

## MEMORANDUM DECISION

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# IN THE Court of Appeals of Indiana

Robert Earl Thompson, Jr.,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*



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May 28, 2024

Court of Appeals Case No.  
23A-CR-3130

Appeal from the Lake Superior Court  
The Honorable Gina L. Jones, Judge

Trial Court Cause Nos.  
45G03-2208-F5-430  
45G03-2208-F6-1851

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**Memorandum Decision by Judge Mathias**  
Judges Tavitas and Weissmann concur.

**Mathias, Judge.**

- [1] Robert Earl Thompson, Jr. appeals his sentence following his convictions for Level 6 felony attempted theft and theft. Thompson presents a single issue for our review, namely, whether the trial court abused its discretion when it sentenced him. We affirm.

**Facts and Procedural History**

- [2] On August 20, 2022, Thompson and two accomplices committed thefts from two locations of Dick's Sporting Goods in two counties. Thompson and his accomplices took goods worth a total of several thousand dollars. Law enforcement officers interrupted an attempted third theft of goods by the three men at another Dick's location. Officers apprehended the two accomplices, but Thompson escaped to the parking lot, where he got into his van and started to drive away. Thompson rammed three police vehicles, which were blocking his way, before officers shot him, striking him three times. At that point, Thompson was arrested and treated for his wounds.
- [3] The State charged Thompson with Level 6 felony theft in Cause No. 45G03-2208-F6-1851 ("1851"). And, in 45G03-2208-F5-430 ("430"), the State charged Thompson with two counts of Level 5 felony attempted battery with a deadly weapon, Level 6 felony theft, two counts of Level 6 felony resisting law enforcement, Class A misdemeanor resisting law enforcement, and Class A misdemeanor attempted striking of a law enforcement animal. In October 2023, Thompson pleaded guilty as charged in 1851, and he pleaded guilty to Level 6

felony theft in 430. In exchange for his plea, the State dismissed the remaining charges. The trial court sentenced Thompson to two-and-one-half years for each conviction and ordered that the sentences run concurrently. This appeal ensued.

## Discussion and Decision

[4] Thompson contends that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions for an abuse of discretion. *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.* For example, a trial court may abuse its discretion by:

(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.* “In cases where the trial court has abused its discretion, we will remand for resentencing only ‘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.’” *Bryant v. State*, 959 N.E.2d 315, 322 (Ind. Ct. App. 2011) (quoting *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind.), *clarified on reh’g*, 875 N.E.2d 218 (2007)).

- [5] The sentencing range for a Level 6 felony is between six months and two-and-one-half years, with the advisory sentence being one year. [Ind. Code § 35-50-2-7](#). Here, at sentencing, the trial court identified two aggravating circumstances, namely, Thompson’s criminal history (six felony convictions, two misdemeanor convictions, and two juvenile adjudications) and his recent probation violations. The trial court identified a single mitigating circumstance, namely, his guilty plea. The court found that the aggravators outweighed the mitigators and imposed two-and-one-half year sentences for each conviction, to be served concurrently.
- [6] Thompson argues that the trial court abused its discretion when it did not identify certain proffered mitigators. It is well settled that “[a] trial court is not obligated to accept the defendant’s argument as to what constitutes a mitigating factor, and a trial court is not required to give the same weight to proffered mitigating factors as does a defendant.” [Healey v. State](#), 969 N.E.2d 607, 616 (Ind. Ct. App. 2012), *trans. denied*. “A trial court does not err in failing to find a mitigating factor where that claim is highly disputable in nature, weight, or significance.” *Id.* “An allegation that a trial court abused its discretion by failing to identify or find a mitigating factor requires the defendant on appeal to establish that the mitigating evidence is significant and clearly supported by the record.” *Id.*
- [7] Thompson first contends that the trial court should have found mitigating the hardship his incarceration will impose on his family, including his ailing mother and his daughter. Thompson acknowledges that a trial court is not required to

find that a defendant's incarceration would result in undue hardship upon his dependents. *Westmoreland v. State*, 787 N.E.2d 1005, 1010 (Ind. Ct. App. 2003).

But he argues that he presented significant evidence that both his mother and his daughter would suffer unnecessary hardship during his incarceration. We do not agree.

[8] At sentencing, Thompson's mother testified that she had recently been stricken by several health conditions and that her health care providers "say [she is] going to need help . . . around the house, [such as shopping for] groceries and stuff like that[.]" Tr. p. 28. But Thompson did not present any evidence that he had a history of helping his mother in any meaningful way, and he did not present evidence that he intended to help her going forward but for his incarceration. We cannot say that the trial court abused its discretion when it rejected that proffered mitigator. *See, e.g., Hillenburg v. State*, 777 N.E.2d 99, 109 (Ind. Ct. App. 2002) (holding no abuse of discretion in rejecting this mitigator when the defendant made "no showing with respect to his mother's degree of reliance on him"), *trans. denied*.

[9] With respect to his daughter, who was nine years old at the time of sentencing, Thompson argues only that she "was being cared for by his mother [who] was unable [to] adequately care for his daughter on her own." Appellant's Br. at 9. But Thompson's mother testified only that she helps to take care of his daughter on occasion. Thompson's mother did *not* testify that she was unable to care for his daughter on those occasions of unknown frequency and duration. The trial court did not abuse its discretion when it rejected that proffered mitigator.

[10] Finally, Thompson contends that the trial court should have found mitigating his chronic pain, which is a result of the injuries he sustained when he was shot by law enforcement officers during the incident that led to his arrest. Thompson testified that the jail is not providing him with free pain medication<sup>1</sup> and that he has trouble sleeping because of the pain. And Thompson's mother testified that he needs corrective surgery. Thompson himself did not present evidence that he would be unable to get the corrective surgery during his incarceration. Second, as to the pain resulting from his gunshot wounds, that pain was caused by his decision to ram three law enforcement vehicles in his attempt to escape capture. We cannot say that the trial court abused its discretion when it did not find Thompson's chronic pain and injuries to be mitigating circumstances.

[11] For all these reasons, we cannot say that the trial court abused its discretion when it sentenced Thompson.

[12] Affirmed.

Tavitas, J., and Weissmann, J., concur.

ATTORNEY FOR APPELLANT

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<sup>1</sup> He testified that pain medication is available for purchase at the jail.

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