

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Raquel Mendoza McCormick,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

July 17, 2024
Court of Appeals Case No.
23A-CR-2681
Appeal from the Lake Superior Court
The Honorable Samuel L. Cappas, Judge
Trial Court Cause No.
45G04-2103-MR-19

Memorandum Decision by Judge Pyle
Judges Bailey and Crone concur.

Pyle, Judge.

Statement of the Case

[1] Raquel Mendoza McCormick (“McCormick”) appeals her sentence after she pled guilty to Level 2 felony voluntary manslaughter.¹ McCormick argues that the trial court abused its discretion when sentencing her and determining mitigating circumstances. Concluding that the trial court did not abuse its discretion, we affirm McCormick’s sentence.

We affirm.²

Issue

Whether the trial court abused its discretion when sentencing McCormick.

Facts

¹ IND. CODE § 35-42-1-3.

² McCormick also suggests that her sentence was inappropriate in light of the nature of the offense and the character of the offender. However, her brief focuses on her argument that the trial court abused its discretion when determining mitigating circumstances. Additionally, she asserts that her sentence is manifestly unreasonable, which has not been a sentencing standard of review since January 1, 2003. *See Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). Moreover, McCormick provides no separate cogent argument related to why her sentence is inappropriate. Accordingly, McCormick has waived any such inappropriate sentence argument. *See* Ind. App. R. 46(A)(8)(a) (explaining that an appellate argument must be supported by cogent reasoning); *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (explaining that “inappropriate sentence and abuse of discretion claims are to be analyzed separately”); *Sandleben v. State*, 29 N.E.3d 126, 136 (Ind. Ct. App. 2015) (concluding that the defendant waived an inappropriate sentence argument by failing to advance cogent argument on that issue), *trans. denied*. Waiver notwithstanding, McCormick has failed to meet her burden of showing that her sentence is inappropriate. *See Childress*, 848 N.E.2d at 1080 (explaining that the defendant has the burden of persuading us that his sentence is inappropriate).

[2] The facts underlying McCormick's offense are taken from her stipulated factual basis that she entered when she pled guilty to voluntary manslaughter and from the exhibits and testimony introduced during her sentencing hearing. In 2020, McCormick was dating Thomas Brankin ("Brankin"). On August 11, 2020, then forty-eight-year-old McCormick and then fifty-two-year-old Brankin were engaged in an argument as they were across the street from each other on Highway Avenue in Lake County. McCormick, who was standing outside her wine shop business ("the wine shop"), yelled at Brankin, who was at an ice cream shop ("the ice cream shop") getting food. McCormick was "being irate" and "flailing her arms up as she was arguing" with Brankin. (Tr. Vol. 2 at 9). McCormick yelled that Brankin was taking too long, and he responded that he was merely waiting for his hot dog. Brankin then walked over to McCormick at the wine shop, and "the now heated argument continued" and moved to the rear parking lot of the wine shop. (App. Vol. 2 at 34). McCormick, who had gotten into her Chevy Equinox ("SUV"), drove her SUV towards Brankin as he stood in the parking lot. Brankin "hit his hands on the hood of [McCormick's SUV] and stated 'Are you going to hit me?'" (App. Vol. 2 at 34). The couple argued over a cell phone as McCormick was inside her SUV, and Brankin was standing in the parking lot. "Brankin walked away from [McCormick,] and [she] knowingly or intentionally drove her car toward Brankin a second time, this time striking him and causing him to fall to the ground and lose consciousness." (App. Vol. 2 at 34).

[3] McCormick initially drove away from the scene but then returned two minutes later. McCormick and a witness from the ice cream shop called 911. As McCormick was on the phone with 911, she repeatedly told Brankin to wake up. McCormick told the 911 operator that she needed an ambulance because she and Brankin had been having an argument. The operator asked why McCormick would need an ambulance for an argument, and McCormick responded that Brankin had been in front of her car. The operator then asked McCormick if she had run over Brankin, and McCormick replied that Brankin had “blocked” her. (State’s Ex. 1). McCormick told the operator that she and Brankin had been drinking and had had an argument and that arguing was “not new” for them. (State’s Ex. 1). McCormick stated that they had had an argument, Brankin had stood in front of McCormick’s car, and he was then lying on the ground. The operator attempted to find out what had happened to cause Brankin to lie on the ground, and McCormick repeatedly stated that Brankin had stood in front of her car. While McCormick was still on the phone with 911, Brankin started groaning. McCormick asked Brankin if he was ok, and he moaned, “yeah[.]” (State’s Ex. 1). McCormick then told Brankin, “I’m gonna get in trouble and that’s the end of my business, right there. I can’t get a liquor license. Thanks, Tom.” (State’s Ex. 1).

[4] At that time, Highland Police Department officers responded to the scene. Brankin was on the ground and “was going in and out of consciousness.” (Tr. Vol. 2 at 7). According to one of the officers, McCormick “appeared to be yelling at [Brankin]” and “wasn’t cooperative with [the officer] in telling him

exactly what had happened.” (Tr. Vol. 2 at 8). McCormick told the officers that “she no longer needed the police or [an] ambulance, and they could leave.” (Tr. Vol. 2 at 8). The police stayed on the scene, and an ambulance transported Brankin to the hospital.

- [5] A detective interviewed McCormick about two hours after the incident. McCormick acknowledged that she and Brankin had been arguing from across the street and that they had then continued to argue when he came to the wine shop parking lot. McCormick stated that they had been arguing about Brankin taking too long to get his food at the ice cream shop and arguing about trust and family issues. McCormick told the detective that arguing “was nothing really new for them.” (Tr. Vol. 2 at 12). Additionally, McCormick told the detective that she had wanted to leave the wine shop parking lot and that Brankin had walked to the front of her SUV and had asked her if she was going to hit him. According to McCormick’s report to the detective, McCormick told Brankin, “Yes, I’m going to hit you. You’re standing in front of me. I want to leave.” (Tr. Vol. 2 at 13). The detective was “confused” at McCormick’s statement because “the only way [for her] to leave [the parking lot] would have been for her to reverse [her SUV] towards the alley.” (Tr. Vol. 2 at 13). As part of his investigation, the detective obtained a surveillance video that was taken from a nearby school. The surveillance video showed McCormick, Brankin, and McCormick’s SUV as they were in the wine shop parking lot. The detective noted that it was “evident after watching the video that [McCormick’s] only way of leaving would have been to back up, as she eventually did, and [that]

her striking Mr. Brankin was not due to him blocking her travel.” (Tr. Vol. 2 at 24).

- [6] Brankin “suffered a massive head and brain injury as a result of [McCormick] hitting him with [her SUV,] and [he] was hospitalized for several weeks.” (App. Vol. 2 at 34). Brankin’s injuries included a skull fracture, damage to his brainstem and brain, “bleeding on the brain, [and] cracked . . . eye sockets[.]” (Tr. Vol. 2 at 24). “Brankin died on September 1, 2020[,] with his cause of death being a massive head injury due to being struck by a motor vehicle and the manner of death being ruled a homicide.” (App. Vol. 2 at 34).
- [7] The State charged McCormick with murder, Level 1 felony attempted murder, and Level 3 felony aggravated battery. In July 2022, McCormick pleaded guilty to an amended charge of Level 2 felony voluntary manslaughter in exchange for the State’s dismissal of the remaining counts. The plea agreement left sentencing open to the trial court’s discretion. The parties entered a stipulated factual basis regarding the facts of McCormick’s offense. In McCormick’s stipulated factual basis, she admitted that she had, while “acting under sudden heat[,]” “knowingly or intentionally killed Thomas Brankin between August 11, 2020 and September 1, 2020.” (App. Vol. 2 at 34-35). During McCormick’s

guilty plea hearing, she pled guilty to voluntary manslaughter, and the trial court then took the plea under advisement.³

- [8] Thereafter, McCormick filed a motion for a competency evaluation. The trial court held a competency hearing in August 2023 and found McCormick to be competent. McCormick then filed a motion to withdraw her guilty plea, and the trial court denied the motion.
- [9] Prior to McCormick's October 2023 sentencing hearing, she filed a sentencing memorandum.⁴ McCormick specifically requested the trial court to consider the following as mitigating circumstances: (1) the crime was the result of circumstances unlikely to recur; (2) Brankin had induced or facilitated the offense and had caused McCormick to act under strong provocation when Brankin slapped his hands on the hood of her SUV; (3) she had led a law-abiding life for a substantial period of time before committing the offense against Brankin; (4) her character and attitude indicated that she was unlikely to commit another crime; (5) the undue hardship to her family members, including her two adult daughters and her adult sister; and (6) her acceptance of responsibility by pleading guilty.

³ In her notice of appeal, McCormick did not request for the guilty plea hearing to be transcribed; therefore, the record before us does not include a transcript of this hearing.

⁴ The State also filed a sentencing memorandum, but McCormick did not include that document in her Appellant's Appendix.

