

MEMORANDUM DECISION

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IN THE Court of Appeals of Indiana

Christopher Colbert,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 13, 2025

Court of Appeals Case No.
24A-CR-1782

Appeal from the Lake County Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-2311-F1-000045

Memorandum Decision by Judge DeBoer
Judges May and Tavitas concur.

DeBoer, Judge.

Case Summary

- [1] Christopher Colbert (“Colbert”) pled guilty to Level 1 felony Rape,¹ Level 1 felony Child Molesting,² and Level 6 felony Domestic Battery.³ The trial court sentenced him to an aggregate term of eighty-five years at the Indiana Department of Corrections (“DOC”). He now appeals his sentence, arguing the trial court abused its discretion by improperly identifying two aggravating factors and by failing to identify a mitigating factor. Finding no error, we affirm.

Facts and Procedural History

- [2] In August 2023, Colbert and his twelve-year-old child (“Child”) were at Colbert’s residence in Dyer, Indiana. Unbeknownst to Child, Colbert made her ingest a “sex pill,” which made her feel “weird and uncomfortable.” *Appellant’s App. Vol. 2* at 126. Colbert put her on his bed and inserted his penis into her vagina. Child verbally told Colbert to stop but Colbert did not stop.
- [3] On October 22, 2023, Colbert made Child drink a dark liquid he knew to be a controlled substance, which made Child feel “dizzy” and “go straight to sleep.” *Id.* Child was unconscious in her bed and Colbert placed himself in the bed

¹ Ind. Code § 35-42-4-1(a)(4), (b)(4).

² I.C. § 35-42-4-3(a), (a)(1).

³ I.C. § 35-42-2-1.3(a)(1), (b)(2).

next to her. He removed Child’s underwear and his own shorts and penetrated Child’s vagina with his penis. While Colbert was sexually violating Child, his wife (“Wife”), who was also Child’s stepmother, walked into the room and confronted Colbert. Colbert then kicked Wife in the presence of Child, causing Wife to fall to the floor.⁴

[4] On November 17, 2023, the State charged Colbert with sixteen crimes.⁵ On May 6, 2024, Colbert entered into a plea agreement whereby he agreed to plead guilty to Level 1 felony rape, Level 1 felony child molesting, and Level 6 felony domestic battery and the State would dismiss the thirteen remaining charges. The trial court found an adequate factual basis for Colbert’s guilty pleas and informed Colbert that his “admissions can be considered as a mitigating factor towards sentencing.” *Tr.* at 25.

[5] On June 26, 2024, the trial court accepted Colbert’s plea and sentenced him. During the sentencing hearing, Child’s biological mother’s (“Mother”) victim impact statement was read into the record. Mother said that she was forced to quit her job and stay home with Child, who “has lost all trust in people” and is scared to be alone or have any social life. *Id.* at 35. Wife read her own victim impact statement and shared that she was diagnosed with extreme post-

⁴ While not reflected in the stipulated factual basis for his guilty plea, Colbert also apparently put a Ring camera in Child’s room and filmed his actions, which the trial court took into account when considering the nature and circumstances of Colbert’s crimes for purposes of sentencing. Colbert does not dispute this.

⁵ The sixteen charged crimes consisted of six counts of child molesting, three counts of domestic battery, two counts of intimidation, and one count each of rape, incest, strangulation, pointing a firearm, and dissemination of matter harmful to minors.

traumatic stress disorder and that she had experienced severe panic attacks that have resulted in her losing consciousness.

[6] Four of Colbert’s family members and a family friend testified on behalf of Colbert. Evidence was presented that Colbert had two minor contacts with the criminal justice system in 2008. Colbert exercised his right to allocution and told the trial court about his past and his relationships with Wife and his children. While Colbert purported to “take responsibility for the things [he] did do,” he blamed Wife for having “indulged in things she shouldn’t have and then involved [him]” and said that his actions were “because of the things that [he] indulged in.”⁶ *Id.* at 80, 81, 83. Notably, this was an abandonment of the position Colbert held as late as the filing of the presentence investigation report—that he was drugged by Wife on October 22, 2023. The trial court stated it was “very surpris[ed]” that Colbert “would in any way disparage [Wife] or try to lay any blame at her feet,” and lauded Wife as a “hero and a champion” for standing up for Child. *Id.* at 86.

