MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Richard L. Beavers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2023

Court of Appeals Case No. 22A-CR-2770

Appeal from the Marion Superior Court

The Honorable Charnette D. Garner, Judge

Trial Court Cause Nos.
49D35-2002-F6-4785
49D35-2103-F6-7123
49D35-2203-F6-7881

Memorandum Decision by Judge Bradford
Judges May and Mathias, concur.

Bradford, Judge.

Case Summary

[1] In November of 2021, Richard Beavers pled guilty to two counts of Level 6 felony public indecency and was placed in community corrections. In March of 2022, while still placed in community corrections, Beavers was charged with Level 6 felony public indecency for actions committed outside of an Indianapolis-area gas station. Beavers eventually pled guilty to the latest charge and admitted that he had violated the terms of his community-corrections placement. The trial court accepted Beavers's guilty plea and admission, revoked Beavers's community-corrections placement, and sentenced Beavers to an aggregate 1640-day executed sentence with credit for 324 days of time served. On appeal, Beavers contends that the trial court erred by failing to advise him of the rights he was waiving by admitting to violating the terms of his community-corrections placement. Beavers also contends that the trial court abused its discretion in sentencing him and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On February 3, 2020, Beavers, "in a public place or place of public resort," knowingly or intentionally fondled his genitals and appeared in a state of nudity "with the intent to arouse or satisfy" his sexual desires in front of a home on 39th Street in Indianapolis. Appellant's App. Vol. II p. 35. A witness reported

Beavers's behavior, stating that she had observed Beavers "masturbating in her front yard as kids walked to the bus stop." Appellant's App. Vol. II p. 33. Later that day, the State charged Beavers in Cause Number 49D35-2002-F6-4785 ("Cause No. F6-4785") with two counts of Level 6 felony public indecency.

[3] On both March 3, and March 5, 2021, Beavers fondled his genitals in a public place, exposing himself to IndyGo bus drivers near the intersection of 38th Street and Sherman Drive in Indianapolis. On March 9, 2021, the State charged Beavers in Cause Number 49D35-2103-F6-7123 ("Cause No. F6-7123") with two counts of Level 6 felony public indecency.

[4] On November 29, 2021, Beavers entered into a combined plea agreement, by the terms of which he pled guilty to one count of Level 6 felony public indecency in Cause No. F6-4785 and one count of Level 6 felony public indecency in Cause No. F6-7123. In exchange for Beavers's guilty pleas, the State agreed to dismiss the remaining counts in both cause numbers. In Cause No. F6-4785, the trial court sentenced Beavers to 180 days in the Marion County Jail and seventy-six days in Marion County Community Corrections ("MCCC"). In Cause No. F6-7123, the trial court sentenced Beavers to 730 days in MCCC. The trial court ordered that the sentence imposed in Cause No. F6-7123 run consecutively to the sentence imposed in Cause No. F6-4785.

[5] While being monitored by MCCC, on March 13, 2022, Beavers fondled his genitals in a public place, *i.e.*, "at the location of 3609 East 38th Street" in

Indianapolis. Appellant's App. Vol. V p. 20. A witness "called police and pretended to be taking a picture of herself all while taking video of [Beavers] to document the behavior for police." Appellant's App. Vol. V p. 18. In addition, a MCCC employee reviewed Beavers's GPS tracking data and determined that Beavers had been "in the area of 3609 E. 38th St. for several hours that day." Appellant's App. Vol. V. p. 19. On March 23, 2022, the State charged Beavers in Cause Number 49D35-2203-F6-7881 ("Cause No. F6-7881") with one count of Level 6 felony public indecency. The next day, MCCC filed notices indicating that Beavers had violated the terms of his community-corrections placement in both Cause Nos. F6-4785 and F6-7123.

[6] During an April 27, 2022 hearing relating to all three cause numbers, the trial court, referring to the cases for which Beavers had been placed in community corrections, informed Beavers that "on two of your cases —[Cause Nos. F6-4785 and F6-7123]—those are violations. Because of that, you have the right to have a hearing in the matter[s]." Tr. p. 9. On October 24, 2022, Beavers pled guilty to public indecency in Cause No. F6-7881 and admitted that he had violated the terms of his community-corrections placement in Cause Nos. F6-4785 and F6-7123. The trial court accepted Beavers's guilty plea and admissions to the violation of the terms of his community-corrections placement. With respect to Cause No. F6-4785, the trial court revoked Beavers's community-corrections placement and sentenced him to forty-four days, with credit for forty-four days of time served. The trial court ordered that "that matter is discharged." Tr. p. 65. With respect to Cause No. F6-7123, the

trial court revoked Beavers's community-corrections placement and imposed a 730-day executed sentence with credit for 324 days of time served. With regard to Cause No. F6-7881, the trial court found Beavers guilty and sentenced him to a 910-day executed sentence. The trial court ordered that the sentence in Cause No. F6-7881 "run consecutive to" Cause No. F6-7123. Tr. p. 65.

Discussion and Decision

[7] Beavers contends that the trial court erred by failing to advise him "of the rights he waived when he admitted to violating the terms of his community[-]corrections placement" in Cause Nos. F6-4785 and F6-7123. Appellant's Br. p. 9. He also contends that the trial court abused its discretion in sentencing him and that his sentence is inappropriate.

I. Advisement of Rights

[8] For purposes of appellate review, we treat a hearing on a petition to revoke a placement in a community corrections program the same as we do a hearing on a petition to revoke probation. The similarities between the two dictate this approach. Both probation and community corrections programs serve as alternatives to commitment to the Department of Correction and both are made at the sole discretion of the trial court. A defendant is not entitled to serve a sentence in either probation or a community corrections program. Rather, placement in either is a matter of grace and a conditional liberty that is a favor, not a right.

Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999).

[9] It is well-settled that while probationers are not entitled to the full array of constitutional rights afforded defendants at trial, the Due Process Clause of the Fourteenth Amendment imposes procedural and substantive limits on the revocation of the conditional liberty created by probation. *Id.* In the probation-revocation context, this court has described a defendant's due-process rights as follows:

> There are certain due process rights, of course, which inure to a probationer at a revocation hearing. These include written notice of the claimed violations, disclosure of the evidence against him, an opportunity to be heard and present evidence, the right to confront and cross-examine adverse witnesses, and a neutral and detached hearing body. Indiana Code [section] 35-38-2-3(d) … also ensures the probationer the right to confrontation, cross-examination, and representation by counsel.

Isaac v. State, 605 N.E.2d 144, 148 (Ind. 1992) (cleaned up).

[10] In *Cox*, the Indiana Supreme Court held "that the due process requirements expressed by this court for probation revocations are also required when the trial court revokes a defendant's placement in a community corrections program." 706 N.E.2d at 549.

> As a result, a defendant in a community corrections program is entitled to representation by counsel, written notice of the claimed violations, disclosure of the opposing evidence, an opportunity to be heard and present evidence, and the right to confront and cross-examine witnesses in a neutral hearing before the trial court.

Id. at 550.

[11] In both *Hilligoss v. State*, 45 N.E.3d 1228, 1232 (Ind. Ct. App. 2015) and *Saucerman v. State*, 193 N.E.3d 1028, 1031 (Ind. Ct. App. 2022) we concluded that a trial court's failure to advise a probationer, who had admitted to having violated the terms of his or her probation, of the rights which the probationer waives by admitting to the violation amounts to a violation of the probationer's fundamental due process and entitles the probationer to a new hearing. Beavers points to these two cases in support of his claim that a new hearing is necessary because the trial court failed to properly advise him that he was waiving certain rights by admitting to the alleged violation of the terms of his community-correction placement. Beavers acknowledges that the trial court "repeatedly told [him that] his guilty plea [in Cause No. F6-7881] amounted to a community corrections violation," but argues that the trial court never informed him of "the separate rights and procedures that attach." Appellant's Br. p. 11.

[12] Specifically, Beavers asserts that he was not informed of his "right to a hearing on the violations." Appellant's Br. p. 12. A review of the record, however, indicates otherwise. Again, the record reveals that Beavers was informed during the April 27, 2022 hearing that he had a right to a hearing on the revocation petitions. Neither *Saucerman* nor *Hilligoss* specify at what point during revocation proceedings that an advisement of rights be given, but rather simply indicate that such an advisement must be given prior to the admission. *See Saucerman*, 193 N.E.3d at 1031; *Hilligoss*, 45 N.E.3d at 1231–32. We agree with the State that "[a]s [Beavers] had been made aware of his right to have a

hearing on his violations at an earlier date, prior to his admission, his due process rights were not violated." Appellee's Br. p. 16.

