

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Nicklas Bunch,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

December 13, 2021

Court of Appeals Case No.  
21A-CR-1010

Appeal from the Miami County  
Superior Court

The Honorable Daniel Banina,  
Judge

Trial Court Cause No.  
52D02-1911-F6-375

**Robb, Judge.**

## Case Summary and Issue

- [1] Nicklas Bunch pleaded guilty to invasion of privacy, a Level 6 felony. The trial court sentenced him to two years in the Indiana Department of Correction (“DOC”). Bunch now appeals, raising one issue for our review, which we restate as: whether the trial court abused its discretion by failing to find significant mitigating circumstances. Concluding that the trial court did not abuse its discretion, we affirm.

## Facts and Procedural History

- [2] Bunch and his ex-wife Christy Bunch have three children together who were eighteen, seventeen, and thirteen at the time of Bunch’s sentencing in this case. In September of 2018, Bunch was charged with domestic battery. Following a guilty plea, Bunch was placed on probation. As a condition of his probation, the trial court issued a no contact order prohibiting Bunch from contacting Christy or their daughters.
- [3] In October 2019, Bunch violated the no contact order. Subsequently, on November 1, 2019, the State charged Bunch with invasion of privacy, a Level 6 felony. On November 19, 2019, Bunch was arrested and then charged with possession of paraphernalia, a Class C misdemeanor. On November 9, 2020, Bunch was charged with battery resulting in bodily injury, a Class A misdemeanor; criminal mischief, a Class B misdemeanor; and residential entry, a Level 6 felony.

- [4] On March 11, 2021, Bunch pleaded guilty to invasion of privacy. Bunch’s invasion of privacy plea agreement also included pleas for violating his probation and battery resulting in bodily injury. In exchange for his guilty plea, charges of criminal mischief and residential entry were dismissed as well as two other felony causes.
- [5] At the sentencing hearing, Bunch testified that he took responsibility for his actions and was remorseful but that he wanted to get back to his family so he could provide for them. Bunch testified that his parenting was restricted to supervised visitation; however, he was working toward unsupervised visits. Further, prior to his most recent incarceration, he had been employed and paid \$230 a week in child support. Bunch also testified that prior to his incarceration he was undergoing counseling and treatment but had not received any since being incarcerated. During his incarceration Bunch began receiving medication for his depression and anxiety.
- [6] The trial court stated that Bunch was “saying the right things today and [was] sounding sincere[.]” Transcript of Evidence, Volume 2 at 41. However, the trial court also highlighted Bunch’s failure to follow through on mental health treatment and his previous violations of community corrections. The trial court found Bunch’s criminal history and the fact that he was on probation at the time of the current offense to be aggravating circumstances. *See* Appellant’s Appendix, Volume 2 at 94. The trial court did not enumerate any mitigating circumstances but found “the aggravating factors outweigh the mitigating factors.” *Id.*

[7] The trial court sentenced Bunch to two years to be served in the DOC. Bunch now appeals. Additional facts will be provided as necessary.

## Discussion and Decision

### I. Standard of Review

[8] Whether to find a mitigating circumstance lies within the discretion of the trial court, and we will not reverse unless we find that the trial court has abused its discretion. *Moore v. State*, 827 N.E.2d 631, 642 (Ind. Ct. App. 2005), *trans. denied*. We will conclude that the trial court abused its discretion if the defendant shows that the trial court ignored a mitigating circumstance that is “both significant and clearly supported by the record.” *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999). We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, or significance. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*.

### II. Mitigating Circumstances

[9] Bunch argues that the trial court “abused its discretion in failing to consider or even acknowledge the clear mitigating factors” supported by the record.<sup>1</sup> Brief

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<sup>1</sup> In Bunch’s Statement of the Issue, he states that “the trial court abused its discretion in failing to impose a sentence which would allow the continuation of [Bunch’s] self-initiated efforts at rehabilitation, reunification with his daughters and support of his family[.]” Brief of Appellant at 4. However, he fails to advance this argument in the remainder of his brief. Instead, he argues that the trial court erred by failing to acknowledge

of Appellant at 6-7. Specifically, Bunch claims that his willingness to take responsibility for his actions, his rehabilitation efforts, and his family's need to be supported were significant mitigating circumstances and clearly supported by the record.

