MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jacob Stephen Wootton,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

January 30, 2023

Court of Appeals Case No. 22A-CR-728

Appeal from the Madison Circuit Court

The Honorable Angela Warner Sims, Judge

Trial Court Cause No. 48C01-1905-MR-1123

Pyle, Judge.

Statement of the Case

[1] Jacob Stephen Wootton ("Wootton") appeals, following a guilty plea, his aggregate fifty-two-year sentence for his convictions of Level 1 neglect of a dependent causing death,[1] Class B misdemeanor possession of marijuana,[2] Class C misdemeanor possession of paraphernalia,[3] and his adjudication for being an habitual offender.[4] Wootton argues that the trial court abused its discretion when sentencing him. Concluding that there was no abuse of discretion, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether the trial court abused its discretion when sentencing Wootton.

Facts[5]

[3] The facts underlying Wootton's offenses are found in the probable cause affidavit, which was admitted as an exhibit during the sentencing hearing. In

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[1] IND. CODE § 35-46-1-4.

[2] I.C. § 35-48-4-11.

[3] I.C. § 35-48-4-8.3.

[4] I.C. § 35-50-2-8.

[5] We remind Wootton's counsel that Indiana Appellate Rule 46(A)(6)(a) provides that an Appellant's Statement of Facts "shall be supported by page references to the Record on Appeal or Appendix in accordance with Rule 22(C)."

October 2018, Wootton, who had a protective order against him for his wife, Alyson Stephen ("Alyson"), was living in Madison County with Alyson and her four children. Wootton and Alyson had a "violent" relationship, and each of them had battery charges against the other. (Ex. Vol. at 78; App. Vol. 2 at 6). Wootton was responsible for disciplining the children. When Wootton spanked the children, Alyson "could hear [the spankings] from the other room" and had told Wootton "not [to spank them] so hard." (Ex. Vol. at 78; App. Vol. 2 at 6).

[4] On October 26, 2018, one child, R.S. ("R.S."), who was less than one week from his second birthday, had a stomachache and had "pooped everywhere[.]" (Ex. Vol. at 76; App. Vol. 2 at 4). Alyson, who was getting ready to go to work, put R.S. into an infant bathtub, which was placed inside their shower, and partially cleaned R.S. Alyson told Wootton that he needed to finish bathing R.S., and she left for work around 3:30 p.m.

[5] Sometime after 4:00 p.m., Lane Smith ("Smith") and Curt Faulstich ("Faulstich") went to Wootton's house to pick him up. When they arrived, Wootton's door was locked, which Faulstich found to be "weird because it [wa]s normally never locked." (Ex. Vol. at 76; App. Vol. 2 at 4). Smith and Faulstich yelled, and Wootton came to the door with R.S. "limp" in his arms. (Ex. Vol. at 76; App. Vol. 2 at 4). Faulstich asked Wootton what had happened, and Wootton responded that he had forgotten about R.S. in the tub for about five minutes. Smith called 911, and Faulstich helped Wootton with CPR. At one point, Faulstich rolled R.S. onto his side and saw bruises on

R.S.'s back. Faulstich asked Wootton what he had done, and Wootton replied that he had patted R.S. on his back and had probably broken his ribs.

[6] Officers from Elwood Police Department arrived at the scene and performed CPR on R.S. The fire department transported R.S. to a local hospital and eventually to Riley Hospital. When a police detective spoke to Wootton at the hospital, Wootton informed the detective that he had left R.S. in the bathtub and then heard a "thud[.]" (Ex. Vol. at 75; App. Vol. 2 at 3). Approximately one minute later, Wootton went to check on R.S. and saw that R.S. was lying on his back in the bathtub with his head dangling off the back of the tub. When Wootton saw that R.S. closed his eyes and that he looked "drowsy[,]" Wootton ran R.S. under water, bit R.S. on the cheek, "hit him on the back a lot, and smacked him all over including the head." (Ex. Vol. at 75; App. Vol. 2 at 3). Wootton also stated that he had attempted CPR. When the detective asked Wootton about R.S.'s bruising, Wootton responded that R.S. was "a loner" and that maybe his siblings had "picked on him[.]" (Tr. 162). Wootton also told the detective that R.S. had spit something brown from his mouth, and Wootton "assumed it was blood." (Ex. Vol. at 75; App. Vol. 2 at 3).