[13] Moreover, in addition to the repeated advisements that his guilty plea in Cause No. F6-7881 would result in a finding that he had violated the terms of his community-corrections placements in Cause Nos. F6-4785 and F6-7123, at the time Beavers pled guilty and admitted to the violation, Beavers was informed that he had the right to a trial, to confront and cross-examine all witnesses, to remain silent, and to have the criminal allegations proven beyond a reasonable doubt. These advisements, combined with the earlier advisement that Beavers was entitled to a hearing on the violation and that a guilty plea in the new criminal case would result in a finding that he had violated the terms of his community-corrections placement, sufficiently advised Beavers of his right to have a fact-finder determine whether the State's evidence was sufficient to prove not only the new criminal offense, but also that he had violated the terms of his community-corrections placement. Thus, looking at the record as a whole, we cannot say that the trial court failed to adequately inform Beavers of his rights, specifically his right to a hearing on the revocation petition.

II. Sentencing

[14] Given that the sentence imposed in Cause No. F6-4785 has been completed and the case has been discharged, Beaver's challenge to his sentence relates only to the sentences imposed in Cause Nos. F6-7123 and F6-7881. In these cases, Beavers was convicted of a Level 6 felony offense and admitted to violating the

terms of his community-corrections placement relating to another Level 6 felony offense. Indiana Code section 35-50-2-2.2(b) provides that a person who commits a Level 6 felony "shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." With respect to Cause No. F6-7881, Beavers was sentenced to 910 days, *i.e.*, two and one-half years. With the respect to Cause No. F6-7123, Beavers was sentenced to 730 days, *i.e.*, two years. As such, Beavers was sentenced to a maximum sentence in Cause No. F6-7881 and an enhanced sentence in Cause No. F6-7123.

A. Abuse of Discretion

[15] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). "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." *Id.* (quotation omitted).

> We review for an abuse of discretion the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand 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) (internal citation and quotation omitted), *trans. denied*. "A single aggravating circumstance may be sufficient to enhance a sentence." *Id.* at 417.

[16] At sentencing, the trial court found the following aggravating factors: Beavers's criminal history, which included more than ten public indecency convictions; his numerous prior probation and community-corrections violations; and that Beavers had been found to be a "very high risk" to reoffend. Appellant's App. Vol. V p. 86. The trial court found Beavers's remorse to be a mitigating factor. The trial court noted, however, that although Beavers had been given "opportunity after opportunity to … participate in treatment, whether that's mental health[-]treatment, um, treatment to address the underlying issues that are causing you to pick up all of these public[-]indecency cases, substance[-]abuse treatment," the trial court had not "ever seen a time where" Beavers had successfully completed any form of treatment. Tr. pp. 63–64.

[17] In arguing that the trial court abused its discretion in sentencing him, Beavers asserts that the trial court abused its discretion by failing to find two proffered mitigating factors. Although a sentencing court must consider all evidence of mitigating factors offered by a defendant, the finding of mitigating factors rests within the court's discretion. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002).

> A court does not err in failing to find mitigation when a mitigation claim is highly disputable in nature, weight, or significance. While a failure to find mitigating circumstances clearly supported by the record may imply that the sentencing court improperly overlooked them, the court is obligated neither to credit mitigating circumstances in the same manner as would the defendant, nor to explain why he or she has chosen not to find mitigating circumstances.

Id. (citations and quotations omitted). An allegation that the trial court failed to find a mitigating factor "requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999).

1. Guilty Plea

[18] In arguing that the trial court abused its discretion by failing to find his guilty plea to be a significant mitigating factor, Beavers asserts that because he pled guilty "to an open plea," the "only possible benefit for [his] plea was consideration [of his plea] as a mitigator by the court." Appellant's Br. p. 13. Beavers also asserts that his expression of remorse constituted a separate mitigating factor. Thus, he claims that his guilty plea was significant and should have been credited as such.