[10] First, Bunch contends that he “acknowledged his failures and took responsibility for them.” Br. of Appellant at 8. Bunch did plead guilty; however, a guilty plea is not necessarily a significant mitigating circumstance. *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005). “[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea[.]” *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*.

[11] Bunch received a substantial benefit from his guilty plea by having multiple felony charges dismissed. *See* Tr., Vol. 2 at 16; Appellant's App., Vol. 2 at 53. Under these circumstances, we cannot say the trial court abused its discretion by failing to consider the guilty plea as a mitigating circumstance. Further, the trial court noted that Bunch “was saying the right things” and “sounding sincere” but seemingly did not conclude his remorse was a mitigating factor. *See* Tr., Vol. 2 at 41. Without evidence of some impermissible consideration by the

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mitigating factors. Therefore, we conclude any challenge to Bunch's placement in the DOC instead of probation or community corrections has been waived. *See* Ind. Appellate Rule 46(A)(8)(a).

trial court, we accept its determination of a defendant's remorse. *See Hape v. State*, 903 N.E.2d 977, 1003 (Ind. Ct. App. 2009), *trans. denied*.

[12] Second, Bunch argues the trial court failed to acknowledge that "his medications had been adjusted and were now appropriate" and that through his own initiative he continued counseling.<sup>2</sup> Br. of Appellant at 7. The trial court is permitted to consider pre-sentencing rehabilitation. *See Zavala v. State*, 138 N.E.3d 291, 300 (Ind. Ct. App. 2019), *trans. denied*. Bunch contends that his efforts at rehabilitation are mitigating; however, the trial court did not find this significant and instead noted Bunch's failed rehabilitation efforts, including two previous opportunities for mental health treatment that Bunch did not complete. *See Tr.*, Vol. 2 at 41. Thus, the record indicates that the trial court did consider Bunch's past efforts at rehabilitation and did not consider them to be mitigating.

[13] Lastly, Bunch contends that his family needs to be financially supported. Indiana Code section 35-38-1-7.1(b)(10) provides that the trial court may consider as a mitigating circumstance whether the imprisonment of the

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<sup>2</sup> To the extent that Bunch's statement that his medication has been adjusted is a contention that his mental health in general is a mitigating circumstance, we conclude the trial court did not abuse its discretion. Mental illness is not necessarily a significant mitigator; "rather, [it] is a mitigating factor to be used in certain circumstances, such as when the evidence demonstrates longstanding mental health issues or when the jury finds that a defendant is mentally ill." *Townsend v. State*, 45 N.E.3d 821, 831 (Ind. Ct. App. 2015) (citation omitted), *trans. denied*. In order for a defendant's mental history "to provide a basis for establishing a mitigating factor, there must be a nexus between the defendant's mental health and the crime in question." *Steinberg v. State*, 941 N.E.2d 515, 534 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*. Bunch has not demonstrated that his mental health issues are significant and clearly supported by the record, nor has he provided any link between his mental health and the instant offense.

defendant will result in an undue hardship to the defendant's dependents.

However, our supreme court has explained that "[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship." *Dowdell*, 720 N.E.2d at 1154.

[14] Bunch did not offer any special circumstances that would lead us to hold the trial court abused its discretion. It is indisputably true that Bunch's children will suffer hardship during his absence. However, that is true of the dependents of most incarcerated persons, and the fact that Bunch is prohibited from contacting his daughters, coupled with the fact that one daughter is an adult and they all reside with Christy leads us to conclude that their hardship will not be so severe that the trial court abused its discretion by failing to consider it a mitigating circumstance.<sup>3</sup> Therefore, we hold the trial court did not abuse its discretion in this regard.

## Conclusion

[15] We conclude the trial court did not abuse its discretion when it failed to find any significant mitigating circumstances. Accordingly, we affirm.

[16] Affirmed.

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<sup>3</sup> Bunch provides no evidence regarding Christy and his daughters' dependence on his financial support.

Bradford, C.J., and Altice, J., concur.