[7] The trial court identified the following four aggravating factors in its sentencing statement: (1) the harm, loss, or damage suffered by Child, Wife, and Mother was greater than the elements necessary to prove the commission of the

⁶ The parties and the trial court understood that the “things” Colbert indulged in were illegal substances. At the sentencing hearing, Colbert’s defense counsel described the relationship between Colbert and Wife as a “volatile relationship fueled by mutual drug use.” *Tr.* at 74. In later declining to find any mitigating weight in Colbert’s substance use, the trial court stated, “I think most people would say that there’s not enough drugs or alcohol they could ever consume that would cause them to rape their daughter.” *Id.* at 89.

offenses; (2) Colbert’s minor criminal history; (3) Colbert’s care, custody or control of Child; and (4) the specific nature and circumstances of his crimes. The trial court also identified two mitigating factors—that Colbert had made a positive impact on some friends and family members’ lives, and that his childhood had been very challenging. Balancing the aggravators and mitigators, the trial court concluded that the four aggravators “greatly outweigh[ed]” the two mitigating factors it had identified. *Appellant’s App. Vol. 2* at 157. It sentenced Colbert to aggravated consecutive sentences of thirty-eight years for the rape, forty-five years for the child molest, and two years for the domestic battery. *See* Ind. Code §§ 35-50-2-4(b), (c)(1); I.C. § 35-50-2-7(b). The eighty-five-year total sentence was ordered to be executed at the DOC.

Discussion and Decision

- [8] Colbert argues that the trial court abused its discretion when it based his aggravated sentence on two improper aggravating factors: (1) the harm, loss, or damage suffered by Child, Wife, and Mother and (2) his minor criminal history; and that it improperly failed to recognize his guilty plea as a mitigating factor.
- [9] “[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 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.’” *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

[10] When sentencing a defendant for a felony conviction, the trial court must detail its reasons for imposing its chosen sentence unless the court imposes the advisory sentence for the felony. *Ward v. State*, 113 N.E.3d 1242, 1245 (Ind. Ct. App. 2018); *see also* Ind. Code. § 35-38-1-1.3. A trial court abuses its discretion if it:

(1) fails ‘to enter a sentencing statement at all[,]’ (2) enters ‘a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,’ (3) enters a sentencing statement that ‘omits reasons that are clearly supported by the record and advanced for consideration,’ or (4) considers reasons that ‘are improper as a matter of law.’

McSchooler v. State, 15 N.E.3d 678, 684 (Ind. Ct. App. 2014) (quoting *Anglemyer*, 868 N.E.2d at 490-91). When a trial court’s sentencing statement includes a finding of mitigating circumstances, it must “identify all significant mitigating circumstances.” *Anglemyer*, 868 N.E.2d at 493. The relative weight or value assigned to sentencing reasons properly found is not subject to review for an abuse of discretion. *Id.* at 491. Where an abuse of discretion is shown, “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.” *Id.*

1. Harm to the Victims

- [11] Colbert argues that the trial court abused its discretion by identifying the harm, loss, or damage suffered by Child, Wife, and Mother as an aggravating factor. “The trial court may assign aggravating weight to the harm, injury, loss or damage suffered by the victim if such harm was significant and greater than the elements necessary to prove the commission of the offense.” *Sharkey v. State*, 967 N.E.2d 1074, 1078 (Ind. Ct. App. 2012); I.C. § 35-38-1-7.1(a)(1). For psychological trauma to a victim to be a valid aggravator, “the trial court must explain why the impact suffered by the victims exceeded that which is normally associated with the crime.” *Walden v. State*, 216 N.E.3d 1165, 1175 (Ind. Ct. App. 2023), *trans. denied*. “The impact on others may qualify as an aggravator only where the defendant’s actions ‘had an impact on other persons of a destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant.’” *Gober v. State*, 163 N.E.3d 347, 354 (Ind. Ct. App. 2021) (quoting *Comer v. State*, 839 N.E.2d 721, 727 (Ind. Ct. App. 2005), *trans. denied*), *trans. denied*.
- [12] In *Simmons v. State*, 746 N.E.2d 81, 91 (Ind. Ct. App. 2001), *reh’g denied*, *trans. denied*, the trial court stated that Simmons’ molestation of the child victim had “adversely affected” the child and her family and the child would require counseling “for many, many years.” This Court held that the trial court’s reliance on victim and family impact as an aggravating factor was erroneous because we could not say that the impact suffered was “distinct from the impact felt by similarly situated victims.” *Id.*

