

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David W. Eades,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2021

Court of Appeals Case No.
20A-CR-2238

Appeal from the Warren Circuit
Court

The Honorable Hunter J. Reece,
Judge

Trial Court Cause No.
86C01-1909-F4-84

Bailey, Judge.

Case Summary

- [1] David W. Eades (“Eades”) appeals the sentence imposed upon him following his plea of guilty to two counts of Sexual Misconduct with a Minor, as Level 4 felonies.¹ We affirm.

Issues

- [2] Eades presents two issues for review:
- I. Whether the trial court abused its sentencing discretion by failing to identify Eades’s alleged mental illness as a mitigating circumstance; and
 - II. Whether his sentence is inappropriate.

Facts and Procedural History

- [3] On two occasions in the spring of 2017, Eades took his teenaged daughter, A.E., mushroom hunting in the woods of Warren County, Indiana. Eades threw down a blanket and engaged A.E. in sexual intercourse and other sexual activity. Eventually, A.E. reported the conduct to police, disclosing that she had been sexually abused by Eades for as long as she could remember.

¹ Ind. Code § 35-42-4-9(a).

[4] On September 26, 2019, the State of Indiana charged Eades with two counts of Sexual Misconduct with a Minor and two counts of Incest,² relative to his conduct with A.E. in Warren County.³ On September 30, 2020, Eades pled guilty to two counts of Sexual Misconduct with a Minor, and the Incest charges were dismissed. With the exception of a provision that the sentences would run concurrently, the plea agreement left sentencing to the discretion of the trial court.

[5] On November 6, 2020, the trial court conducted a sentencing hearing and heard testimony from the investigating detective, Eades, A.E., Eades's ex-wife, and Eades's mother. When he testified, Eades described having symptoms he associated with his childhood diagnosis of obsessive-compulsive disorder ("OCD"). In sentencing Eades, the trial court found as aggravators that the harm to A.E. was significant because Eades's conduct was prolonged, Eades had violated a position of trust, and he had ended his illicit conduct only two weeks before A.E.'s disclosure. The trial court found as the sole mitigator that Eades had pled guilty. Eades was given an aggregate sentence of eleven years, with one year suspended to probation. He now appeals.

² I.C. § 35-46-1-3.

³ He was separately charged with sexual offenses against A.E. allegedly committed in Fountain County, Indiana.

Discussion and Decision

Abuse of Sentencing Discretion

- [6] A person who commits a Level 4 felony is subject to a sentence of two years to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Eades contends that the trial court abused its sentencing discretion in imposing upon him an eleven-year sentence, with one year suspended to probation. According to Eades, he established that he suffers from a mental illness, but this was given “absolutely no consideration” by the trial court in mitigation of his sentence. Appellant’s Brief at 6.
- [7] Sentencing is left to the discretion of the trial court, and an appellate court reviews its decisions only for an abuse of that discretion. *Singh v. State*, 40 N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied*. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Id.* The finding of mitigating circumstances falls within the trial court’s discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). The trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. *Id.* at 493.
- [8] An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to show the mitigating factor is both significant and clearly supported by the evidence. *Id.* Further, if the trial court does not find the existence of a mitigating factor, it is not obligated to explain why it has

found that the factor does not exist. *Id.* A trial court abuses its discretion only if “the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.” *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490), *trans. denied*.

[9] At the sentencing hearing, Mary Eades (“Mary”) testified that Eades had been diagnosed with Tourette’s Syndrome, a neurological disorder, at age seven. Eades had reportedly exhibited, as a child, “severe trembles, shakes, and eye blinking” and he had “flopped his arm” on the ball field. (Tr. Vol. II, pg. 29.) Mary testified that Tourette’s Syndrome is often “associated with OCD,” a diagnosis also given to Eades as a child. (*Id.* at 30.) She explained that a person having OCD would experience intrusive thoughts causing extreme anxiety, an “inability to refrain from carrying out repetitive behavior” and a “diminished capacity to control motor responses.” (*Id.*) Mary acknowledged that the two clinical psychologists who had examined Eades after his arrest concluded that neither Tourette’s nor OCD “prevented him from understanding the wrongfulness of his actions.” (*Id.* at 33.) Eades testified that he had experienced “intrusive thoughts playing like movies ... so strong that [he] felt [he] had to do them.” (*Id.* at 23.)

[10] The State did not challenge Mary’s recollection of Eades’s juvenile mental health history. However, Mary acknowledged that Eades’s symptoms had improved in adulthood. She testified that Eades “took himself off medication”

and did not appear to show extreme stress until he married. (Tr. Vol. II, pg. 31.) Despite his childhood challenges, an adult Eades was a productive member of society – he had twice married, had several children, served in the Army, and was a member of the National Guard. Eades had a long history of employment; his employers included a school system, the Indiana Department of Correction, the Marion County Jail, and Kenworth. Crucially, psychologists who examined Eades as an adult had opined that neither Tourette’s nor OCD impaired his understanding of the wrongfulness of his conduct. The trial court was not obligated to credit Eades’s self-serving testimony of a lack of control. Absent a nexus between Eades’s childhood diagnoses and his incestuous conduct, we cannot say that the trial court abused its discretion in not identifying Eades’s alleged mental illness as a mitigating factor. And the court was not obligated to explain the omission. *Anglemyer*, 875 N.E.2d at 493.

Inappropriateness

[11] Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offenses and the character of the offender. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895

N.E.2d 1219, 1225 (Ind. 2008). When reviewing the appropriateness of a sentence under Rule 7(B), we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[12] Eades pled guilty to two Level 4 felonies, each having a statutory potential penalty of up to twelve years imprisonment. I.C. § 35-50-2-5.5. However, the plea agreement provided that Eades's sentences would be served concurrently, capping his exposure at twelve years. Finding several aggravators related to the effect of lengthy conduct on the victim and the violation of a position of trust, and finding a sole mitigator of the guilty plea, the trial court sentenced Eades to eleven years imprisonment, with one year suspended to probation.

[13] Regarding the nature of the offenses, a parent having control of his victim took her into isolated woods on multiple occasions, threw down the blanket which he had packed, and sexually assaulted her. When A.E. reported Eades's crimes committed in 2017, she also disclosed that Eades had routinely sexually abused her over many years. She could not provide a specific date that the abuse began, relating that the conduct had been happening as far back as she could remember. When Eades was asked by an interviewing detective to estimate whether he had engaged A.E. in intercourse more or less than 100 times, Eades indicated that he could not specify. There is nothing in the nature of the offenses that militates toward a lesser sentence.

[14] As for Eades's character, he had no prior history of criminal convictions. That said, he was charged in a different county with numerous offenses against A.E., allegedly committed when she was aged twelve and thirteen. The record does not suggest that Eades led a law-abiding life before he committed the offenses in the woods of Warren County. Moreover, he blamed his victim, telling the investigating detective that she had consented to all sexual activity. We are not persuaded that Eades's character renders his sentence inappropriate.

Conclusion

[15] Eades has not demonstrated that the trial court abused its sentencing discretion. His sentence is not inappropriate.

[16] Affirmed.

May, J., and Robb, J., concur.