- [10] During the sentencing hearing, the trial court accepted McCormick’s guilty plea and entered judgment of conviction for voluntary manslaughter. McCormick’s presentence investigation report (“PSI”) indicates that her criminal history consisted of a conviction for Class B misdemeanor reckless driving in 2002. The PSI also indicates that McCormick had been diagnosed with anxiety, depression, and post-traumatic stress disorder (“PTSD”) in 2020, after she had committed the offense against Brankin.
- [11] McCormick offered character letters on her behalf, and the State presented character letters on Brankin’s behalf.⁵ The State also introduced various exhibits, including McCormick’s 911 call on the night of the offense and the surveillance video that the detective had obtained from the nearby school. The trial court noted that McCormick, when on the 911 call, presented as “selfish” because she had been “concerned with him getting up, her not getting into trouble, [and] her not losing her liquor license.” (Tr. Vol. 2 at 146). Additionally, the trial court noted that the surveillance video showed McCormick “backing up twice” with her “back[ing] up, pull[ing] forward, back[ing] up again, clearly accelerat[ing] forward, striking Mr. Brankin[.]” (Tr. Vol. 2 at 145). The trial court also noted that McCormick’s “intent to harm [Brankin] with a 1 or 2-ton vehicle is magnified by that [surveillance] video[,]” and the trial court found it to be “reprehensible[.]” (Tr. Vol. 2 at 145).

⁵ These letters are not included in the record on appeal. However, the record reveals that the trial court reviewed the letters.

[12] The State also introduced other sentencing exhibits, including text messages and videos from Brankin's phone and computer. The text messages, which had been exchanged between McCormick and Brankin about one month before the offense, showed that the couple had had an argument and that McCormick had punched Brankin and caused a laceration under one of his eyes. The videos depicted a volatile interaction between McCormick and Brankin at Brankin's house. The videos were taken immediately after McCormick had thrown a glass bottle and a spray can at Brankin, and the videos showed McCormick and Brankin arguing and yelling at each other.

[13] McCormick asked the trial court to consider the mitigating circumstances as set out in her sentencing memorandum, and she addressed some of those mitigators from her memorandum. For example, she asserted that she was entitled to mitigation because Brankin had induced or facilitated the offense and had caused McCormick to act under strong provocation when he had slapped his hands on the hood of her vehicle. When addressing her proposed mitigating factor that the crime was the result of circumstances unlikely to recur, McCormick focused on Brankin's delayed death and health history instead of addressing her own actions. She did not discuss the likelihood of whether she would act in a violent manner in the future. McCormick also requested that the trial court find a mitigating circumstance in the fact that she had been ordered to pay restitution to Brankin's family in a wrongful death lawsuit.

[14] When sentencing McCormick, the trial court stated that this case had been "a long and complicated case to litigate, argue, process, and to analyze for

purposes of sentencing” and that “in a case like this, there’s really not . . . a winning side.” (Tr. Vol. 2 at 139-40). The trial court noted that there had been “numerous . . . character letters . . . submitted by both sides[.]” (Tr. Vol. 2 at 140). The trial court also noted that the letters in support of Brankin had stated that he was a great guy and had disparaged McCormick, while the letters in support of McCormick had stated that she was a great woman and had disparaged Brankin. Thus, the letters had revealed “a certain degree of volatility” had existed between McCormick and Brankin. (Tr. Vol. 2 at 140).

- [15] The trial court specifically rejected McCormick’s proposed mitigators that the crime was the result of circumstances unlikely to recur and that Brankin had provoked McCormick or had facilitated and induced her to commit the offense against him. When addressing the circumstances unlikely to recur mitigator, the trial court acknowledged that McCormick had led a substantially law-abiding life, but it noted that the video evidence and letters showed “the volatility of Ms. McCormick[.]” “corroborated the unreported instances of minor domestic violence,” and revealed “destruction of property and battery[.]” (Tr. Vol. 2 at 142-43). The trial court stated that “that type of thing -- maybe not to this extent -- exist[ed] in that relationship.” (Tr. Vol. 2 at 143). The trial court stated that “these circumstances did recur -- that is, the volatile interaction between the two, which, unfortunately on this date, led to Mr. Brackin’s death.” (Tr. Vol. 2 at 143). Thus, the trial court rejected McCormick’s proposed mitigator that the crime was the result of circumstances unlikely to recur.

- [16] The trial court also rejected McCormick's argument that Brankin had provoked McCormick or induced the offense by slapping the hood of her vehicle. The trial court noted that the sentencing exhibits revealed that McCormick had already been angry with Brankin and had been yelling at him before Brankin had walked over to the wine shop parking lot and before she had struck him with her SUV. Additionally, the trial court noted that McCormick had pled guilty to voluntary manslaughter, which took "into account her already acting angry." (Tr. Vol. 2 at 144). The trial court also rejected McCormick's assertion that Brankin had been blocking her when she had struck him with her SUV. The trial court noted that the video revealed that that was not "within the realm of possibility" and that "[t]here was no need for [McCormick] to pull forward at that rate of speed." (Tr. Vol. 2 at 146-47).
- [17] Additionally, the trial court noted that evidence presented during the sentencing hearing revealed that McCormick had been "dishonest [with] the police" and had "anger management issues." (Tr. Vol. 2 at 146). The trial court also determined that the surveillance video of the offense and the domestic argument video from Brankin's computer showed that McCormick was "violent" and "relentless[,"] which "reflect[ed] poorly on her character." (Tr. Vol. 2 at 146).
- [18] The trial court determined that McCormick's "sincere" remorse, the fact that she had "led a substantially law-abiding life[,"] her guilty plea, and restitution to be mitigating circumstances. (Tr. Vol. 2 at 141; App. Vol. 3 at 128). The trial court gave little weight to McCormick's guilty plea and little to no weight

