

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dayana Sarahid Medina-Flores,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 20, 2022

Court of Appeals Case No.
21A-CR-2259

Appeal from the Monroe Circuit
Court

The Honorable Christine Talley
Haseman, Judge

Trial Court Cause No.
53C03-1905-MR-601

Brown, Judge.

[1] Dayana Sarahid Medina-Flores appeals her sentence for murder. We affirm.

Facts and Procedural History

[2] Medina-Flores lived in a room at a motel in Bloomington together with her husband Luis Posso and their children, including twelve-year old E.P., who was Posso's son from another relationship. On May 24, 2019, Posso took E.P. to the hospital, where E.P. was pronounced dead. In the family's motel room, law enforcement discovered a case with a padlock on it which contained all of the food in the room, "an electronic dog shock collar," "additional cordage," "a wrist or ankle restraint, almost resembling shackles," and "a length of chain with a couple of additional padlocks." Transcript Volume II at 177.

[3] An autopsy revealed that E.P. suffered severe malnutrition including sunken eyes, prominent ribs and bones, and severe wasting of soft tissue, dehydration including increased skin tenting and loss of turgor, and multiple blunt force injuries. The forensic pathologist who performed the autopsy determined that E.P. died from complications of severe malnutrition, dehydration, and multiple soft tissue injuries. The pathologist stated a tuft of hair fibers was found in E.P.'s stomach which indicated he was so starved that he would eat anything. The autopsy revealed numerous contusions and abrasions on E.P.'s head, neck, trunk, and upper and lower extremities. The pathologist stated that E.P. had lost forty to fifty percent of his weight. In text messages, Medina-Flores stated "[h]e's the one who has to give in, in attitude and behavior" and "what about me? I'm just a maid that has to abide by being with a brood of kids that aren't

mine,” and she referred to Posso’s children as her “#1 problem.” State’s Exhibit 13 at 1, 10, 14. Officers retrieved photographs from Medina-Flores’s phone which depicted E.P. chained in a bathtub. They also retrieved video recordings from her phone and Google account.

[4] On May 31, 2019, the State charged Medina-Flores with murder, neglect of a dependent resulting in death as a level 1 felony, neglect of a dependent as a level 5 felony, criminal confinement as a level 5 felony, and battery resulting in bodily injury to a person less than fourteen years of age as a level 5 felony. The State also filed a notice of intent to seek life imprisonment without parole. Medina-Flores and the State entered into a plea agreement dated May 26, 2021, which provided that Medina-Flores agreed to plead guilty to murder and the State agreed to dismiss the remaining counts and not to seek life imprisonment without parole. The agreement also stated that the State and defense counsel received assurances that the United States Attorney’s Office would not prosecute Medina-Flores if she accepted the plea offer. The trial court accepted Medina-Flores’s guilty plea.¹

[5] The trial court held a sentencing hearing at which it admitted among other evidence photographs and text messages found on Medina-Flores’s phone, recordings found on her phone and Google account, and photographs of the collars, chains, and case of food which were discovered in the family’s motel

¹ Posso and the State entered into a plea agreement pursuant to which Posso agreed to plead guilty to murder. He has not yet been sentenced. *See* Cause No. 53C03-1905-MR-602.

room. Medina-Flores stated, “[e]very day, day and night, I lament time and time again that all this happened and how I could have stopped it and that didn’t happen” and “[t]here are many broken hearts and I hope that someday those wounds can be healed.” Transcript Volume II at 199. The trial court found that the harm, injury, loss, or damage suffered by the victim was significant and greater than the elements necessary to prove the offense as an aggravating factor. The court referred to the findings of the pathologist that E.P. was severely underweight with bruises all over his body in different stages of healing, he was severely malnourished, his eyes were sunken into his eye sockets, and his ribs and bones were prominent as the fat under the skin had been depleted. It found E.P. was starved to the point that his body started to break down its own tissues for survival.