[7] When police searched Wootton's house, they discovered a plastic razor inside the infant tub, blood splatter on the washer that was outside the bathroom, and water and blood on a child's bed. They also discovered marijuana and a pipe that had burnt residue of marijuana inside the pipe. An autopsy report indicated that R.S.'s manner of death was homicide and cause of death was multiple blunt force injuries. These blunt force injuries included "[e]xtensive

contusions" of the face, extremity, and torso;" hemorrhages of the "[t]ongue, thymic, spinal subdural, and microscopic spinal epidural[;]" an optic nerve sheath hemorrhage; retinal hemorrhages; a "[m]icroscopic left frontal cerebral convexity subarachnoid hemorrhage[;]" and "[a]noxic brain injury" marked by cerebral edema. (Ex. Vol. at 60).

[8] The State ultimately charged[6] Wootton with murder, Level 1 neglect of a dependent causing death, Class A misdemeanor invasion of privacy, Class A misdemeanor resisting law enforcement, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. Additionally, the State alleged that he was an habitual offender and sought life without parole.

[9] In December 2021, Wootton pled guilty to Level 1 neglect of a dependent causing death, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia, and he admitted that he was an habitual offender in March 2022.[7] During the sentencing hearing, the State presented testimony from an Elwood Police Department detective and introduced numerous exhibits, including crime scene photographs, autopsy photographs, the autopsy report, and the probable cause affidavit. The trial

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[6] The State initially charged Wootton in November 2018 and then filed an amended charging information in December 2019.

[7] Wootton pled guilty, without a plea agreement, to the three charges and the habitual offender allegation. We also note that the transcript of the December 2021 guilty plea hearing was not included in the Transcript Volume.

court took judicial notice of its file and the presentence investigation report ("PSI"). Wootton also presented testimony and letters in support of Wootton.

[10] When sentencing Wootton, the trial court noted that it was "a sad day . . . a very tragic day" and further stated as follows:

> Unfortunately, this court has had the opportunity to see more than one child die of a death of a parent's hand in this community and this day is no different than the other days that I've sat in the same spot and had to hand out justice on parents that have failed their responsibility as parents, and in this case with Mr. Wootton, it doesn't have to be a biological parent, but takes on that role as a parent and as a result, [the] responsibilities [that] come from that. This court has stated before that this court find[s] no greater responsibility as a society that we put on each other than that of a parent. And what comes with those responsibilities and those expectations that we put on individuals in our society and our community when they take on the role of care of a child.
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> . . . [N]obody knows exactly what happened, but what we do know and that is absolutely is not disputed is that R.S. was alive when Mr. Wootton was left with the care of that child and he died during that period, or at least sustained injuries that ultimately led to his death.

(Tr. 223, 224-25).

[11] The trial court found Wootton's guilty plea and remorse to be mitigating circumstances. As aggravating circumstances, the trial court found Wootton's position of trust and his criminal history that included "multiple prior felony convictions" and repeated violations of community supervision. (Tr. 226).

Additionally, the trial court determined that R.S.'s young age to be an aggravating circumstance. The trial court acknowledged that age was an element of the offense but noted the following circumstances of R.S.'s age:

> We're not talking about a ten (10) year old or a thirteen (13) year old or even a five (5) or six (6) year old that might have had some ability to defend against the injuries in which this child sustained. We basically have a very young toddler that was completely defenseless and absolutely relied one hundred percent (100%) on a responsible adult to provide for his care and his safety, so the court does find the child's age as an aggravation in this case.

(Tr. 227).

[12] Thereafter, the trial court imposed a forty (40) year sentence for Wootton's Level 1 neglect of a dependent causing death conviction and enhanced that sentence by twelve (12) years for his habitual offender adjudication. The trial court also imposed a sentence of one hundred and eighty (180) days for Wootton's Class B misdemeanor possession of marijuana conviction and a sixty (60) day sentence for his Class C misdemeanor possession of paraphernalia conviction, and it ordered all sentences to served concurrent to one another. Thus, the trial court imposed an aggregate sentence of fifty-two (52) years.[8]

[13] Wootton now appeals.

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[8] The State filed a motion to dismiss the remaining charges without prejudice, and the trial court granted the motion.

