

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.



ATTORNEY FOR APPELLANT

Jennifer L. Koethe
Raleigh, North Carolina

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Angela N. Sanchez
Assistant Chief Counsel of Appeals

Lauren Parmley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kellie J. Cannon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 25, 2022

Court of Appeals Case No.
21A-CR-735

Appeal from the LaPorte Circuit
Court

The Honorable Thomas J. Alevizos,
Judge

Trial Court Cause No.
46C01-1805-F1-445

Baker, Senior Judge.

Statement of the Case

- [1] Kellie J. Cannon appeals the sentence the trial court imposed after she pleaded guilty to aiding in child molesting by a person at least twenty-one years of age, a Level 1 felony,¹ and promotion of human trafficking of a minor, a Level 3 felony.² We affirm.

Issues

- [2] Cannon raises two claims, which we restate as:
- I. Whether the trial court erroneously disregarded a mitigating sentencing circumstance.
 - II. Whether Cannon's sentence is inappropriate in light of the nature of the offense and Cannon's character.

Facts and Procedural History

- [3] Cannon has three children. Her youngest child was fathered by Rusty Reuille, with whom she had been in a relationship for nine years. She knew Reuille watched child pornography. Cannon sent Reuille pornographic pictures of her oldest child, twelve-year-old J.L., at Reuille's request.
- [4] In December 2017, Cannon took J.L. to Reuille's home. The purported reason for the visit was so that J.L. could have a play date with one of Reuille's

¹ Ind. Code §§ 35-42-4-3 (2015) (child molestation), 35-41-2-4 (1977) (aiding, inducing, or causing an offense).

² Ind. Code § 35-42-3.5-1 (2017).

children. In fact, Reuille had told Cannon in previous discussions and text messages to bring J.L. to his home so that he could have sex with J.L., and Cannon understood that she was bringing J.L. to Reuille for that purpose. Cannon had objected to Reuille's demands, but he threatened to stop seeing her if she did not comply.

[5] On the day in question, Reuille had sexual intercourse with J.L. and recorded it. Cannon was present and directed J.L. to submit to sex with Reuille.

Cannon brought J.L. back to Reuille's home to have sex with him on three other occasions. Reuille recorded audio of the later incidents. In some of the recordings, J.L. asked to stop the abuse and complained that she was in pain. Cannon merely told her it would be over soon and offered to give her money, ice cream, or data for her phone plan in exchange for complying with Reuille. Later, a forensic search of Reuille's three mobile phones revealed pictures of J.L. in the nude, along with recordings of the sexual abuse.

[6] The abuse of J.L. was reported to the authorities. Cannon was initially uncooperative with the investigators and demanded that she be present with J.L. for any interview. During the first interview, J.L. did not disclose Reuille's sexual assaults. She later revealed the abuse, stating that she had not disclosed the abuse during the first interview because her mother had instructed her not to talk about it.

[7] During a later interview with police, in which Cannon discussed Reuille's abuse of J.L., Cannon stated that she had given her daughter melatonin prior to the

sexual assaults in an attempt to calm her down. She also minimized the number of occurrences of the abuse, stating it had happened only twice rather than four times.

[8] On May 3, 2018, the State charged Cannon with aiding in child molesting by a person over twenty-one years of age, a Level 1 felony;³ two counts of promotion of human trafficking of a minor, both Level 3 felonies; and neglect of a dependent, a Level 6 felony. An initial hearing was held on May 4, 2018, during which the trial court ordered a competency evaluation for Cannon.

[9] Subsequently, three medical professionals evaluated Cannon and filed reports with the trial court. The court determined she was not competent to understand the proceedings or to participate in her defense. Accordingly, the court ordered that Cannon be placed in the custody of the Division of Mental Health and provided with treatment. After treatment, Cannon was found to be competent, and this case resumed.

[10] The case was scheduled for trial on December 2, 2019, and the State filed three motions in limine and proposed jury instructions as the trial date approached. Two days before trial, Cannon attempted to plead guilty to some of the charges, but the trial court rejected her plea. On the date the trial was to begin, Cannon offered to plead guilty to Level 1 felony aiding in child molesting and one count of Level 3 felony promotion of human trafficking of a minor. The State

³ Reuille committed suicide before he could be arrested.

dismissed the other two charges. The trial court accepted Cannon's plea and later sentenced her to serve a total of thirty-nine years on the two convictions. This appeal followed.

Discussion and Decision

I. Mitigating Sentencing Factors

[11] Cannon claims the trial court erred in failing to recognize as a mitigating factor that Reuille coerced her into committing the offenses. Sentencing decisions are within the discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Green v. State*, 65 N.E.3d 620, 635 (Ind. Ct. App. 2016), *trans. denied*. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Barker v. State*, 994 N.E.2d 306, 311 (Ind. Ct. App. 2013), *trans. denied*.

[12] One way that a trial court may abuse its sentencing discretion is by omitting from the sentencing statement reasons that are clearly supported by the record and advanced for consideration. *Id.* But a trial court is not obligated to accept a defendant's argument concerning what constitutes a mitigating factor. *Green*, 65 N.E.3d at 636. And the defendant bears the burden of establishing that the mitigating evidence is both significant and clearly supported by the record. *Id.*

[13] Indiana Code section 35-38-1-7.1(b)(4) (2015) provides that mitigating sentencing circumstances can include "substantial grounds tending to excuse or justify the crime, though failing to establish a defense." At her guilty plea hearing and at sentencing, Cannon stated that Reuille had physically and

sexually abused her, and she was afraid that he would hurt her, J.L., and her other children if she did not facilitate and cooperate in his sexual abuse of J.L. In response, the State pointed to recordings of Reuille's sexual assaults of J.L., in which Cannon did not appear to be upset or distressed at what she was witnessing. The trial court, after reviewing those recordings and the recording of Cannon's guilty plea hearing, stated that he did not find Cannon's allegations of coercion to be truthful. The trial court observed her demeanor throughout the proceedings and was in a better position to evaluate her sincerity. *See Barker*, 994 N.E.2d at 312 (no abuse of discretion in rejecting Barker's claim of remorse as a mitigating circumstance; trial court heard his argument and weighed his credibility).

[14] Cannon claims the trial judge misstated the record by claiming he had not heard her mention coercion prior to her guilty plea hearing, when in fact she had repeatedly discussed Reuille's coercion during her competency evaluations. Even if the trial court did overlook the competency reports' discussion of coercion, the reports were derived from Cannon's own statements, which the trial court did not find credible. The trial court did not abuse its sentencing discretion.

II. Inappropriateness Review

[15] Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of sentencing decisions. *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019) (citing Indiana Constitution article 7, sections 4 and 6). This sentencing authority is

implemented through Indiana Appellate Rule 7(B), which provides that we “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.”

[16] The principal role of sentencing review under Rule 7(B) is to attempt to leaven the outliers. *Shepherd v. State*, 157 N.E.3d 1209, 1224 (Ind. Ct. App. 2020), *trans. denied*. The defendant bears the burden of persuading the reviewing court that the sentence imposed is inappropriate. *Id.*

[17] At the time Cannon committed her offenses, the maximum sentence for a level 1 felony was forty years, the minimum sentence was twenty years, and the advisory sentence was thirty years. Ind. Code § 35-50-2-4 (2014). For a Level 3 felony, the maximum sentence was sixteen years, the minimum sentence was three years, and the advisory sentence was nine years. Ind. Code § 35-50-2-5 (2014). The trial court imposed the advisory sentence on each conviction, to be served consecutively, for a total sentence of thirty-nine years. Since the advisory sentence is the starting point the General Assembly has selected as an appropriate sentence for the offense committed, the defendant bears a particularly heavy burden in persuading us that the sentence is inappropriate when the trial court imposes the advisory amount. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[18] Cannon asks the Court to order her sentences to be served concurrently “and/or to suspend a portion of her sentence.” Appellant’s Br. p. 24. We

cannot agree. Regarding the nature of the offenses, Cannon transported her twelve-year-old daughter to her boyfriend's home to allow him to sexually abuse her. Further, she gave her daughter melatonin to calm her in advance of the rape, and she was present for this and subsequent assaults, during which she attempted to bribe her daughter into compliance with Reuille's demands by offering money, mobile phone minutes, and ice cream.

[19] Cannon argues that she was coerced by Reuille into committing the offenses, based on his history of abusing her physically and sexually, as well as her fears that he would harm all of her children. The trial court, in assessing her credibility, did not find her claims of coercion to be truthful, especially when contrasted with a recording of one of J.L.'s assaults, in which Cannon did not appear to be upset or in distress. We also note that there is no evidence that Cannon attempted to contact law enforcement before taking J.L. to be assaulted by Reuille.

[20] As for the character of the offender, Cannon was thirty-eight at the time of the sentencing hearing. Cannon notes she has no formal criminal history, but we consider that point to be outweighed by the uncharged criminal conduct present in the record here, which includes: (1) transporting J.L. to be sexually assaulted by Reuille several other times, in addition to the incident for which she was convicted; and (2) sending nude photographs of J.L. to Reuille.

[21] Cannon notes that she pleaded guilty, but a guilty plea "may not be significantly mitigating" when the defendant receives a substantial benefit in

return for the plea. *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017). Here, the State dismissed two felony charges after Cannon pleaded guilty to two other felony charges. In addition, Cannon’s guilty plea did not conserve the prosecutor’s or trial court’s resources because she waited until the day of trial to enter her plea.

[22] Next, Cannon claims she had a traumatic childhood, experiencing physical and sexual abuse in a series of foster homes. “Evidence of a difficult childhood warrants little, if any, mitigating weight.” *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007). Finally, Cannon notes that she has a history of mental illness, including post-traumatic stress disorder and depression. When considering the weight to be given to a defendant’s mental illness, we consider factors including “the extent of the defendant’s inability to control his or her behavior due to the disorder or impairment.” *Lopez v. State*, 869 N.E.2d 1254, 1259 (Ind. Ct. App. 2007), *trans. denied*. Cannon does not present any argument that her mental illness rendered her unable to control her behavior in these circumstances. In short, she has failed to persuade us that her advisory sentences, served consecutively, are inappropriate.

Conclusion

[23] For the reasons stated above, we affirm the judgment of the trial court.

[24] Affirmed.

Riley, J., and Vaidik, J., concur.