[6] The court noted the electronic dog shock collar, additional cordage, restraints, and metal chain with padlocks found in the family’s hotel room as well as the application on Medina-Flores’s phone which allowed the phone to connect to a dog shock collar. It stated that video recordings from Medina-Flores’s phone showed E.P. in a bathtub, chained to a bar on the side of the tub, with a dog collar on his neck, and wearing what appeared to be a swimsuit. It noted E.P. was chained in such a way that he could not have stood up. It noted a recording which showed that E.P.’s sister walked in the bathroom, looked at him, and paused before leaving and that Medina-Flores walked in while E.P.’s sister was in the room and did not even look at E.P. before turning and leaving the room. It further noted that the photographs found on Medina-Flores’s

phone were taken over several days and showed E.P. curled up, often in the fetal position, on the floor of the bathtub with a metal chain around his ankles which chained him to the bar on the side of the tub, that the chain on E.P.'s ankles was often situated in such a way that his feet were in the air and he could not touch the bottom of the tub with his feet, and that the photographs were taken in different bathrooms, yet the system of chaining E.P. in the tub remained consistent. The court stated that E.P.'s sister said that E.P. was kept in the bathroom every day for "almost all day and all night." *Id.* at 218. It stated Medina-Flores sent a text message that E.P. had tried to remove the handcuffs and a message twenty minutes later that she did not trust him but would keep watching. It said Medina-Flores was a willing participant in the cruel confinement and torture of E.P. The court stated another recording from Medina-Flores's phone showed her husband standing in the bathroom door with his phone in his hand and his thumb on the face of the phone, that Medina-Flores told Posso to shock E.P. so that he "sees that you're not just all talk," and that, upon this statement, he held up the phone, placed his thumb on the face of the phone, and told her that he had been shocking E.P. *Id.* at 219. The court also noted the food which was kept locked in a case in the room.

[7] In addition, the court found the fact the offense occurred in the presence or within the hearing of an individual who was under the age of eighteen, including children who were four, seven, and eleven years old, and the fact Medina-Flores was in a position of having care, custody, or control of E.P. to be aggravating factors. The court further found Medina-Flores's lack of a prior

criminal history to be a mitigating factor but stated that, in light of her actions toward E.P., it assigned limited weight to the factor. It noted that the presentence investigation report (“PSI”) indicated that Medina-Flores reported she had been abused as a child and in her prior and her current marriages and had been the victim of sexual abuse, that it considered the abuse which she described in determining her sentence, and that it gave the factor minimal weight and stated that the history of abuse which Medina-Flores described does not explain or excuse her actions and treatment of E.P.

[8] The court noted that the defense asked it to consider as a mitigator the fact Medina-Flores was an undocumented person in this country along with what Medina-Flores described as a power dynamic in her marriage, it stated that it acknowledged these factors could have placed her in a difficult situation as far as contacting the authorities for help and left her with nowhere to turn for fear of being sent back to Mexico and separated from her children, and it found that the factors did not explain her active, voluntary participation in the abuse, torture, and ultimate death of E.P. The court noted that Medina-Flores had expressed at least some remorse for her actions, said that it was not convinced the expression was sincere but was giving her the benefit of the doubt and accepted her statements as sincere, and stated that, taken as a whole with her actions, demeanor, and statements to law enforcement during the investigation, it assigned minimal weight to her expression of remorse. It found Medina-Flores cooperated during the investigation and pled guilty to the highest charge against her which prevented the need for a trial and for witnesses having to

testify, stated that it considered these factors in reaching a sentencing determination, noted that she received some benefit in return for pleading guilty, and stated that it assigned the factor some weight as a mitigator. The court stated:

I can't in any way come to an understanding of what drove you [to] commit such despicable acts on another human being, let alone a defenseless child. There was food in your hotel room. You could have chosen to give [E.P.] food and water at any time, yet you deliberately chose not to. You walked in and out of that bathroom with that 12-year-old little boy curled up, naked, bruised, and starving, lying in a bathtub, chained to the wall, at times in such a way that he could not even stand up, and you did not even look at him. . . . You actively engaged in mistreating him, including telling his father to shock him with the dog collar so that [E.P.] would know it would happen. [Y]ou tortured that boy day by day until his body turned on itself and began consuming its own organs to try to stay alive. You starved him until he was so hungry that he ate hair. He was shocked with a dog collar, chained, beaten and bruised, and denied food and water until his body could not take it anymore. . . . You can be heard telling [E.P.] to "crouch down or I will make you sleep in your underwear." [E.P.], in his child's voice, can be heard telling you "I was having a very bad dream right now." You responded to him "I don't care about your dreams" and left the room. . . . I cannot imagine any dream that this child could have had that could have possibly been worse than the reality in which he was living with you, the horrendous reality that you created for him and perpetrated upon him right up until his death just two weeks later. Your total disregard for his life, for this child's life, is astonishing and beyond my comprehension, as a Judge, as a mother, as a human being.

Id. at 230-231.

[9] The court sentenced Medina-Flores to sixty-five years. Medina-Flores filed a motion to correct error arguing the court did not give the mitigating circumstances proper weight in determining that a maximum sentence was appropriate, and the court denied the motion.

Discussion

[10] Medina-Flores argues this was her first offense and yet she received the maximum sentence. She argues, with respect to her undocumented status and the power imbalance in her relationship, that her “‘participation’ in this crime could be analogous to Patty Hearse [sic] robbing banks in the 1970’s or a woman suffering from Battered Spouse Syndrome.” Appellant’s Brief at 10. She asserts her acceptance of responsibility was a substantial benefit to the State and victims and “should not have been ignored.” *Id.* She further asserts that she did not attempt to impede the investigation. She contends that the maximum sentence should be reserved for the worst of offenders in that class and that her “sentence was inappropriate as there were many mitigators but the Trial Court still imposed the maximum sentence.” *Id.* at 12. She requests this Court to remand for resentencing or to impose an advisory sentence pursuant to Ind. Appellate Rule 7(B).

[11] Ind. 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 offense 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). Whether a sentence is inappropriate “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[12] Ind. Code § 35-50-2-3 provides that a person who commits murder shall be imprisoned for a fixed term of between forty-five and sixty-five years with the advisory sentence being fifty-five years. The Indiana Supreme Court has stated:

We have also observed that the maximum possible sentences are generally most appropriate for the worst offenders. This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the *class* of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002) (citations and quotations omitted).

[13] Our review of the nature of the offense reveals that Medina-Flores knowingly or intentionally killed her stepson E.P., who died of severe malnutrition, dehydration, and multiple soft tissue injuries. The offense was heinous. E.P. suffered numerous contusions and abrasions all over his body, he had lost forty to fifty percent of his weight, he had multiple blunt force injuries on his body of variable ages, and he had bruises on his head, neck, chest, abdomen, arms,

wrist, hand, legs, feet, buttocks, and anus and ulcerations on the sides of his feet.

[14] Our review of the character of the offender reveals that Medina-Flores pled guilty to murder almost two years after she was charged and, in exchange, the State agreed to dismiss the remaining counts and not to seek life imprisonment without parole. The plea agreement also stated that the parties received assurances that the United States Attorney's Office would not prosecute Medina-Flores if she accepted the plea offer. The PSI indicates that Medina-Flores, who was born in 1993, did not have a prior criminal history. According to the PSI, Medina-Flores reported that her father hit her and her siblings, she was sexually abused when she was nine years old by a man who was twenty-five or twenty-six years old and employed by the circus in Mexico, the sexual abuse happened two or three times, and she was later sexually abused when she was sixteen and twenty-two years old by her employers. She reported that Posso had abused her sexually, physically, and emotionally and that her previous marriage ended because there was physical abuse. The PSI states that, when asked why she decided to commit the offense, Medina-Flores "stated she 'did not decide' and 'everything was his decision' speaking of [Posso]," when asked if she threatened or hurt anyone, she replied that "she did not know how to respond to the question," and she also stated "she thinks there is a lot of crime and injustice in the world." Appellant's Appendix Volume II at 225. Medina-Flores expressed some remorse at sentencing, and the court said that it was not convinced the expression was sincere but was giving her the benefit of

the doubt and accepted her statements as sincere. We agree with the trial court that Medina-Flores's total disregard for E.P.'s life was astonishing.

[15] After due consideration, and in light of her cruel treatment of E.P. over an extended time, we conclude that Medina-Flores has not sustained her burden of establishing that her sentence is inappropriate in light of the nature of the offense and her character.²

[16] For the foregoing reasons, we affirm Medina-Flores's sentence.

[17] Affirmed.

Mathias, J., and Molter, J., concur.

² To the extent Medina-Flores argues that the court abused its discretion in sentencing her, we need not address this issue because we find that her sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant's guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate"), *trans. denied*), *trans. denied*.