MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kristina L. Lynn
Lynn Law Office, P.C.
Wabash, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole D. Wiggins
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert Harman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 8, 2021

Court of Appeals Case No. 21A-CR-1140

Appeal from the Huntington Circuit Court

The Honorable Davin G. Smith, Judge

Trial Court Cause No. 35C01-1909-MR-274

Bradford, Chief Judge.

Case Summary

[1] In September of 2019, Robert Harman got into a fist fight with his elderly father, which ultimately led to his father's death. The State charged Harman with murder and Class A misdemeanor failure to report human remains. In April of 2021, a jury found Harman guilty of Level 5 felony involuntary manslaughter and failure to report human remains. After balancing mitigating and aggravating circumstances, including Harman's remorse and his previous felony convictions, the trial court sentenced Harman to six years of incarceration for involuntary manslaughter and one year for failure to report human remains, to be served consecutively. Harman argues that the trial court abused its discretion in imposing a maximum sentence for his offenses and in ordering that his sentences be served consecutively. We affirm.

Facts and Procedural History

[2] On September 4, 2019, Harman killed his father in a fist fight, during which (Harman later acknowledged) he punched his father in the face twice.[1] Harman also failed to timely report his father's death to the appropriate authorities. On September 9, 2019, the State charged Harman with murder, a felony, and Class A misdemeanor failure to report human remains. On April 22, 2021, the jury found Harman guilty of the lesser-included offense of Level 5 felony involuntary manslaughter and failure to report human remains.

[1] Because no trial transcript was prepared in this case, we rely on materials from the Appellant's Appendix for the underlying facts of Harman's crimes.

[3] On May 19, 2021, the trial court sentenced Harman to six years of incarceration for involuntary manslaughter and one year for failure to report human remains, to be served consecutively. The court considered Harman's remorse and criminal history as mitigating and aggravating circumstances, respectively. The court explained to Harman that

> this sentence is aggravated due to your criminal history, including multiple violent offenses, multiple prior intimidation charges, multiple probation violations, and the fact that the, uh, victim was physically infirm. I did, uh, show a mitigator as your remorse in this case; however, the aggravators due [*sic*] outweigh the mitigators and that's why I've aggravated your sentence.

Tr. Vol. II p. 15.

Discussion and Decision

[4] Harman appeals his sentences for involuntary manslaughter and failure to report human remains, alleging that the trial court abused its discretion in imposing the maximum sentences and in ordering that those sentences be served consecutively. Sentencing decisions "rest within the sound discretion of the trial court"; therefore, we look "only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). A trial court abuses its discretion when it makes a decision that 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" from those facts and circumstances. *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006).

[5] Notably, a trial court abuses its discretion when it (1) fails to enter a sentencing statement; (2) enters a sentencing statement that explains the reasons for the sentence, but the record fails to support those reasons; (3) omits reasons that are clearly supported by the record and advanced for consideration; or (4) gives reasons that are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490–91. Importantly, the trial court must provide a statement of reasons for a sentence if it finds aggravating or mitigating circumstances. Ind. Code § 35-38-1-3. However, a trial court is not required to find mitigating circumstances or explain why it did not find a circumstance to be significantly mitigating. *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993); *Sherwood v. State*, 749 N.E.2d 36, 38 (Ind. 2001). When trial courts find aggravating and mitigating circumstances, they cannot be said to abuse their "discretion in failing to 'properly weigh' such factors." *Anglemyer*, 868 N.E.2d at 491 (quoting *Jackson v. State*, 728 N.E.2d 147, 155 (Ind. 2000)).

[6] Harman alleges that the trial court improperly weighed the aggravating and mitigating circumstances when it imposed maximum, consecutive sentences. Specifically, Harman asserts that the court gave too much weight to his extensive criminal history, which includes nine misdemeanor convictions and six felony convictions for various violent offenses such as intimidation and domestic battery, as well as multiple violations of the terms of probation. It is, however, well-settled that "we cannot review the relative weight assigned to [aggravating and mitigating] factors." *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (citing *Anglemyer*, 868 N.E.2d at 490–91)). It was not

clearly against the logic and circumstance of the case for the trial court to conclude that Harman's criminal history was an aggravating circumstance.

[7] Harman also argues that the trial court abused its discretion by failing to consider the effect of his sentence on his children and his positive employment history. Although a sentencing court must consider evidence of all mitigating circumstances offered by a defendant, "[a] court does not err in failing to find mitigation when a mitigation claim is highly disputable in nature, weight, or significance." *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002).

[8] "[T]he hardship to a defendant's dependents is not always a significant mitigating factor[,]" *McElroy v. State*, 865 N.E.2d 584, 592 (Ind. 2007), and we will not find error where a defendant fails to show "that incarceration will result in definite hardship to a dependent." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). Here, there is insufficient evidence of undue hardship to Harman's children. Harman has three children, only two of whom are minors, and one of those is already seventeen. Nothing in the record regarding Harman's custody, parenting time, visitation, or child support suggests that his incarceration would impose an undue hardship on his children. Moreover, while Harman had maintained employment for the four years prior to killing his father, we cannot conclude that the trial court abused its discretion in failing to find this to be mitigating. Indeed, "[m]any people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as [the defendant] proposes." *Newsome v. State*, 797

N.E.2d 293, 301 (Ind. Ct. App. 2003). The trial court did not abuse its discretion in imposing maximum, consecutive sentences in this case.

[9] The judgment of the trial court is affirmed.

Crone, J., and Tavitas, J., concur.