflicted upon J.M. by Morgan as depicted in the videos.[1]

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[1] The trial court sustained Morgan's objection to the State playing the videos for the court.

He stated that the videos showed Morgan, often with J.M.'s mother Mary looking on, repeatedly punching the young child, kicking him, strangling him, and pinning him against the wall or on the floor. The videos also showed Morgan and Mary, with the other children being present in the home, repeatedly taking a naked and visibly bruised J.M. to and from the basement out of the camera's view. Morgan often left J.M. naked and alone in the basement for hours. On October 11, 2021, at approximately 12:12 a.m., after Morgan had extensively beaten J.M. and then left him alone in the basement for nineteen hours, Morgan was recorded carrying J.M.'s "lifeless body" up from the basement and "through the living room into the bathroom." *Id.* at 38. After forty minutes, Morgan carried J.M.'s lifeless body to a bedroom and called 911. J.M. was dead when first responders arrived.

[7] Detective Koch also testified to his personal observations of the basement as it appeared on the day of J.M.'s death. He testified that the basement was cold and dark with concrete floors and no working electricity. There was a beach towel on the floor with a few articles of children's clothing, some used paper plates, a banana peel, and "some Go-Gurt wrapping." *Id.* at 30. There was "an infant style, like training potty. It appeared to have urine and fecal matter in it." *Id.* There was evidence of "bondage" in the basement that included used strands of silver and camouflage duct tape "kind of strewn about the entire basement" that was "stuck to the blanket" and to "some of the child's clothing." *Id.* at 31. Following Detective Koch's testimony, Hullett gave an

impact statement asking the trial court to consider that J.M. was not simply killed but was "tortured and beaten to death" by Morgan. *Id*. at 44.

[8] At the conclusion of the sentencing hearing, the trial court found the following aggravating factors: (1) Morgan was a person in a position to care for J.M.; (2) J.M. was significantly less than twelve years of age; (3) the crimes were committed in the presence of other children; (4) J.M. was tortured and suffered among the "worst" injuries ever noted by the pathologist; and (5) Morgan's lack of remorse.[2] *Id*. at 53, 55. The trial court found Morgan's guilty plea as the sole mitigating factor but determined that it was not entitled to much weight because it was an "eleventh-hour plea" entered "over a year into the process" when it became clear to Morgan that "there was absolutely no chance he could beat this case." *Id*. at 54. Accordingly, the trial court sentenced Morgan to consecutive sentences of sixty-three years for murder, five years for battery, and two years for resisting law enforcement, for an aggregate executed sentence of seventy years. This appeal ensued.

[2] The trial court noted that it gave Morgan multiple opportunities to speak at the sentencing hearing to express remorse, but Morgan declined. The court further noted that in the presentence investigation report, Morgan "blamed everybody but himself," which demonstrated to the trial court that "[h]e is not remorseful, has not shown one shred of remorse." Tr. Vol. 2 at 55.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion during sentencing.

[9] Morgan asserts that the trial court abused its discretion during sentencing. Sentencing decisions rest within the sound discretion of the trial court, and if, as here, a sentence is within the statutory range, it is subject to review 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. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. *Sloan v. State*, 16 N.E.3d 1018, 1026 (Ind. Ct. App. 2014). When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if "the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law." *Anglemyer*, 868 N.E.2d at 490-91.

[10] Morgan first argues that the trial court abused its discretion in failing "to give adequate weight to his plea of guilty." Appellant's Br. at 17. However, while we will review the aggravating and mitigating factors considered by the trial court for abuse of discretion, we do not review the relative weight or value assigned to each factor. *Deloney v. State*, 938 N.E.2d 724, 732 (Ind. Ct. App. 2010) (citing *Anglemyer*, 868 N.E.2d at 491), *trans. denied* (2011). Therefore, we will not

review Morgan's assertion that the trial court assigned too little weight to his guilty plea.

[11] Morgan also claims that the trial court abused its discretion in failing to identify his lack of prior criminal history to be mitigating. A defendant who alleges that the trial court failed to identify a mitigating factor has the burden to establish that the proffered factor is both significant and "clearly supported by the record." *Anglemyer*, 868 N.E.2d at 493. "When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are mitigating, and it is not required to explain why it does not find the proffered factors to be mitigating." *Johnson v. State*, 855 N.E.2d 1014, 1016 (Ind. Ct. App. 2006), *trans. denied* (2007). We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied* (2004).

[12] Regarding his assertion, although a trial court may consider a defendant's lack of criminal history to be a mitigating circumstance, the court is under no obligation to give that circumstance significant weight, especially when a defendant's record "is blemished." *Townsend v. State*, 860 N.E.2d 1268, 1272 (Ind. Ct. App. 2007) (citation omitted), *trans. denied*. The record indicates that Morgan was arrested and charged with class D felony battery and strangulation in 2012. Moreover, in the current case, Morgan's plea involved the dismissal of numerous other crimes for which he was arrested and charged that occurred in separate criminal episodes. This Court has observed that "a record of arrests reflects on the defendant's character in part because such record reveals that

subsequent antisocial behavior by the defendant has not been deterred even having been subject to police authority and having been made aware of its oversight." *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019), *trans. denied* (2020). Under the circumstances, we cannot say that the trial court abused its discretion in declining to find Morgan's blemished criminal record to be a mitigating factor.

Section 2 – Morgan has not met his burden to demonstrate that his sentence is inappropriate.

[13] Morgan also asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Morgan has the burden of showing that his sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490. When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012).

[14] "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by

restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, whether a sentence should be deemed inappropriate "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224.

[15] Turning first to the nature of the offenses, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for murder is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. The sentencing range for a level 5 felony is between one and six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6. The sentencing range for a level 6 felony is between six months and two and a half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7. Morgan received a less-than-maximum sentence for each of his crimes, which resulted in an aggregate executed sentence several years below the maximum allowable sentence. Morgan admits that the nature of his battery and murder offenses "are horrific," and, other than a bald statement that his sentence is inappropriate, he makes no argument that there is any evidence which could portray these offenses in a positive light to persuade

us that the sentence imposed by the trial court is inappropriate. Appellant's Br. at 23.

[16] As for his character, Morgan simply suggests that his acceptance of responsibility for his crimes by pleading guilty, his lack of prior criminal convictions, and a presentence finding that he is "only at a moderate risk to reoffend" indicates that the "near" maximum sentence imposed by the trial court is inappropriate. *Id*. We strongly disagree with Morgan and believe that he is quite fortunate that the trial court did not impose the maximum possible sentence under the circumstances, because the record reveals that he is truly one of the worst offenders. *See Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (observing that the maximum possible sentences are generally most appropriate for the worst offenders). Indeed, when we look to "the nature, extent, and depravity of the offense[s] for which the defendant is being sentenced, and what it reveals about the defendant's character[,]" we have little difficulty concluding that the seventy-year aggregate sentence imposed by the trial court here is in no way inappropriate. *Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied*. We affirm Morgan's sentence.

[17] Affirmed.

Brown, J., and Robb, Sr.J., concur.