MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

William T. Myers
Marion, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lance C. Abbring,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 14, 2021

Court of Appeals Case No. 21A-CR-5

Appeal from the Huntington Circuit Court

The Honorable Davin G. Smith, Judge

Trial Court Cause No. 35C01-2007-F5-256

Bailey, Judge.

Case Summary

[1] Lance C. Abbring ("Abbring") received an aggregate sentence of six years upon one count of Domestic Battery, as a Level 5 felony,[1] and one count of Resisting Law Enforcement, as a Class A misdemeanor.[2] Abbring now appeals, arguing that the trial court abused its discretion in imposing the sentence. We affirm.

Facts and Procedural History

[2] On July 26, 2020, Abbring went to a bar in Huntington with his wife, Karen Abbring ("Karen"), and consumed alcohol. Abbring got into an argument with Karen, who took a ride home. Abbring walked home. When Abbring returned to the residence, Karen was sitting outside in a gazebo area. Abbring began throwing potted plants into the gazebo area. He threw three plastic pots, which struck Karen in the legs. He also threw one ceramic pot, a shard of which cut Karen's nose. She called 9-1-1. When law enforcement arrived, Abbring appeared to be heavily intoxicated. Eventually, Abbring was informed that he was being arrested. When an officer attempted to place handcuffs on Abbring, Abbring twisted his body away and pushed against the arresting officer. The officer then restrained Abbring against a wall, subduing and arresting Abbring.

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[1] Ind. Code § 35-42-2-1.3.

[2] I.C. § 35-44.1-3-1.

[3] The State charged Abbring with Level 5 Domestic Battery, alleging that Abbring had a previous conviction of battery for his conduct against Karen. The State also charged Abbring with Class A misdemeanor Resisting Law Enforcement.

[4] A jury trial was held in late 2020, at which the court conducted an initial guilt phase concerning the offense of Class A misdemeanor Domestic Battery and the charge of Resisting Law Enforcement. The jury returned guilty verdicts. Thereafter, Abbring admitted to having a prior Domestic Battery conviction for his conduct against Karen, which elevated the Domestic Battery offense to a Level 5 felony.

[5] At a December 2020 sentencing hearing, Abbring made a statement of remorse, at one point noting that he "would never, ever intentionally harm [Karen] physically." Tr. at 122. He also admitted to having abused alcohol, stating that "[a]lcohol has been the cause of [his] problems in the legal sense since the age of 18." *Id.* at 123. Abbring requested that, if ordered to serve executed time as a part of his sentence, he be placed on home detention so that he could continue to work, earning an income and providing health insurance for Karen.

[6] Karen testified in support of placement on home detention, stating that it was critical that she have health insurance because of certain unspecified ailments. Karen testified that she would feel victimized again if Abbring was placed outside of the home. Karen also asserted that Abbring is "not a bad person" and that, although he was found guilty, "it's not him. It's alcohol." *Id.* at 116.

[7] The State focused on Abbring's criminal history, asserting that Abbring had three prior felony convictions and thirteen prior misdemeanor convictions, many of which relate to alcohol abuse. The State emphasized that Abbring committed the instant battery within weeks of completing probation for the prior battery against Karen. The State argued that the prior battery involved similar circumstances, in that both times Abbring had consumed alcohol and then gotten angry with Karen. The State also pointed out that Abbring was capable of being even more violent with Karen when consuming alcohol, with the prior battery involving Abbring punching Karen in the head. The State further noted that Abbring had violated a no-contact order issued in the instant case, which resulted in the revocation of his bond and a new pending charge.

[8] In selecting a sentence, the trial court identified one aggravating circumstance—Abbring's criminal history—and no mitigating circumstances. The trial court ultimately imposed a sentence of five years for the Level 5 felony, with two years executed and three years suspended to probation. As to the Class A misdemeanor, the court imposed a consecutive one-year sentence, with the sentence fully suspended to probation. After the trial court orally pronounced the sentence, Abbring—personally and through counsel—inquired about serving the sentence through home detention. The trial court noted that it understood the request regarding home detention and was denying that request, with the executed time to be served in the Indiana Department of Correction.

[9] Abbring now appeals.

Discussion and Decision

[10] Generally, trial courts have broad discretion in selecting a sentence. *Jackson v. State*, 105 N.E.3d 1081, 1084 (Ind. 2018). On appeal, we review a court's sentencing decision for an abuse of that discretion. *McCain v. State*, 148 N.E.3d 977, 981 (Ind. 2020). "An abuse of discretion occurs if 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.'" *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)), *clar'd on reh'g*.

[11] Indiana Code Chapter 35-38-1 requires a sentencing statement, which must include "reasonably detailed reasons or circumstances for imposing a particular sentence." *Anglemyer*, 868 N.E.2d at 491. Moreover, if the trial court identifies mitigating or aggravating circumstances, it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." *Id.* at 490. On appeal, the reasons given for the sentence, "and the omission of reasons arguably supported by the record," are reviewable for an abuse of discretion. *Id.* at 491.