[13] In *Walden*, on the other hand, the trial court noted that the child molest victim cut herself and questioned her gender identity to cope with the psychological harm Walden had inflicted on her. *Walden*, 216 N.E.3d at 1175. It noted that the victim’s mother was especially betrayed by Walden’s actions because their family had a close relationship with Walden and he had knowledge that the mother had been molested in the past. *Id.* The trial court also noted that the victim thought her own father “wanted her dead” for reporting Walden. *Id.* On appeal, we held that the “particularized aspects of [the] case” relied upon by the trial court were “in excess of the harms usually associated with the offense of child molesting” and supported this aggravating factor. *Id.*

[14] Here, the trial court observed that Mother was forced to quit her job to care for Child, “who is now so traumatized she is afraid to be alone.” *Appellant’s App. Vol. 2* at 156. It also noted that Wife was diagnosed with “extreme PTSD” and experienced “panic attacks that cause her to lose consciousness.” *Id.* This finding is supported by the impact statement Wife gave at sentencing, which not only depicted the harms arising from catching her husband filming himself sexually violating his daughter, but more broadly showed severe domestic abuse in her romantic relationship with Colbert.⁷ Additionally, when Wife caught Colbert molesting Child, he retaliated and battered her rather than responding with “appropriate shame.” *Id.* at 157. Colbert cited examples of lasting

⁷ Wife shared that Colbert held a loaded gun to her head on multiple occasions, strangled her, forced her into non-consensual sex, shot at her and her dogs, and verbally abused her.

consequences victims of child sexual abuse face. However, he has not presented us with any authority that the specific destructive harms recognized by the trial court are normally experienced by the victim and family members of a victim of child molestation and rape. The trial court acted within its discretion in identifying this aggravator.

2. Criminal History

- [15] Colbert argues it was an abuse of discretion for the trial court to assign any aggravating weight to his minor criminal history. In its sentencing order, the trial court observed that Colbert had been criminally charged with check fraud and driving with a suspended license in 2008, both of which resulted in deferrals or dismissals. The trial court deemed this criminal history “an aggravating circumstance of low weight.” *Appellant’s App. Vol. 2* at 156.
- [16] Indiana Code section 35-38-1-7.1(a)(2) states that a trial court may consider as an aggravating circumstance whether “[t]he person has a history of criminal or delinquent behavior.” “At sentencing, the significance of a criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense.” *McElfresh v. State*, 51 N.E.3d 103, 112 (Ind. 2016). “Thus, the weight of the criminal history may vary, but consideration of it is not an abuse of discretion.” *Id.*
- [17] Colbert compares his case to *Ruiz v. State*, 818 N.E.2d 927 (Ind. 2004), but *Ruiz* is inapposite. Ruiz pled guilty to child molestation and the only aggravating circumstance considered by the trial court in imposing the maximum allowable

sentence was his “significant criminal history,” which only consisted of four alcohol-related misdemeanors. *Id.* at 928-29. Our Indiana Supreme Court found that these offenses did not relate to the instant crime and were “at best marginally significant as aggravating circumstances” that did not support the maximum sentence. *Id.* at 929.

