MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rodriguez S. Todd,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 30, 2023

Court of Appeals Case No. 22A-CR-2632

Appeal from the Kosciusko Superior Court

The Honorable Karin A. McGrath, Judge

Trial Court Cause No. 43D01-2102-FA-200

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Rodriguez Todd appeals his convictions for rape, as a Class A felony,[1] and kidnapping, as a Class A felony,[2] as well as his corresponding sentence. We affirm.

Issues

[2] Todd raises two issues on appeal, which we revise and restate as the following three issues:

1. Whether the trial court erred when it denied Todd's motion for discharge pursuant to Indiana Criminal Rule 4(C).

2. Whether the trial court abused its discretion when it imposed consecutive sentences.

3. Whether Todd's sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] On November 23, 1999, A.A. was driving her car on her way to visit her terminally ill father. A.A. had been having issues with her vehicle, so she stopped at a gas station to check the transmission fluid. After she popped the

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[1] Ind. Code § 35-42-4-19(b) (1999).

[2] I.C. § 35-42-3-2.

hood of her car, "a man approached [her] from behind." Tr. Vol. 2 at 181. The man "had a knife," and he said to A.A.: "let's take a ride." *Id.* The man then proceeded to force A.A. back into her car, and he got into the passenger seat.

[4] At the man's direction, A.A. drove for approximately sixty to ninety minutes, during which time she "begged" for her life and offered the man her purse and car. *Id.* at 182. Finally, the man had A.A. stop in "the woods," and he "made" her get out of the car. *Id.* The man then "pushed" A.A. onto the hood of her car, and he held the knife to her throat. *Id.* The man used the knife to "rip off" A.A.'s shirt and to cut her pants and her underwear. The man undid his pants and "pushed" his penis into A.A.'s vagina and proceeded to have "rough" sexual intercourse with her until he ejaculated. *Id.* at 183.

[5] After an unknown amount of time, the man again forced A.A. to submit to sexual intercourse, and he was "rougher" and "[m]ore aggressive" the second time. *Id.* at 184. A.A. was "screaming" and "crying for help." *Id.* But the man responded that A.A. "could scream all [she] wanted" but that "nobody would hear" her." Tr. Vol. 3 at 32. He also told A.A.: "I'm going to f**k you like a man." Tr. Vol. 2 at 184. The man hit A.A. in the head "a couple times" and "pressed" the knife to her chest. *Id.* Ultimately, the man stopped, and he left A.A.

[6] After a while, A.A. drove herself home. Once she arrived there, she woke her husband up and told him what had happened. A.A.'s husband drove her to a hospital, where she submitted to a sexual assault examination. During the

examination, a sexual assault nurse examiner swabbed A.A.'s vagina in order to collect DNA. The nurse submitted the samples to the police, but there were no matching samples on file. The case then went cold until police received a report of a matching DNA sample in June 2019. According to the report, Todd's DNA matched the sample the nurse had collected from A.A. in 1999. The State subsequently obtained two other DNA samples from Todd, which again matched the sample collected from A.A.

[7] On February 26, 2021, the State charged Todd with rape, as a Class A felony, and kidnapping, as a Class A felony.[3] Todd was later arrested on June 30, and the court held a pretrial conference on November 29. At that hearing, the parties discussed further pretrial hearings, and Todd requested that the court set a trial date for any date after May 16 and to limit the number of hearings he was required to attend because he resided in California. Todd further stated:

> If the Court were inclined to set a further pretrial because we have some discovery issues we're going to need to work on and some depositions, but plan B would be if we could set maybe a further pretrial maybe about ninety days out and then if my client were excused from showing up so he didn't have to go through the expense of traveling then that would work for me as well.

[3] The State also initially charged Todd with battery and intimidation, both as Class C felonies, but the court dismissed those counts prior to trial.

Tr. Vol. 2 at 13. The court scheduled the next pretrial hearing for February 7, 2022, but did not schedule a date for the jury trial at that time. Ultimately, the court scheduled Todd's trial for September 13 over Todd's objection.

[8] On July 31, 2022, Todd filed a motion for discharge pursuant to Criminal Rule 4(C). Todd contended that the original deadline to bring him to trial was June 30, 2022, and that only a fourteen-day delay was attributable to him. He therefore asserted that his new trial date was outside of the one-year period and that he did not acquiesce to the belated trial date. The State responded and asserted that the time period from November 29, 2021, through February 7, 2022, was attributable to Todd because he had requested more time "for discovery and depositions[.]" Appellant's App. Vol. 2 at 77.