[12] Abbring argues that the trial court abused its sentencing discretion by failing to identify as mitigating factors (1) his remorse and acceptance of responsibility and (2) the hardship that incarceration would cause Karen. Abbring suggests that, had the court properly identified these proffered mitigators, it would have

allowed Abbring to "serve his sentence on home detention or simple probation, rather than executing a term of imprisonment." Br. of Appellant at 9.

[13] To show an abuse of discretion in failing to identify mitigators, Abbring must "establish that the mitigating evidence is both significant and clearly supported by the record." *Id.* at 493. Notably, however, if the court "does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Id.* (quoting *Fugate v. State*, 608 N.E.2d 1370, 1374 (Ind. 1993)). Furthermore, "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id.* at 491.

Remorse and Acceptance of Responsibility

[14] Abbring directs us to his statement of allocution, alleging that he expressed genuine remorse and an acceptance of responsibility. According to Abbring, the trial court should have addressed his remorse and acceptance of responsibility, identifying the same as significant mitigating circumstances.

[15] By declining to mention Abbring's expressions of remorse and acceptance of responsibility, the trial court either determined that (1) Abbring had been insincere or (2) Abbring's proffered mitigators were not significantly mitigating.

[16] Assuming the former, we note that the trial court is in the best position to consider a statement of allocution and decide whether the defendant has been sincere—a decision akin to a credibility determination. *See Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002). We will not second-guess the trial court. *See Id.*

Indeed, "[w]ithout evidence of some impermissible consideration," we will accept its credibility determination. *Id.* As to credibility, Abbring directs us to no impermissible considerations, and we discern none. Moreover, we note that Abbring was at one point disingenuous, claiming that he "would never, ever intentionally harm [Karen] physically," Tr. Vol. 2 at 122, despite having thrown a ceramic pot in her direction and having previously punched her in the head.

[17] Assuming instead that the trial court determined that Abbring had been sincere but that his statements were not significantly mitigating, we note that a court is not obligated to explain why it declined to identify a proffered mitigator. *Anglemyer*, 868 N.E.2d at 493. Regardless, under the circumstances—where Abbring chose to again consume alcohol and direct violence toward Karen—the trial court could reasonably conclude that the expressions of remorse and acceptance of responsibility were not significant mitigators, but instead part of a cycle of conduct. All in all, we are not persuaded that the trial court abused its discretion.

Hardship upon the Victim

[18] Next, Abbring asserts that there was evidence that incarceration would inflict a hardship upon Karen. Abbring directs us to evidence that his job was still available, which included "important and necessary insurance coverage that [Karen] required to attend to her medical needs[.]" Br. of Appellant at 12. Abbring also directs us to evidence that Karen relied on his income to pay the bills, including the house payment, and would feel victimized again if he were

to be incarcerated. According to Abbring, the court should have found that the impact on Karen was a significant mitigator. Abbring also suggests that, due to the impact on Karen, the court should have placed him on home detention.

[19] Assuming *arguendo* that the trial court should have identified the impact on Karen as a significant mitigating circumstance, remand for resentencing is warranted only if "we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Anglemyer*, 868 N.E.2d at 491. In this case, there was evidence indicating that further incarceration would negatively impact Karen's financial wellbeing. However, there was also evidence indicating that, until Abbring had adequately addressed his alcohol and anger issues, Abbring posed a risk to Karen's physical wellbeing. Moreover, it is not as though the trial court overlooked Abbring's request to serve his sentence on home detention. Indeed, after the trial court orally pronounced the sentence, Abbring interjected that he "need[ed] this home detention for [his] wife[.]" Tr. at 130-31. The trial court responded as follows: "I understand your request, sir; however, I did not grant that request." *Id.* at 131. Later, Abbring again implored the court to order home detention: "Sir, I really need this home detention for my wife." *Id.* The court responded, "I understand that's your request, sir; however, I have not granted that request." *Id.* Abbring then stated, "I mean, didn't the prosecutor recommend [home detention] just now?" *Id.* The court responded, "Sir, I understand what your request is, I've not granted that request." *Id.* at 132.

[20] In light of the repeated exchanges regarding the effect of incarceration upon Karen, we are able to say with confidence that, even if the trial court should have found that a hardship upon Karen was a significant mitigator, it would have imposed the same sentence, ultimately declining to place Abbring outside of the Department of Correction. *See also, e.g.*, *Madden v. State*, 25 N.E.3d 791, 795 (Ind. Ct. App. 2015) (noting that placement outside of the Department of Correction is a matter of grace and a favor, not a right), *trans. denied*.[3]

[21] Abbring has not demonstrated an abuse of sentencing discretion.

[22] Affirmed.

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

[3] At one point, Abbring baldly asserts that the court "failed to enter a sentencing statement that includes reasonably detailed reasons for imposing [the] sentence[.]" Br. of Appellant at 11. In asserting as much, it appears that Abbring is alleging that the trial court should have provided detail regarding his proffered mitigators. As already discussed, Abbring has not shown reversible error with respect to his proffered mitigators. Moreover, to the extent Abbring is arguing that the sentencing statement was otherwise deficient, he has not developed this argument. Regardless, Abbring presents no challenge to his criminal history being identified as an aggravator. It is well-settled that a single valid aggravator supports the imposition of a sentence in excess of the advisory sentence. *See Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006).