MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Latasha Rodriguez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 4, 2023

Court of Appeals Case No. 22A-CR-2694

Appeal from the Dubois Circuit Court

The Honorable Nathan Verkamp, Judge

Trial Court Cause No. 19C01-2001-F1-60

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Latasha Rodriguez appeals following her conviction of Level 3 felony neglect of a dependent resulting in serious bodily injury.[1] She raises two issues, which we revise and restate as:

1. Whether the trial court abused its discretion at sentencing when it failed to find two alleged mitigating circumstances; and

2. Whether her twelve-year sentence is inappropriate in light of the nature of her offense and her character.

We affirm.

Facts and Procedural History

[2] Bruce Clayton dated, married, and eventually divorced Rodriguez's cousin. After Clayton's divorce, he remained a part of the family. In 2008, Ireland Home Based Services performed an Adaptive Behavior Assessment on Clayton and determined Clayton, who was fifty-nine years old at the time, operated at the same level as a four-year-old with regard to eating, drinking, toileting, dressing, bathing, grooming, and general health care. Despite his cognitive disabilities, Clayton was able to work for Gibson County trash disposal until he retired in 2011. In 2012, Clayton suffered a stroke that left him in a wheelchair, and the hospital suggested he sign a power of attorney. Rodriguez, who was eighteen years old at the time, became Clayton's attorney-in-fact. The hospital

[1] Ind. Code § 35-46-1-4(a)(2) & (b)(2).

did not think Clayton would survive very long, but Clayton survived five more years.

[3] For four of those years, Clayton lived with Rodriguez, Rodriguez's sister Selena Dubon, and other members of the Rodriguez family. Rodriguez described Clayton's care during that time as a "team effort" and described Clayton as "pretty well independent" despite not being able to shower by himself or change his own underwear. (Tr. Vol. II at 119.) As Clayton's attorney-in-fact, Rodriguez handled his finances. Clayton received $1,887.74 each month from social security and his retirement. Clayton's bank statements indicate the majority of transactions on his account after Rodriguez became his attorney-in-fact were ATM withdrawals, which totaled $78,704.50. (App. Vol. II at 145.) Rodriguez also "consistently combined her income and expenses" with Clayton and used his debit cards through November 2017. (*Id.* at 25.) Rodriguez did not keep records of how she spent Clayton's money, nor did she put any money aside for savings.

[4] At some point in 2016, Dubon and Clayton moved out of Rodriguez's house and moved into a trailer home that belonged to Dubon's dad. Dubon's father had cancer and moved in with a different relative. Dubon and Clayton remained in the trailer home. Dubon never had access to Clayton's debit cards during the time Clayton lived with her. Instead, Rodriguez brought Dubon and Clayton groceries "[t]wo or three times a month." (Tr. Vol. II at 91.) Eventually, Dubon found a job and began working double shifts because the groceries Rodriguez bought "just wasn't enough." (*Id*. at 86.)

[5] In the summer of 2017, police received an anonymous complaint that Clayton was being neglected. Officer Tyler Stivers of the Huntingburg Police Department and another officer conducted a welfare check. The trailer where Dubon and Clayton were living was "pretty messy" and "smelly" but Clayton was clothed and said he felt okay. (*Id*. at 79.) Officer Stivers contacted Adult Protective Services, but the record does not indicate any follow-up occurred.

[6] In October or November of 2017, Dubon told Rodriguez that Clayton was having difficulty eating and that he had bed sores. Dubon wanted to put Clayton in a nursing home, but Rodriguez refused. Dubon also wanted to take Clayton to the hospital, but Rodriguez refused because "they will put him in a nursing home[.]" (App. Vol. II at 24.) Instead, Rodriguez advised Dubon to clean Clayton's wounds with salt water and to cover them with diaper rash cream and gauze. At the time, Rodriguez was a certified nursing assistant at a retirement center.

