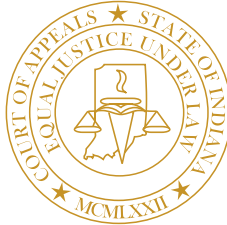


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Damien Monte Hagan,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 3, 2024

Court of Appeals Case No.
24A-CR-888

Appeal from the
Lake Superior Court

The Honorable
Gina L. Jones, Judge

Trial Court Cause No.
45G03-2107-F1-42

Memorandum Decision by Senior Judge Baker
Judges Mathias and Bradford concur.

Baker, Senior Judge.

Statement of the Case

- [1] Damien Monte Hagan appeals from the trial court’s sentencing order after he pleaded guilty to one count of Level 3 felony aggravated battery, contending the court abused its discretion by failing to find his lack of criminal history a significant mitigating factor during sentencing. Concluding that the trial court nonetheless would have imposed the same sentence given the gruesome nature of the crime, we affirm.

Facts¹ and Procedural History

- [2] On July 15, 2021, Officer Aaron Ridgway of the Merrillville Police Department responded to a dispatch involving a shooting. Andrial and Clinton Blackwell reported the following events to Officer Ridgway. Andrial and Clinton drove to an Auto Zone store. Once there, Andrial saw her co-worker Hagan sitting in a

¹ Hagan stipulated to a factual basis for his guilty plea. *See* Appellant’s App. Conf. Vol. II, p. 50. And the presentence investigation report included the probable cause affidavit. *See id.* at 19 (probable cause affidavit), 65 (PSI reference to probable cause affidavit). Hagan’s only correction to the report was a modification related to credit days. *See* Tr. Vol. 2, pp. 25-26. Therefore, we recite the facts from those sources in our decision.

vehicle parked in the parking lot. She remarked to her husband that Hagan either owed money to her or had stolen money from her.

- [3] Clinton exited his vehicle and approached Hagan's vehicle to talk with him. When he identified himself to Hagan, he observed a pistol resting on Hagan's lap. As Clinton backed up, Hagan racked the slide of the pistol ejecting a live round. Hagan then racked the slide once more and began firing at Clinton. The first shot hit Clinton's left leg and caused him to drop to the ground. Hagan continued to fire at him. Clinton moved to the opposite side of a nearby SUV to escape from Hagan and the gunfire. But Hagan followed Clinton, moving closer to him while continuing to shoot at him. At some point, Hagan stopped shooting, looked over at Andrial, and fled in his car.
- [4] Clinton was transported to a hospital for treatment. He suffered at least eleven wounds, including seven wounds to his right leg, two wounds to his left leg, a wound to his upper left arm, and a wound to his left middle finger.
- [5] The State charged Hagan with one count of Level 1 felony attempted murder, one count of Level 2 felony aggravated battery, one count of Level 5 felony battery by means of a deadly weapon, and one count of Level 5 felony battery resulting in serious bodily injury. The parties entered into a plea agreement, which called for Hagan to plead guilty to one count of Level 3 felony aggravated battery. And Hagan admitted to a stipulated factual basis attached to the agreement. The trial court accepted the plea agreement, which provided

that the parties would be free to argue the issue of sentencing. The trial court also ordered the preparation of a presentence investigation report.

- [6] At the conclusion of the sentencing hearing, the trial court sentenced Hagan to twelve years executed in the Department of Correction, to be served consecutively to the one-year probation sentence Hagan received pursuant to the terms of his guilty plea for Class A misdemeanor unlawful carrying of a handgun that was charged in another case. The sentencing range for a Level 3 felony is a minimum term of three years, with a maximum term of sixteen years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5(b) (2014).

Discussion and Decision

- [7] Hagan appeals from his sentence, arguing that the trial court abused its discretion by failing to consider and evaluate his lack of prior criminal history. And he takes issue with the trial court's consideration of his criminal conduct, occurring after the present offense.

- [8] "Sentencing decisions rest within the sound discretion of the trial court." *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). "An abuse of discretion will be found where 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.* "A trial court may abuse its discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a

sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* Hagan’s argument focuses on the third manner in which a trial court can abuse its discretion.

[9] “The finding of mitigating factors is not mandatory and rests within the discretion of the trial court, and the trial court is not required to accept the defendant’s arguments as to what constitutes a mitigating factor.” *Williams v. State*, 997 N.E.2d 1154, 1163 (Ind. Ct. App. 2013). “Further, the trial court is not required to give the same weight to proffered mitigating factors as the defendant does, nor is it obligated to explain why it did not find a factor to be significantly mitigating.” *Id.* at 1163-64. And “a defendant’s lack of criminal history can no longer be said to always be a *significant* mitigating factor.” *Id.* at 1164.

[10] “When a trial court enhances a presumptive sentence, it must state its reasons for doing so, identifying all significant aggravating and mitigating factors; stating the facts and reasons that lead the court to find the existence of each such circumstance; and demonstrating that the court has evaluated and balanced the aggravating and mitigating factors in determining the sentence.” *Bacher v. State*, 722 N.E.2d 799, 801 (Ind. 2000). “The trial court must state these reasons in order to guard against arbitrary sentences and to provide an adequate basis for appellate review.” *Id.*

[11] At the sentencing hearing, Hagan’s counsel argued that “Mr. Hagan has no felony convictions nor misdemeanor convictions.” Tr. Vol. 2, p. 34. And on appeal, Hagan argues that “[c]onspicuously missing from the list of mitigating factors [in the trial court’s written sentencing order] is the defendant’s lack of any criminal history.” Appellant’s Br. p. 8. The State argued that Hagan “has had three different instances where he was charged with things after he was on bond for this case.” Tr. Vol. 2, p. 32. And on appeal, the State argues that the “trial court was not obligated to give weight to [Hagan’s] alleged lack of a criminal history.” Appellee’s Br. p. 8. The State also recites the record of Hagan’s contacts with the criminal justice system.

[12] Hagan’s juvenile history began in 2015 with an informal adjustment for having been charged with what would be the criminal offense operating a vehicle without a license and false reporting if committed by an adult. But that informal adjustment was successfully completed. In April 2021, Hagan was charged as an adult with possession of cannabis and unlawful use of a weapon, but the charges ended in a nolle prosequi. Hagan’s next offense was the present offense. However, in October 2021, while he was on bond for this offense, Hagan was charged with Class C misdemeanor possession of marijuana, which was successfully resolved by a pretrial diversion agreement. And in November 2022, while still on bond in the present case, Hagan was charged with one count of Class A misdemeanor unlawful carrying of a handgun. That charge was resolved by plea agreement, resulting in a sentence of one year of

probation, which was imposed at the same time as the sentence in the present case.

[13] Hagan observes that the trial court did not include a statement about his lack of criminal history in its written sentencing order, contending “[t]he trial court erred in failing to consider” it. Appellant’s Br. p. 8; *see also*, Appellant’s App. Vol. II, p. 89 (sole sentencing order mitigator: “The defendant admitted his guilt by way of a plea agreement, thus saving the Court and the [taxpayers] of the county the time and expense of a trial.”). And he says it is reversible error for the court to overlook it. *See* Reply Br. p. 5 (citing *Jones v. State*, 705 N.E.2d 452, 454 (Ind. 1999)). However, in the oral sentencing statement, when discussing mitigating circumstances, the trial court said, “I am not accepting that he had no criminal history because of all of the things that happened, thereafter[,]” meaning the court took into consideration the criminal charges filed against Hagan after the present case was filed against him. Tr. Vol. 2, pp. 38-39.

[14] “In reviewing a sentencing decision in a non-capital case, we are not limited to the written sentencing statement but may consider the trial court’s comments in the transcript of the sentencing proceedings.” *Corbett v. State*, 764 N.E.2d 622, 631 (Ind. 2002). The trial court did not fail to consider Hagan’s lack of criminal history. Rather, the court did not assign the same weight to that proffered mitigator as Hagan suggested. And here, the court explained why it discounted that proffered mitigator even though it was not required to do so.

- [15] To the extent Hagan disagrees with the trial court’s consideration of crimes committed after the present charge, a charge pending at the time of sentencing is a proper aggravating circumstance “and may be considered by a sentencing court as being reflective of the defendant’s character and as indicative of the risk that he will commit other crimes in the future.” *Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991). Thus, the court considered Hagan’s lack of criminal history but did not find it to be a significant mitigating factor.
- [16] As for Hagan’s argument that the trial court should have acknowledged his lack of criminal history and evaluated it in its written sentencing order, we can say with confidence that the trial court nevertheless would have imposed the same sentence. *See Anglemeyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g by Anglemeyer v. State*, 875 N.E.2d 218 (Ind. 2007) (when trial court omits reasons clearly supported by record and advanced for consideration “remand for resentencing may be the appropriate remedy 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.”).
- [17] The trial court noted that “[t]he harm, injury, loss, or damage suffered by [Clinton] was significant and greater than the elements necessary to prove the commission of the offense.” Tr. Vol. 2, p. 38. The court also noted that Hagan “had recently violated [the] conditions of [his] pretrial release” *Id.* And the court found the gruesome nature of the offense and the harm to the victim was a “significant aggravating factor” which “shocks the [conscience] of any

reasonable person . . .” *Id.* Ultimately, the court found the “aggravators outweigh the mitigators.” Appellant’s App. Conf. Vol. 2, p. 90.

[18] “A single aggravating circumstance may be sufficient to enhance a sentence.” *Hackett v. State*, 716 N.E.2d 1273, 1278 (Ind. 1999). Here, the trial court identified three valid aggravators. Any one of the aggravating circumstances, and all of them combined, supports Hagan’s slightly enhanced sentence.

[19] We can say with confidence that the trial court would have imposed the same sentence had it noted Hagan’s lack of prior criminal history in its written sentencing order.

Conclusion

[20] In light of the foregoing, we affirm the trial court’s sentencing decision.

[21] Affirmed.

Mathias, J., and Bradford, J., concur.

ATTORNEY FOR APPELLANT

R. Brian Woodward
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

J.T. Whitehead
Deputy Attorney General
Indianapolis, Indiana