[9] The court held a hearing on Todd's motion on August 3, 2022. Todd asserted that the relevant delay was not attributable to him because the parties had "agreed" to set a later pretrial conference date and that the later date "did not delay this matter for being set within the appropriate time period." Tr. Vol. 2 at 28. The State contended that Todd made "an actual request for more time" to work on discovery issues and depositions such that the delay was attributable to Todd. *Id*. at 32. Todd then conceded that the seventy-one days "would" be attributed to him but that "it's not a trial delay." *Id*. at 38.

[10] Following the hearing, the court determined that the seventy-one-day period from November 29, 2021, through February 7, 2022, was attributable to Todd and that the new deadline to bring Todd to trial was September 24, 2022. The

court therefore denied Todd's motion to dismiss, and the case proceeded to a trial. During the trial, A.A. testified to the events that had occurred on November 23, 1999. At the conclusion of the trial, the jury found Todd guilty of rape and kidnapping.

[11] At the ensuing sentencing hearing, the court identified as aggravating factors Todd's criminal history, including that he was out on bond for the instant offenses when he committed a new offense, and that he had previously violated the terms of his probation. The court found no mitigating circumstances. The court then found that the "aggravators outweigh the mitigators and warrant an increase . . . from the . . . presumptive sentence[.]" Tr. Vol. 4 at 127. Accordingly, the court sentenced Todd to forty years on each count, to run consecutively, for an aggregate sentence of eighty years in the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

Issue One: Criminal Rule 4(C)

[12] Todd first contends that the delay in bringing him to trial violated Indiana Criminal Rule 4(C). "In reviewing Criminal Rule 4 claims, we review questions of law *de novo*, and we review factual findings under the clearly erroneous standard." *State v. Harper*, 135 N.E.3d 962, 972 (Ind. Ct. App. 2019), *trans. denied*. As our Supreme Court recently reiterated, "'[t]he State bears the burden of bringing the defendant to trial within one year.'" *Battering v. State*, 150 N.E.3d 597, 601 (Ind. 2020) (quoting *State v. Larkin*, 100 N.E.3d 700, 703

(Ind. 2018)). To enforce this burden, Criminal Rule 4(C) provides, in relevant part:

> No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar . . .

[13] As the rule suggests, criminal defendants extend the one-year period "'by seeking or acquiescing in delay resulting in a later trial date.'" *Battering*, 150 N.E.3d at 601 (quoting *Pelley v. State*, 901 N.E.2d 494, 498 (Ind. 2009)). Further, "when a defendant takes action which delays the proceedings, that time is chargeable to the defendant and extends the one-year time limit, regardless of whether a trial date has been set at the time or not." *Cook v. State*, 810 N.E.2d 1064, 1066-67 (Ind. 2004). "And any action that postpones the proceeding of the case will likely cause a delay in the trial date." *Id*. at 167. Indeed, "[w]hen a party delays a task which must be completed before a trial can take place, that party can and often does delay the setting of the case for trial, and through that, the trial itself." *Id*. (quotation marks omitted).

[14] Todd contends that the State did not timely bring him to trial because "the period between November 29, 2021[,] through February 7, 2022[,] should have

been attributed to the State rather than Todd."[4] Appellant's Br. at 8. In particular, Todd asserts that he "only acquiesced to the trial court's decision to not set a trial date at the November 29, 2021[,] hearing" and that he did not "request the deferral of setting a trial date." *Id*. at 9.

[15] However, the record is clear that Todd took action which delayed the proceedings. *See Cook*, 810 N.E.2d at 1066-67. Indeed, at the November 29, 2021, pretrial conference, Todd requested that the court limit the number of pretrial conferences in order to minimize the number of times he had to travel from California. Tr. Vol. 2 at 13. In addition, Todd stated:

> If the Court were inclined to set a further pretrial because we have some discovery issues we're going to need to work on and some depositions, but plan B would be if we could set maybe a further pretrial maybe about ninety days out and then if my client were excused from showing up so he didn't have to go through the expense of traveling then that would work for me as well.

Id.

[16] It is clear from that conversation with the court that Todd was requesting a belated pretrial conference because he needed additional time to resolve discovery issues and to conduct depositions. Indeed, during the hearing on Todd's motion for discharge, Todd acknowledged that the seventy-one-day

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[4] Our Supreme Court has clarified that Criminal Rule 4(C) "does not call for any attribution of delay to the State but only for delay attributable to the defendant or insufficient time due to court congestion or emergency" and, thus, that "the phrase 'chargeable to the State' is an unfortunate misnomer, inexact, and potentially misleading." *Carr v. State*, 934 N.E.2d 1096, 1100 (Ind. 2010).

delay would be attributable to him. *See id*. at 38. In other words, Todd took an action that caused a delay in the proceedings and resulted in a later trial date. *See Battering*, 150 N.E.3d at 601. We therefore cannot say that the court erred when it denied Todd's motion for discharge.

Issue Two: Consecutive Sentences

[17] Todd next contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion 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 to be drawn therefrom." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted).

[18] A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind.), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007)).

[19] On appeal, Todd specifically asserts that the court abused its discretion when it imposed consecutive sentences for the rape and kidnapping convictions. "The decision to impose consecutive sentences lies within the discretion of the trial court." *Gross*, 22 N.E.3d at 869. Further, a single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Id*.

[20] Todd contends that the court "did not state a valid reason for imposing consecutive sentences." Appellant's Br. at 11. In particular, he asserts that, "[w]hile the trial court found one aggravator, the trial court did not explicitly find that the aggravator outweighed any mitigators, nor did the trial court find that the aggravator justified the enhanced or consecutive sentences." *Id*. at 12. He therefore maintains that the "court did not make the requisite findings to impose consecutive sentences[.]" *Id*.

[21] However, Todd misconstrues the record. First, the trial court specifically identified two aggravators: 1) Todd's criminal history, including that he was on bond for the present offenses when he committed another offense, and 2) that he had previously violated the terms of his placement on probation. In addition, the court explicitly found that the "aggravators outweigh the mitigators," and the court found that the aggravators "warrant an increase" from the presumptive sentence. Tr. Vol. 4 at 127. Thus, contrary to Todd's arguments, the court found two aggravators. And either aggravator, on its own, would have been sufficient for the court to impose consecutive sentences. *See Gross*, 22 N.E.3d at 869. The court did not abuse its discretion when it ordered Todd's sentences to run consecutively.

Issue Three: Appropriateness of Sentence

[22] Finally, Todd alleges that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he 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." The Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[23] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] 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).

[24] Here, Todd was convicted of two Class A felonies. At the time Todd committed the offenses, the presumptive sentence for a Class A felony was thirty (30) years, and the court was permitted to add up to twenty (20) years for aggravating circumstances or subtract up to ten (10) years for mitigating circumstances. *See* Ind. Code § 35-50-2-4(a) (1999). At sentencing, the court identified as aggravators Todd's criminal history, including the fact that he committed an additional offense while out on bond for the current offenses, and Todd's prior probation violation. And the court did not find any mitigators. Accordingly, the court found that the aggravators outweighed the mitigators and sentenced Todd to an enhanced sentence of forty years on each count, to run consecutively.

[25] On appeal, Todd contends that his aggregate eighty-year sentence is inappropriate in light of the nature of the offenses because "there was no evidence that the conduct in this case was worse than normal for those offenses" and because he "did not seriously injure" A.A. Appellant's Br. at 12. And he maintains that his sentence is inappropriate in light of his character because he submitted nine letters "that spoke to the person he was at the time of sentencing, all of which reflected positively on his character," and because the

other convictions that he had accrued "were of a fundamentally different character than this case." *Id*. at 12-13.

[26] However, Todd has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Todd kidnapped A.A. at knifepoint, forced her to drive sixty to ninety minutes to a remote location in the woods, and proceeded to forcefully and violently rape her twice. In addition, A.A. lived with "pain, suffering, and fear" for more than twenty years. Tr. Vol. 4 at 120. Todd has not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.3d at 122.

[27] As for his character, Todd has a criminal history that includes two convictions for driving while intoxicated, one of which was a felony offense; one conviction for reckless driving; and one conviction for domestic battery. In addition, as the trial court found, Todd has violated a previous placement on probation, and he committed an offense while on bond for the instant offenses, which reflects poorly on his character. We therefore cannot say that Todd's sentence is inappropriate in light of his character. We affirm Todd's sentence.

Conclusion

[28] The trial court did not err when it denied Todd's motion for discharge because the seventy-one-day extension was attributable to Todd. In addition, the court did not abuse its discretion when it imposed consecutive sentences. And

Todd's sentence is not inappropriate in light of the nature of the offenses or his character. We therefore affirm the trial court.

[29] Affirmed.

Brown, J., and Weissmann, J., concur.