[7] On or about December 17, 2017, Clayton was taken via ambulance to the emergency room. Clayton appeared "profoundly emaciated and skinny." (Tr. Vol. II 50.) The emergency room physician, Dr. Stephen Sample, evaluated Clayton and observed multiple pressure ulcers, commonly referred to as bed sores, on Clayton's back. Bed sores "typically come by sitting in one position for prolonged periods of time without movement[.]" (*Id.*) Clayton's bed sores were "softball size holes[,]" some of which exposed bone that had "rot[ted] out[.]" (*Id*. at 55, 58.) By the time Clayton was brought to the hospital, his condition had "deteriorated so far that there was really no hope in saving his

life." (*Id.* at 51.) Clayton's bed sores were not fresh as it "takes time to – to rot out sections to the bone[.]" (*Id.* at 58.) Clayton died within twenty-four hours of entering the hospital. An autopsy was performed, which revealed Clayton's cause of death to be severe acute pneumonia with partial right lung consolidation, multiple advanced decubitus ulcers, cerebral infarct, MRSA, severe protein calorie malnutrition, and mild coronary artery atherosclerosis. At the time of his death, Clayton was 5'8" tall and weighed ninety pounds.

[8] On January 17, 2020, the State charged Rodriguez with three counts of Level 1 felony neglect of a dependent resulting in death,[2] three counts of Level 3 felony neglect of a dependent resulting in serious bodily injury,[3] and Level 6 felony exploitation of a dependent.[4] On February 14, 2022, Rodriguez entered a plea agreement whereby she pled guilty to one count of Level 3 felony neglect of a dependent resulting in serious bodily injury and the State dismissed the six remaining charges. The trial court accepted the plea agreement and entered a judgment of conviction of Level 3 felony neglect of a dependent resulting in serious bodily injury.

[9] During the sentencing hearing, Dubon testified that Rodriguez knew about Clayton's bed sores and instructed her to apply diaper rash cream and salt water to the wounds. Rodriguez denied knowing about the bed sores. Prior to the

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[2] Ind. Code § 35-46-1-4(b)(3).

[3] Ind. Code § 35-46-1-4(b)(2).

[4] Ind. Code § 35-46-1-12(a)(2) & (b)(2).

sentencing hearing, Dubon met with the prosecutor and told her she did not want Rodriguez to go prison because Rodriguez was pregnant. Dubon showed the prosecutor images on her phone of ultrasounds that Rodriguez had sent to Dubon. Investigator Rick Chambers conducted a google search of ultrasound images and found identical images to those sent to Dubon by Rodriguez. Rodriguez later told Dubon that she miscarried. Rodriguez denied sending the ultrasound images and suggested someone else sent the images.

[10] During its sentencing statement, the trial court "found [Rodriguez's] testimony to be somewhat at times manipulative, self-serving, but she does take responsibility – but again, largely casts away that blame to her sister. This was a crime of opportunity – to gain financially it appears to the Court at the expense and ultimately the death of Mr. Clayton." (*Id*. at 165-64.) The trial court found the following four aggravating circumstances: Clayton died as a result of neglect at the hands of Rodriguez and Dubon, Clayton was over the age of sixty-five, Rodriguez was in a position of care for Clayton, and Rodriguez knew of Clayton's disabilities and need for care. The trial court found the following two mitigating circumstances: Rodriguez had led a law-abiding life and her going to prison would be a hardship for her family. The trial court found the aggravating circumstances outweighed the mitigating circumstances. The trial court imposed a twelve-year sentence and ordered Rodriguez to serve five years at the Indiana Department of Correction, five years on the Dubois County Community Corrections Work Release Program, and two years suspended to probation.

Discussion and Decision

1. Mitigators

[11] We review sentencing decisions 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 (Ind. 2007). An abuse of discretion occurs when the trial court's 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 citation omitted). A trial court may abuse its discretion by failing to enter a sentencing statement, identifying aggravators and mitigators that are unsupported by the record, omitting reasons from the sentencing statement that are clearly supported by the record, or entering reasons in the sentencing statement that are improper as a matter of law. *Id.* at 490-91.

[12] Rodriguez contends the trial court abused its discretion when it failed to consider two proposed mitigating circumstances. Specifically, she asserts the court should have found the crime was a result of circumstances unlikely to recur and she would respond affirmatively to probation or short-term imprisonment. "An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Id.* at 493. During the sentencing hearing, the trial court stated:

> With respect to mitigating circumstances, Court would find that Ms. Rodriguez has largely led a law-abiding life. This would be a hardship to her family. Counsel asked the Court to find as a

> mitigating circumstance that—that this is a crime that would likely not reoccur, and that defendant would respond affirmatively to a short-term imprisonment. Again, I—if I were to find those at all, I would give them very little weight. As I said, this is a crime of opportunity and because such, I'm not quite sure at this point, how defendant would respond. So, based on that, the Court would find that the aggravating circumstances outweigh the mitigating circumstances.

