

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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James Michael Miller,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

March 13, 2023

Court of Appeals Case No.  
22A-CR-1865

Appeal from the  
Noble Circuit Court

The Honorable  
Michael J. Kramer, Judge

Trial Court Cause No.  
57C01-2106-F5-43

**Memorandum Decision by Judge Foley**  
Judges Robb and Mathias concur.

**Foley, Judge.**

[1] James Michael Miller (“Miller”) was found guilty by a jury of Level 5 felony operating a motor vehicle after forfeiture of license for life<sup>1</sup> and admitted to being a habitual offender. The trial court sentenced Miller to an aggregate sentence of six years in the Indiana Department of Correction (“DOC”). Miller claims that the trial court abused its discretion by failing to identify and consider a mitigating factor when it sentenced him. Finding any error harmless, we affirm.

### **Facts and Procedural History**

[2] On June 14, 2021, Chief Deputy Renkenberger (“Deputy Renkenberger”) observed Miller driving in an alley. Due to prior dealings with Miller over the years, Deputy Renkenberger knew that Miller only possessed an Indiana identification card. As a result, Deputy Renkenberger initiated a traffic stop and made contact with Miller. Deputy Renkenberger requested to see Miller’s driver’s license and vehicle registration. Miller informed Deputy Renkenberger that his license was suspended for life. Deputy Renkenberger conducted a routine record check through the Indiana Bureau of Motor Vehicles and learned that Miller was operating the motor vehicle while his driving privileges were suspended for life.

[3] On June 15, 2021, the State charged Miller with Level 5 felony operating a motor vehicle after forfeiture of license for life. The State also sought habitual

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<sup>1</sup> Ind. Code § 9-30-10-17(a)(1).

offender status. On June 28, 2022, a jury found Miller guilty of Level 5 felony operating a motor vehicle after forfeiture of license for life. Miller waived his right to a jury trial for the habitual offender portion of his trial and admitted to being a habitual offender. On August 1, 2022, the trial court sentenced Miller to an aggregate sentence of six years in the DOC: three years for the Level 5 felony enhanced by three years for being a habitual offender. Miller now appeals.

## Discussion and Decision

- [4] Miller claims that the trial court abused its discretion when it found that his admission to being a habitual offender was an aggravating factor, rather than a mitigating factor, for sentencing purposes. Sentencing decisions are within the sound discretion of the trial court and this court reviews only for an abuse of discretion. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (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.” *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006) (quoting *In re L.J.M.*, 473 N.E.2d 637, 640 (Ind. Ct. App. 1985)). A trial court abuses its discretion when it: (1) relies on aggravating and mitigating factors not supported in the record; (2) omits reasons that are clearly supported in the record; (3) uses a legally improper reason to impose a sentence; or (4) fails to enter a sentencing statement entirely. *Anglemeyer*, 868 N.E.2d at 491. “An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to

establish that the mitigating evidence is both significant and clearly supported by the record.” *Id.* at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)).

[5] We reiterate that a trial court is not obligated to accept a defendant’s claim as to what constitutes a mitigating circumstance. *See Roscoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000). Any mitigating weight attributable to Miller’s admission to the habitual offender enhancement was minimal, as Miller did not “conserve [ ] the State’s resources” since his admission was subsequent to his trial where he was found guilty of the Level 5 felony. *Jackson v. State*, 973 N.E.2d 1123, 1131 (Ind. Ct. App. 2012) (In contrast, “a guilty plea [to the underlying crime] can be a significant mitigating factor when the State reaps a substantial benefit from the defendant’s act of pleading guilty[ ]”). Miller’s admission “only relieved the State of its burden of proving the nature and chronology of [his] prior convictions” which involves far fewer resources than Miller’s Level 5 felony trial. *Id.*

[6] To the extent the trial court may have improperly identified Miller’s habitual offender admission as an aggravator<sup>2</sup>, any error was harmless. When sentencing Miller, the trial court considered his extensive criminal history. It

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<sup>2</sup> At the outset of the sentencing statement, the trial court stated “. . . I guess I do consider the uh, guilty plea as far as the habitual, um, only that part uh, as far as aggravating factors . . . .” Tr. Vol. 2 p. 165. The trial court then moved on to discuss the facts of the case, Miller’s extensive criminal history and the sentencing decision. From that statement alone, it is unclear whether the trial court considered Miller’s admission to be an aggravator.

had “been twenty-nine (29) years since [Miller’s] first felony and in the last twenty-two (22) years[.]” Miller committed crimes “on a fairly regular basis[.]” Tr. Vol. 2 p. 165. In fact, Miller had two more “charges pending against [him] at [that] very moment,” *id.* at 151, and this was not his first time before this same court.<sup>3</sup> Given Miller’s frequent contacts with the judicial system, the trial court stated he would have been “completely justified in giving [Miller] six (6) and six (6)[.]” *Id.* at 166. However, the trial court sentenced Miller to three years on his habitual offender admission, which is three years below the maximum possible sentence for an enhancement on his offense and three (3) years for the Level 5 felony.<sup>4</sup> We can “say with confidence that the trial court would have imposed the same sentence” even if it identified Miller’s admission as a mitigator. *Anglemyer*, 868 N.E.2d at 491.

[7] Therefore, we conclude that the trial court did not abuse its discretion in sentencing Miller, and any error in sentencing was harmless.

[8] Affirmed.

Robb, J., and Mathias, J., concur.

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<sup>3</sup> “[I]t’s gotten to the point where we just need to lock you up just to keep you from committing crimes . . . . I did have hope that you would learn your lesson from having violated drug court and [ ] you seemed very remorseful then but you’ve just continued on your crime spree after getting out from that case.” Tr. Vol. 2 p. 166.

<sup>4</sup> Indiana Code section 35-50-2-6(b) provides that “[a] person who commits a Level 5 felony . . . shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.”