Decision

[14] Wootton argues that the trial court abused its discretion when sentencing him. Specifically, he contends that the trial court abused its discretion by failing to give more weight to his guilty plea mitigating circumstance and by considering the age of the victim as an aggravating circumstance. We disagree.

[15] 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. "'[T]he trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence" and thus "a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors.'" *Kimbrough v. State*, 979 N.E.2d 625, 628 (Ind. 2012) (quoting *Anglemyer*, 868 N.E.2d at 491).

[16] We first turn to Wootton's contention that the trial court "failed to give proper weight" to his guilty plea as a mitigating circumstance. (Wootton Br. 9). This argument is nothing more than a challenge to the weight the trial court gave to this mitigator, which is not reviewable on appeal. *See Anglemyer*, 868 N.E.2d at 491 (explaining that the relative weight assigned to aggravators and mitigators is not subject to appellate review).

[17] Next, we address Wootton's challenge to the trial court's determination that R.S.'s young age of being just shy of two years old was an aggravating circumstance. Specifically, he contends that such an aggravator was improper because the age of the victim was an element of his offense.

[18] Generally, where the age of the victim is a material element of the crime, the age of the victim may not be used as an aggravating circumstance. *Kien v. State*, 782 N.E.2d 398, 414 (Ind. Ct. App. 2003) (citing *Stewart v. State*, 531 N.E.2d 1146, 1150 (Ind. 1988)), *reh'g denied*, *trans. denied.* "However, the trial court may properly consider the particularized circumstances of the material elements of the crime" to be an aggravating factor. *Id.* (citing *Stewart*, 531 N.E.2d at 1150). For example, a trial court may properly consider as aggravating the age of the victim when the trial court considers that the victim was of a "tender age." *Id.* (citing *Stewart*, 531 N.E.2d at 1150 and *Buchanan v. State*, 767 N.E.2d 967, 971 (Ind. 2002)). Stated differently, we have held that a trial court may properly consider the victim's age as an aggravating factor where "the youth of the victim is extreme." *Reyes v. State*, 909 N.E.2d 1124, 1128 (Ind. Ct. App. 2009). Our supreme court has explained that "[t]he younger the victim, the

more culpable the defendant's conduct." *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011).

[19] Here, when discussing R.S.'s young age, the trial court acknowledged that age was an element of the offense but, as set forth above, noted the vulnerability associated with such a young age. The trial court noted that R.S. was unable to defend against the injuries inflicted upon him and that he was "completely defenseless" and "relied one hundred percent (100%) on a responsible adult to provide for his care and his safety[.]" (Tr. 227). The trial court also noted that Wootton had failed in his important responsibility to care for the young child and that R.S. had sustained the injuries that had led to his death while in Wootton's care. Because the trial court found that R.S.'s tender age to be part of the particularized circumstances of this case, we conclude that the trial court did not abuse its discretion by identifying this aggravating circumstance. *See Hudson v. State*, 135 N.E.3d 973, 980 (Ind. Ct. App. 2019) (holding that the trial court did not abuse its discretion by considering the two-year-old victim's age as an aggravating circumstance); *Edwards v. State*, 842 N.E.2d 849, 855 (Ind. Ct. App. 2006) (affirming the trial court's use of the fifteen-month-old victim's age as an aggravating circumstance).[9]

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[9] Wootton also suggests that his aggregate sentence was inappropriate in light of the nature of the offense and the character of the offender. However, he provides no cogent argument or analysis related to why his sentence is inappropriate and instead focuses on his claims that the trial court abused its discretion when determining aggravating and mitigating circumstances. Accordingly, Wootton has waived any such inappropriate sentence argument. *See* Ind. App. R. 46(A)(8)(a) (explaining that an appellate argument must be supported by cogent reasoning); *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (explaining that "inappropriate sentence and abuse of discretion claims are to be analyzed separately"); *Sandleben v. State*, 29

[20] Affirmed.

Bradford, J., and Kenworthy, J., concur.

N.E.3d 126, 136 (Ind. Ct. App. 2015) (concluding that the defendant waived an inappropriate sentence argument by failing to advance cogent argument on that issue), *trans. denied*. Waiver notwithstanding, Wootton's aggregate sentence is not inappropriate.