(Tr. Vol. II at 166.)

[13] The trial court explicitly acknowledged Rodriguez's proposed mitigators and expressed uncertainty as to their validity. A trial court is not obligated to accept a defendant's proffered mitigating circumstances. *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). Furthermore, the weight assigned to aggravating and mitigating circumstances by the trial court is not subject to review for abuse of discretion. *Anglemyer*, 868 N.E.2d at 491. We cannot say the trial court abused its discretion when it declined to find Rodriguez's proffered circumstances as mitigating. *See*, *e.g.*, *Hollins v. State*, 145 N.E.3d 847, 852 (Ind. Ct. App. 2020) (trial court did not abuse discretion by rejecting defendant's proffered mitigators), *trans. denied*.

2. Inappropriate Sentence

[14] Rodriguez also contends her sentence is inappropriate based on the nature of her crime and her character. "Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorizes independent appellate review and revision of a

sentence imposed by the trial court." *Alvies v. State*, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009). This appellate authority is implemented through 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." We consider the aggravators and mitigators found by the trial court as well as any other factors we find in the record. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The appellant carries the burden of proving her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[15] With regard to the nature of the offense, "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5. Rodriguez's sentence of twelve years is above the advisory sentence but below the maximum. When analyzing a sentence that diverges 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 out the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021).

[16] Rodriguez was entrusted with providing care and seeking proper medical treatment for Clayton following a stroke that left him in a wheelchair. Clayton also had cognitive disabilities that left him operating at the level of a four-year-

old with regard to daily living skills. Rodriguez pled guilty to and was convicted of Level 3 felony neglect of a dependent, but she could have been convicted of Level 1 felony neglect of a dependent because Clayton had physical and mental disabilities. Although Rodriguez became Clayton's attorney-in-fact when she was only eighteen years old, she largely benefitted financially from this arrangement and bought groceries and gas for her own family. Meanwhile, Clayton sat alone in a trailer for up to sixteen hours a day, and by the time he died his weight had gotten down to ninety pounds. Dr. Sample had worked in an emergency department for sixteen years and served two deployments in Iraq and Afghanistan, but he cited Clayton's case as the "worst thing [he's] ever seen." (Tr. Vol. II at 61.) Furthermore, Rodriguez was a certified nursing assistant when the facts of this case unfolded, yet she told Dubon not to take Clayton to the hospital and to treat his softball-sized bed sores with diaper rash cream and salt water. Clayton's bed sores were so deep that even bone was rotting. Nothing about these circumstances suggests to us that a twelve-year sentence is inappropriate for Rodriguez's crime.

[17] For the character of the offender, we begin by considering the offender's criminal history. *Johnson*, 986 N.E.2d at 857. Rodriguez has no criminal history. However, the character of the offender is also "found in what we learn of the offender's life and conduct." *Harris v. State*, 163 N.E.3d 938, 957 (Ind. Ct. App. 2021), *trans. denied.* The trial court described Rodriguez's testimony as manipulative and self-serving. She testified she did not know Clayton was in poor shape, yet Clayton weighed only ninety pounds and Dr. Sample described

a strong odor of "rotted flesh" that "was all over [Clayton]." (Tr. Vol. II at 59). Rodriguez also lied to her sister about being pregnant and having a miscarriage, and she denied sending the ultrasound images to her sister, even suggesting someone else was to blame. Clayton received nearly $2,000.00 per month, but Rodriguez combined his money with her own and spent it on her family. Rodriguez did not provide Dubon sufficient groceries to feed herself and Clayton, so Dubon had to work double shifts and leave Clayton at home alone in his wheelchair. We cannot say Rodriguez's twelve-year sentence is inappropriate in light of these circumstances that reflect negatively on her character or based on the heinous nature of her offense. *See*, *e.g.*, *McElroy v. State*, 865 N.E.2d 584, 592 (Ind. 2007) (horrendous facts and flaws in character render enhanced sentence appropriate).

Conclusion

[18] The trial court did not abuse its discretion when it declined to find the mitigating circumstances proffered by Rodriguez, and Rodriguez's twelve-year sentence was not inappropriate based on the nature of her offense and her character. Therefore, we affirm the trial court's judgment.

[19] Affirmed.

Altice, C.J., and Foley, J., concur.