

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shane Ketcham,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 15, 2023
Court of Appeals Case No.
22A-CR-2473
Appeal from the
St. Joseph Superior Court
The Honorable
Elizabeth C. Hurley, Judge
Trial Court Cause No.
71D08-2008-F5-175

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Shane Allen Ketcham pled guilty to Level 5 felony operating a motor vehicle with a Schedule I or II controlled substance in his blood causing serious bodily injury, and the trial court sentenced him to five years, with two years executed and three years suspended to probation. Ketcham now appeals his sentence, arguing the court erred in not finding certain mitigators. Finding no abuse of discretion, we affirm.

Facts and Procedural History

- [2] In October 2019, Ketcham, who was twenty-three years old, was driving with his friend, Ryan Butts, as passenger. Ketcham, who had smoked marijuana “a day or two” earlier, drove at a high rate of speed while documenting it on social media and crashed, ejecting Butts from the car. Tr. p. 8. Butts suffered a broken collar bone and injuries to his kidney, liver, and spleen and underwent brain surgery. Ketcham’s blood was drawn, and it was “positive” for THC. Appellant’s App. Vol. II p. 37.
- [3] In August 2020, the State charged Ketcham with Level 5 felony operating a motor vehicle with a Schedule I or II controlled substance in his blood causing serious bodily injury. *See* Ind. Code § 9-30-5-4(a)(2). In December 2021, Ketcham pled guilty without the benefit of a plea agreement.

- [4] A sentencing hearing was held in July 2022. Evidence was presented that Ketcham has juvenile adjudications for what would be visiting a common nuisance, public nudity, and theft if committed by an adult and criminal convictions for misdemeanor possession of marijuana, misdemeanor criminal trespass, and felony dealing in marijuana. Evidence was also presented that Ketcham had been arrested twice after he pled guilty but before sentencing in this case. In April 2022, Ketcham was charged with driving while suspended in Marshall County. The next month, in May 2022, Ketcham was charged with driving while suspended and resisting law enforcement in Kosciusko County.
- [5] Ketcham submitted a statement from Butts asking the trial court to exercise “leniency.” Appellant’s App. Vol. II p. 40. Ketcham also submitted a letter from Michiana Community Corrections stating that he had been accepted for home detention but that he needed to take care of his Marshall County and Kosciusko County cases first. Defense counsel explained that the Marshall County case had been resolved and the Kosciusko County case was close to being resolved. Defense counsel asked the trial court to sentence Ketcham to three years, with one year in jail, one year on work release, and one year on home detention.
- [6] The trial court found two aggravators: (1) Ketcham’s criminal history, including that he continued to drive while this case was pending, and (2) the injuries to Butts “go far and beyond what would have been necessary to establish serious bodily injury.” Tr. p. 18. The court found one mitigator: Ketcham pled guilty without the benefit of a plea agreement. Finding the aggravators to outweigh

the mitigator, the court sentenced Ketcham to an above-advisory term of five years, with two years executed and three years suspended to probation.

[7] Ketcham now appeals.

Discussion and Decision

[8] Ketcham contends the trial court erred in not finding several mitigators. The finding of mitigators rests within the sound discretion of the trial court, and we review such decisions only for an abuse of that discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied*. One way a trial court abuses its discretion is by not recognizing mitigators that are clearly supported by the record and advanced for consideration. *Id.*

[9] Ketcham first argues the trial court “did not discuss [his] suitability for alternative punishment.” Appellant’s Br. p. 7. In support, he cites Indiana Code section 35-38-1-7.1(b)(7), which provides that a trial court may find as a mitigator that the defendant is likely to respond affirmatively to probation or short-term imprisonment. As the State points out, this topic was discussed at sentencing. Defense counsel acknowledged that Ketcham would have to serve at least some of his sentence incarcerated:

Prior to this sentencing hearing we discussed his desire to get community corrections. I think the Court pointed out that due to the nature of the crime that he cannot go directly to community corrections. There appears to be – he has to serve some jail time. And from my research looking at the file, et cetera, I think the Court is correct. It does appear some incarceration first.

Tr. p. 13. Defense counsel also acknowledged that Ketcham had to take care of his Marshall County and Kosciusko County cases before community corrections would accept him and that one of the cases had not been resolved yet. Based on the limitations recognized by defense counsel, the court did not abuse its discretion in not finding as a mitigator that Ketcham would respond affirmatively to probation or short-term imprisonment.

[10] Ketcham next argues the trial court “did not discuss the statement given by the victim of the crime, Mr. Butts.” Appellant’s Br. p. 7. Butts provided two statements to the trial court. In the Victim Impact Statement, Butts detailed some of the long-term effects of his injuries and the financial difficulties he was experiencing due to the medical bills. Appellant’s App. Vol. II p. 43. In the second statement, Butts asked the court to exercise “leniency.” *Id.* at 40. Both statements were attached to the presentence investigation report, and defense counsel referenced them at sentencing. Tr. p. 12. Given the serious injuries to Butts, the court was not required to find his plea for leniency as mitigating.

[11] Finally, Ketcham argues the trial court failed to consider his “work history” and the hardship to his dependents as mitigators. Appellant’s Br. p. 7. Ketcham has not established that these mitigators are clearly supported by the record. At sentencing, defense counsel did not discuss Ketcham’s work history other than to say he had been employed before his incarceration. The PSI contains more detail, but it shows a spotty work history, at best. In addition, Ketcham does not have any dependents. Although Ketcham’s significant other has children,

Ketcham did not explain how his incarceration would be a hardship to them.
The court did not abuse its discretion in not finding these mitigators.

[12] Affirmed.

Tavitas, J., and Foley, J., concur.