- [18] Colbert’s minimal criminal history, on the other hand, was one of four aggravating factors identified by the trial court, and was appropriately assigned the lowest weight of the four aggravators. The trial court did not base Colbert’s sentence solely on his criminal history and it was certainly within its discretion to consider this aggravator along with the other weightier aggravators. *See Newsome v. State*, 797 N.E.2d 293, 300 (Ind. Ct. App. 2003) (“We would tend to agree with Newsome that an enhanced sentence would not have been appropriate had the only aggravator been his criminal history. However, that is clearly not the case.”), *trans. denied*.

3. Guilty Plea

- [19] Colbert argues that the trial court abused its discretion by failing to identify Colbert’s guilty plea as a mitigating factor. “The trial court is not obligated to explain why it did not find a factor to be significantly mitigating.” *Sherwood v. State*, 749 N.E.2d 36, 38 (Ind. 2001). “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.” *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999).

[20] While a guilty plea “can show an acceptance of responsibility for one’s actions,” saves the trial court time, conserves State resources, and may spare the victim the trauma of trial, it is “not automatically a significant mitigating factor.” *Sensback v. State*, 720 N.E.2d 1160, 1164-65 (Ind. 1999). Where a defendant’s guilty plea is “more likely the result of pragmatism than acceptance of responsibility and remorse,” or the defendant received significant benefits in exchange for his plea, the plea may not constitute a significant mitigating factor. *Id.* at 1165 (“Sensback received benefits for her plea adequate to permit the trial court to conclude that her plea did not constitute a significant mitigating factor.”); *Comer*, 839 N.E.2d at 728-29, (no abuse of discretion occurred where the defendant’s guilty plea afforded him the significant benefit of reducing his maximum potential sentence from sixty-nine years to twenty-eight years); *Davies v. State*, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), *trans. denied*.

[21] Here, having originally charged Colbert with sixteen counts, the State agreed to dismiss thirteen charges in return for Colbert’s plea, affording him the significant benefit of relief from a substantial period of potential jeopardy. Additionally, despite his assurance that he was taking responsibility for his actions, Colbert blamed his Wife for involving him in substance use that he claimed had influenced his behavior. Given Colbert’s obfuscation of responsibility and the significant evidence against him, the trial court could have properly considered Colbert’s guilty plea “more likely the result of pragmatism than acceptance of responsibility and remorse.” *Davies*, 758

N.E.2d 987. The trial court did not abuse its discretion by not identifying Colbert's guilty plea as a mitigating factor.

[22] Colbert also suggests that the trial court was under some sort of obligation to identify Colbert's guilty plea as a mitigating factor because it informed him that his "admissions *can* be considered as a mitigating factor towards sentencing." *Tr.* at 25 (emphasis added). It was not. The trial court was simply informing Colbert of the law, which in this case, did not subsequently require it to identify Colbert's guilty plea as a significant mitigating factor.

[23] We finally note that, even if any error occurred in the identification of the aggravators and the omission of Colbert's suggested mitigator, the sentence imposed by the trial court was nevertheless within its discretion. Colbert does not challenge the trial court's decision to assign significant aggravating weight to the fact that Colbert was in a position of having care, custody, or control over Child as her father. *See McCoy v. State*, 856 N.E.2d 1259, 1262 (Ind. Ct. App. 2006) ("[A] 'position of trust' by itself constitutes a valid aggravating factor, which supports the maximum enhancement of a sentence for child molesting."). He also does not challenge the trial court's determination that the nature and circumstances of the crimes—namely, that Colbert drugged Child and filmed his horrific acts—constituted "the most heinous, depraved and vile violation of the moral and ethical responsibilities of a parent imaginable" and was a significant aggravating factor. *Appellant's App. Vol. 2* at 157. As Colbert does not challenge these valid significant aggravating factors, and "one valid aggravating factor is enough to enhance a sentence," remand and resentencing

would be inappropriate even if we had found error. *Harris v. State*, 163 N.E.3d at 956.

Conclusion

[24] The trial court did not abuse its discretion in sentencing Colbert.

[25] Affirmed.

May, J., and Tavitas, J., concur.

ATTORNEY FOR APPELLANT

Brian Woodward
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana