MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Julio Serrano,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 2, 2024

Court of Appeals Case No. 23A-CR-1212

Appeal from the Hendricks Superior Court

The Honorable Stephenie LeMay-Luken, Judge

Trial Court Cause No. 32D05-1702-F3-14

Memorandum Decision by Senior Judge Baker
Chief Judge Altice and Judge Vaidik concur.

Baker, Senior Judge.

Statement of the Case

[1] Julio Serrano appeals his sentence, arguing the trial court abused its discretion when it resentenced him to ten years. Finding no error, we affirm.

Facts and Procedural History

[2] In July 2022, a jury found Serrano guilty of Level 4 felony unlawful possession of a handgun by a serious violent felon and adjudicated him an habitual offender. The court sentenced Serrano to ten years on the Level 4 felony, which it enhanced by ten years for being an habitual offender.

[3] Serrano appealed. In a memorandum decision, a panel of this Court determined there was insufficient evidence to support Serrano's habitual offender adjudication, reversed the adjudication, and remanded the cause for resentencing. *See Serrano v. State*, No. 22A-CR-2177 (Ind. Ct. App. March 21, 2023) (mem.).

[4] On remand, the trial court resentenced Serrano to a term of ten years on his Level 4 felony conviction. He now appeals.

Discussion and Decision

[5] When imposing a sentence for a felony offense, a trial court must enter a sentencing statement that includes, in reasonable detail, the court's reasons for imposing a particular sentence. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind.

2007), *clarified on reh'g*, 875 N.E.2d 218. On appeal, we review sentences for an abuse of discretion, which occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions drawn therefrom. *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

[6] Citing no authority for his assertion, Serrano contends that "unless the court can incorporate the original sentencing hearing by reference," its sentencing statement is not sufficient. Appellant's Br. p. 8.

[7] At resentencing, the judge stated, "I'm going to find that all my aggravating circumstances and mitigating circumstances in my prior sentencing statement apply today. No factual issues have changed . . . ." Tr. Vol. 2, p. 8. When reviewing a sentencing statement, this Court may examine the record as a whole to determine that the trial court made a sufficient statement of its reasons for selecting the sentence imposed. *Mata v. State*, 866 N.E.2d 346, 349 (Ind. Ct. App. 2007). Serrano did not allege any error with the court's prior sentencing statement in his first appeal, and we find no error with the judge incorporating her findings from the prior hearing and sentencing statement. *See Hicks v. State*, 729 N.E.2d 144, 146 (Ind. 2000) (observing with approval that resentencing court incorporated by reference same aggravators and one mitigator recited by trial court at first sentencing hearing).

[8] Serrano also asserts that the court's reliance on its prior finding of aggravating and mitigating factors and its statement that nothing had changed demonstrates

it failed to reevaluate the circumstances to determine an appropriate term upon resentencing. Specifically, he claims that because the court originally found his history of violating the rules of confinement to be an aggravator, it should have reassessed this factor in light of his eight months of incarceration between his original sentencing and resentencing. In addition, he argues the court failed to fully explore his pain as a type of "continued punishment." Appellant's Br. p. 9.

[9] At Serrano's original sentencing, the court found as aggravating circumstances: (1) fact that he is a parent committing crimes, (2) criminal history, (3) violation of rules of parole, probation, and incarceration, (4) fact that he represents a serious and direct threat to law enforcement, and (5) high risk of reoffending. Prior Case Tr. Vol. 4, pp. 29-30. As mitigating circumstances, the court identified: (1) support of family and friends, (2) abysmal childhood, (3) truncated education, (4) struggle with mental health issues, and (5) referral to DOC at age 12. *Id.* at 30. The court determined the aggravating circumstances outweighed the mitigating circumstances. *Id.* at 31.

[10] Serrano did not advance for consideration at the resentencing hearing his alleged recent lack of bad behavior in confinement. Consequently, he has waived this argument for appellate review. *See McSchooler v. State*, 15 N.E.3d 678, 684 (Ind. Ct. App. 2014) (determining that defendant waived appellate review of mitigating circumstances by failing to present them to trial court). Waiver notwithstanding, Serrano's argument is without merit because, regardless of his behavior for the last eight months, the fact remains that he had

previously violated parole, home detention, and DOC rules. As the sentencing court correctly noted, nothing had changed as far as the factual situation upon which the original sentence was based.

[11] As to Serrano's pain, defense counsel explained at both the original sentencing and the resentencing that Serrano was shot by police when he ran from them during the incident underlying these charges. Counsel informed the court that Serrano suffered not only physical injuries but also lingering nightmares and undiagnosed "PTSD." *See* Tr. Vol. 2, p. 7; Prior Case Tr. Vol. 4, pp. 21, 25.

[12] A trial court is not required to give the same weight to mitigating factors as does the defendant. *Smoots v. State*, 172 N.E.3d 1279, 1288 (Ind. Ct. App. 2021). Indeed, a court may impose any sentence that is authorized by statute regardless of the presence or absence of aggravating or mitigating circumstances. Ind. Code §35-38-1-7.1(d) (2019).

[13] Here, though perhaps not assigning it as much weight as Serrano would like, the court included Serrano's "PTSD" as a mitigator in determining his sentence. Prior Case Tr. Vol. 4, p. 30. Further, at resentencing, Serrano provided no additional information for the court to consider on this factor, reinforcing the point that the facts had not changed. Thus, we find no error.

[14] Finally, Serrano alleges the court failed to award him 722 days of credit time. He claims that he was in the Hendricks County Jail on this charge from March 2017 to February 2019 (722 days) and in jail again from February 2022 to August 2022 (195 days) and that "[t]here is no dispute that both periods of

confinement were the 'result of the criminal charge for which sentence is now imposed.'" Appellant's Br. p. 10.

[15] "'Because pre-sentence jail time credit is a matter of statutory right, trial courts generally do not have discretion in awarding or denying such credit.'" *Purdue v. State*, 51 N.E.3d 432, 436 (Ind. Ct. App. 2016) (quoting *Perry v. State*, 13 N.E.3d 909, 911 (Ind. Ct. App. 2014)). To be entitled to credit time, a defendant must have been confined for the offense for which he is being sentenced. *Maciaszek v. State*, 75 N.E.3d 1089, 1093 (Ind. Ct. App. 2017), *trans. denied*.

[16] At Serrano's original sentencing hearing, defense counsel informed the court that Serrano "used that credit time from 2017 to 2019 on his Cook County[, Illinois] case." Prior Case Tr. Vol. 4, p. 19. "So his credit time, correctly, should be from February 1st of 2022 to today, August 16, 2022, and that calculates at 197." *Id.* at 20. Counsel further informed the court that she advised Serrano he could not "double-dip" on credit time. *Id.* Serrano acknowledges that when he was resentenced he was again awarded 197 days of credit. He did not contest the credit time determination as explained by his counsel at sentencing, and he directs us to nothing in the record to contradict the trial court's finding. Consequently, he has failed to show any error.

Conclusion

[17] Based on the foregoing, we conclude the trial court did not abuse its discretion in resentencing Serrano.

[18] Affirmed.

Altice, C.J., and Vaidik, J., concur.