to restitution as mitigators. The trial court found the nature and circumstances of the crime to be a “significant” aggravating circumstance and noted that the nature was “particularly heinous[.]” (App. Vol. 3 at 129). As an additional aggravating circumstance, the trial court concluded that McCormick had a poor character. Specifically, the trial court explained that the sentencing exhibits had shown that McCormick had exhibited selfish behavior as Brankin was lying injured on the ground, had been dishonest with the police, had anger management issues, and had used her vehicle in a manner to inflict serious harm to Brankin. Moreover, the trial court found that McCormick’s act of striking Brankin when he was intoxicated and “in a weakened state” to be an aggravating factor. (Tr. Vol. 2 at 147).

- [19] For McCormick’s Level 2 felony voluntary manslaughter conviction, the trial court imposed a twenty (20) year sentence, with seventeen (17) years executed at the Indiana Department of Correction and three (3) years served in the community corrections on work release.
- [20] McCormick now appeals.

Decision

- [21] McCormick contends that the trial court abused its discretion when sentencing her and determining mitigating circumstances. We disagree.
- [22] Sentencing decisions rest within the sound discretion of the trial court. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g, 875 N.E.2d

218 (Ind. 2007). So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* 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 several 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.* at 490-91.

[23] McCormick argues that the trial court erred by failing to find the following mitigating circumstances: (1) Brankin initiated or facilitated McCormick's crime against him; (2) the crime was the result of circumstances unlikely to recur; (3) she was likely to respond affirmatively to probation or short-term imprisonment; (4) her mental health conditions, including anxiety, depression, and PTSD; and (5) her sentence was "disproportionate compared to other similarly-situated offenders."⁶ (McCormick's Br. 11).

⁶ McCormick cites to two trial court cause numbers from two other counties and argues that the trial court, when sentencing her, should have considered how the two defendants in those lower causes were sentenced for their voluntary manslaughter convictions.

- [24] The determination of mitigating circumstances lies within the trial court's discretion. *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000), *reh'g denied*. A trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000). In fact, a claim that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Anglemyer*, 868 N.E.2d at 493.
- [25] We first note that McCormick did not raise mitigators (3), (4), or (5) as proposed mitigating factors to the trial court. "If the defendant does not advance a factor to be mitigating at sentencing, this Court will presume that the factor is not significant[,] and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal." *Spears*, 735 N.E.2d at 1167. *See also Simms v. State*, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003) (holding that the defendant was precluded from raising provocation as a mitigating circumstance on appeal when he had failed to advance it as a mitigating circumstance at sentencing). Therefore, we need not review McCormick's arguments relating to the mitigating circumstances that she did not raise to the trial court.
- [26] Additionally, McCormick also argues that the trial court failed to properly weigh the mitigating circumstances. This argument is without merit because our Indiana Supreme Court has explained that the degree of weight the trial court assigns to a particular mitigating factor is not an appropriate basis for appeal. *See Anglemyer*, 868 N.E.2d at 491 ("Because the trial court no longer

has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, . . . a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”).

- [27] The only mitigating factors raised on appeal that McCormick also argued at sentencing were the following: (1) Brankin initiated or facilitated McCormick’s crime against him; and (2) the crime was the result of circumstances unlikely to recur. However, as explained in the facts above, the trial court recognized the proffered mitigators and then expressly and duly rejected them. Because McCormick failed to establish that her proposed mitigators were both significant and clearly supported by the record, we conclude that the trial court did not abuse its discretion when sentencing McCormick. *See Anglemeyer*, 868 N.E.2d at 493. *See also Cloum v. State*, 779 N.E.2d 84, 89 (Ind. Ct. App. 2002) (concluding that a defendant was not entitled to mitigation of his sentence for voluntary manslaughter based on his proposed mitigators of inducement or provocation because it would result in a double mitigation); *Mehringer v. State*, 152 N.E.3d 667, 674 (Ind. Ct. App. 2020) (concluding that the trial court did not abuse its discretion when it declined to find that the crime was the result of circumstances unlikely to recur as a mitigator), *trans. denied*.
- [28] Affirmed.

Bailey, J., and Crone, J., concur.

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