[19] As the State points out, however, the Indiana Supreme Court has held that "[a] guilty plea is not automatically a significant mitigating factor." *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). Further, " a guilty plea may not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one." *Brown v. State*, 907

N.E.2d 591, 594 (Ind. Ct. App. 2009). In this case, the State's evidence against Beavers was strong. A witness had recorded a video of Beavers's criminal act, and GPS data indicated that he had been at the location for multiple hours on the date in question. Thus, his decision to plead guilty and spare himself a trial can reasonably be categorized as a pragmatic decision that is not entitled to significant mitigating weight.

2. Mental Illness

[20] Beavers further argues that the trial court abused its discretion by failing to find his mental illness to be a mitigating factor because his mental-health issues were both significant and well-documented. Beavers asserts that "by ignoring his mental[-]health diagnosis, the trial court erased important context for why Beavers repeatedly engages in behavior he regrets" and "[t]he challenges Beavers faces daily due to his mental illnesses should have been acknowledged by the trial court." Appellant's Br. p. 22.

[21] Again, "[a] trial court is not obligated to weigh or credit mitigating factors in the manner a defendant suggests." *Scott v. State*, 840 N.E.2d 376, 382 (Ind. Ct. App. 2006), *trans. denied*. Furthermore, a trial court is not required to find mental illness to be a mitigating factor that is always entitled to significant mitigating weight. *See Ousley v. State*, 807 N.E.2d 758, 762 (Ind. Ct. App. 2004). In *Belcher v. State*, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019), *trans. denied*, we concluded that the trial court had acted within its discretion in finding that Belcher's mental illness was not entitled to significant mitigating weight based on evidence indicating that Belcher had been given the

opportunity for treatment and rehabilitation but had failed to take advantage of the opportunity.

[22] We do not agree with Beavers's assertion that the trial court completely ignored his mental-health issues in sentencing him. The trial court acknowledged that Beavers had presented argument relating to situations that "triggered him into acting out" but noted that Beavers had failed to take advantage of opportunities to participate in treatment, including mental-health treatment, "treatment to address the underlying issues that are causing [him] to pick up all of these public[-]indecency cases," and substance-abuse treatment. Tr. p. 63. The trial court further noted that one of the reasons that Beavers had been placed in community corrections in Cause Nos. F6-4785 and F6-7123 was to allow him to seek mental-health treatment, but that he had failed to do so. It is apparent to us that rather than overlooking Beavers's mental health, the trial court decided that it was not entitled to significant mitigating weight. That was the trial court's call, and we will not second-guess the trial court's decision. As such, we cannot say that the trial court abused its discretion in this regard.

B. Appropriateness

[23] Indiana Appellate Rule 7(B) provides that "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the

offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[24] While being monitored by MCCC, on March 13, 2022, Beavers fondled his genitals in public view at a gas station in Indianapolis. At the time he committed this act, he was placed in community corrections for similar acts which had been charged under two other cause numbers. Beavers's actions constituted felonies by virtue of prior criminal convictions for similar acts. While Beavers asserts that his actions were not "particularly egregious," Appellant's Br. p. 23, we cannot help but observe that Beavers has continued to engage in such behavior, even after amassing numerous convictions for similar behavior. To say the least, Beavers should have known that exposing and fondling oneself in public amounts to punishable, criminal behavior in Indiana.

[25] Beavers has also amassed a substantial criminal history. Beginning in 1996, his criminal history includes six convictions in Ohio, for which the record does not differentiate as either misdemeanor or felony. Beaver's criminal history also includes at least seventeen misdemeanor convictions and nineteen felony convictions. Of these prior convictions and not counting either of the convictions in Cause Nos. F6-4785 or F6-7123, Beavers has amassed ten prior convictions, and numerous other arrests, for public indecency. Beavers has also committed at least eighteen prior violations of probation or community

corrections. Beavers was also found to be a "very high" risk to reoffend. Appellant's App. Vol. V. p. 86. To say the least, Beavers's criminal history is extensive and reflects poorly on his character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (providing that even a minor criminal history is a poor reflection of a defendant's character). Beavers has also demonstrated an unwillingness to participate in mental-health or substance-abuse treatment or to reform his behavior to conform to the laws of this State. Consequently, Beavers has failed to convince us that his sentence is inappropriate.

[26] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.