MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Hezekiah Amon Johnson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

December 12, 2022

Court of Appeals Case No. 22A-CR-1333

Appeal from the Lake Superior Court

The Honorable Gina L. Jones, Judge

Trial Court Cause No. 45G03-1901-F4-1

Pyle, Judge.

Statement of the Case

[1] Hezekiah Johnson ("Johnson") appeals, following a guilty plea, his aggregate sentence for two counts of Level 4 felony arson.[1] Johnson argues that the trial court abused its discretion when it considered his violation of a no-contact order as an aggravating circumstance. Concluding that the trial court did not abuse its discretion when imposing Johnson's sentence, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether the trial court abused its discretion when imposing Johnson's sentence.

Facts

[3] Johnson and M.C. ("M.C.") started dating in 2016 and had a daughter ("Daughter"). Over the next couple of years, Johnson and M.C. ended their relationship and got back together multiple times. In 2018, Johnson and M.C. entered into a custody dispute over Daughter. Specifically, in December 2018, at a custody hearing, Johnson filed for joint custody of Daughter while M.C. opposed joint custody.

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[1] IND. CODE § 35-43-1-1.

[4] Three days after the custody hearing, Johnson, who had been in a work release program, drove to M.C.'s grandparents' home instead of his job site. At approximately 2:00 a.m., Johnson arrived at M.C.'s grandparents' home and used gasoline to set fire to the north side of the garage. Johnson stood by and watched the garage catch fire before fleeing the scene. Soon after, the flames from the garage spread to a neighbor's garage. The total damage from the fire exceeded five thousand dollars.

[5] Thirty minutes later, Johnson arrived at M.C.'s home where M.C. and two-year-old Daughter were sleeping. Johnson also used gasoline to set fire to M.C.'s garage before fleeing. M.C. awoke fifteen minutes later as firefighters began putting out the fire on her garage. Johnson returned to the work release center. However, a few days later, Johnson fled the work release center and never returned.

[6] In January 2019, the State charged Johnson with three counts of Level 4 felony arson and one count of Level 4 felony stalking. The State also charged Johnson with Level 5 felony escape in another related cause. Also in January 2019, M.C. obtained a no-contact order against Johnson. Johnson entered into a plea agreement with the State. In the agreement, Johnson pleaded guilty to two counts of Level 4 felony arson. In exchange, the State dismissed the charges for the third count of Level 4 felony arson, the Level 4 felony stalking, and the Level 5 felony escape. The trial court accepted the plea agreement and set a date for sentencing.

[7] In May 2022, the trial court held a sentencing hearing. At the hearing, Johnson apologized to his victims and stated that he was "sorry" and had "committed a crime that could have went way worse than it actually did." (Tr. Vol. 2 at 26).

[8] During the hearing, the State entered into evidence a no-contact order for M.C. against Johnson from January 2019. The State also entered into evidence records from the jail showing that Johnson had made three phone calls to M.C. Further, the records showed that Johnson had attempted to schedule six video visits with M.C. M.C., who had requested the jail block Johnson's calls to her number, never received any of these calls or requests. Further, the employee that oversaw the jail communications could not say whether or not Johnson had been told about the no-contact order against him.

[9] M.C. gave a victim impact statement at the hearing. M.C. testified that she still felt "scared, sad, destroyed, guilty, and disappointed" because of the trauma she still had from the night of the fire. (Tr. Vol. 2 at 42). M.C. further testified that she continued to have trouble sleeping and that she constantly worried about "every little noise [that she] heard outside" and constantly checked her garage. (Tr. Vol. 2 at 43). M.C. also testified that she feared for her life and the lives of her family. She testified that she and Daughter had been asleep at the time of the fire and that there had also been a child at her grandparents' home when Johnson had set their garage on fire too.

[10] The trial court found as an aggravating circumstance Johnson's extensive criminal history. This included an adjudication for felony residential burglary,

multiple felonies for theft, a felony for robbery, and multiple misdemeanor theft convictions. Further, the trial court found that Johnson being on work release at the time of this offense to be an aggravating circumstance. The trial court also found as an aggravating circumstance that the harm, injury, loss, or damage suffered by the victim was "significant and greater than the elements necessary to prove the commission of the offense." (Tr. Vol. 2 at 62). The trial court found as an aggravating circumstance Johnson's violation of the no contact order.

[11] The trial court found Johnson's admission of guilt and remorse to be a mitigating circumstance. At the conclusion of the hearing, the trial court sentenced Johnson to ten (10) years in the Indiana Department of Correction for each of his Level 4 felony arson convictions, to be served concurrently.

[12] Johnson now appeals.

Decision

[13] Johnson argues that the trial court abused its discretion when it considered his violation of a no-contact order as an aggravating circumstance at sentencing. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* 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.* A trial court may abuse its discretion in a number of ways, including: (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.* at 490-91.

[14] Johnson challenges the aggravating circumstance that he had violated a no-contact order. Specifically, he contends that it was an improper aggravating circumstance because he had not been aware that the no contact order had existed. Assuming without deciding that Johnson did not have notice of the no contact order and that the trial court improperly relied on Johnson's violation of said order as an aggravating circumstance, we conclude that it would not require this Court to remand for resentencing given the trial court's finding of other valid aggravating circumstances. If a trial court abuses its discretion by improperly considering an aggravating circumstance, we need to 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." *Anglemyer*, 868 N.E.2d at 491.

[15] The trial court had found, and Johnson did not challenge, as aggravating circumstances: (1) Johnson's extensive criminal history; (2) that Johnson had committed this offense while on work release; and (3) that the harm, injury, loss, or damage suffered by the victim was significant and greater than the

elements necessary to prove the commission of the offense. Because we can say with confidence that the trial court would have imposed the same sentence given the multiple aggravating circumstances supported by the record that Johnson did not challenge on appeal, we affirm Johnson's ten-year sentence for his two Level 4 felony arson convictions. *See Anglemyer*, 868 N.E.2d at 491.

[16] Affirmed.

Bradford, C.J., and Crone, J., concur.