MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Carlos M. Wilson,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 14, 2024

Court of Appeals Case No.
23A-CR-2332

Appeal from the Lake Superior Court

The Honorable Natalie Bokota, Judge

Trial Court Cause No.
45G02-2207-F3-90

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

[1] Carlos M. Wilson pled guilty to Level 3 felony robbery and was sentenced to ten years. He now appeals, arguing the trial court erred in finding an aggravator. We affirm.

Facts and Procedural History

[2] In February 2022, Wilson robbed two people at gunpoint and stole their car. When the police tried to pull Wilson over in the stolen car a couple of days later, he led them on a chase. The State charged Wilson under two cause numbers for these offenses. In the first case, Cause No. 45G02-2207-F3-90, the State charged Wilson with two counts of Level 3 felony armed robbery, Level 5 felony battery, and Level 6 felony auto theft. In the second case, Cause No. 45G02-2203-F6-545, the State charged Wilson with Level 6 felony resisting law enforcement.

[3] In July 2023, Wilson and the State entered into a plea agreement that covered both cause numbers. Specifically, Wilson agreed to plead guilty to Level 3 felony armed robbery (which was added as a fifth count in F3-90), and the State agreed to dismiss the remaining charges. Sentencing was left to the discretion of the trial court, except that the sentencing cap was ten years, which is one year above the advisory sentence for a Level 3 felony. *See* Ind. Code § 35-50-2-5(b).

[4] At the sentencing hearing, evidence was presented that Wilson, then age thirty-two, had four felony convictions, seven misdemeanor convictions, and two juvenile adjudications. In addition, Wilson was on parole when he committed the armed robbery. The State read a victim impact statement from one of the victims, Alfonso Reyes:

> Mr. Wilson's crime had a deep financial impact on my family, as we have been unable to recover the car he stole with a gun point in front of our home. Now we live life with fear, insecure. We lost our trust in people and it's taking us time to recover. I, Alfonso Reyes, I'm the person who don't stay angry at the people who do wrong or especially in crime. But that day, what happened to us, it turned me 360 degrees. Now I stay angry at those who do crime and I hope they serve time in prison. . . . I'm working on myself not to stay angry. It's going to take me some time.

Tr. p. 25.

[5] The trial court found five aggravators: (1) Reyes has suffered "continuing psychological consequences"; (2) Wilson has an "extensive" criminal history, which was entitled to "significant weight"; (3) Wilson has violated the conditions of both probation and parole, including being on parole when he committed the armed robbery, which was entitled to "significant weight"; (4) Wilson has been given the benefit of rehabilitative services through probation, parole, and prison but continues to commit crimes; and (5) Wilson's character is "violent, selfish, and immature." Appellant's App. Vol. II pp. 104-05. The court identified two mitigators: (1) Wilson expressed remorse and (2) he had a

difficult childhood, although it was entitled to "low" weight. *Id.* at 105. Finding the aggravators to "dramatically" outweigh the mitigators, the court sentenced Wilson to ten years in prison, the maximum under the plea agreement. *Id.*

[6] Wilson now appeals.

Discussion and Decision

[7] Wilson contends that the trial court erred in finding as an aggravator that Reyes has suffered "continuing psychological consequences." Our trial courts enjoy broad discretion in identifying aggravators and mitigators, and we will reverse only for an abuse of that discretion. *Coy v. State*, 999 N.E.2d 937, 946 (Ind. Ct. App. 2013).

[8] Wilson argues the psychological-impact aggravator was improper because no evidence was presented at sentencing "to demonstrate that the effect on the victim's [sic] here was any more significant than that of any other armed robbery." Appellant's Br. p. 7. In support, Wilson cites *Mitchem v. State*, 685 N.E.2d 671 (Ind. 1997). There, the defendant was convicted of one count of murder and three counts of attempted murder and sentenced to ninety years. On appeal, he argued the trial court improperly found as an aggravator "the emotional and psychological effects of the crimes committed on the victims and their families." *Id.* at 679-80. Our Supreme Court agreed that this aggravator was improper:

> We presume that the legislature considers victim impact when establishing a presumptive [now advisory] sentence. There is

> nothing in the record to indicate that the impact on the families and victims in this case was different than the impact on families and victims which usually occur in such crimes.

Id. at 680. Nevertheless, the Court affirmed the defendant's sentence because of the presence of other valid aggravators. *Id.*

[9] Here, Reyes said the armed robbery caused him to live in fear and changed his whole way of thinking. But even assuming this aggravator was improper, "we need not remand for resentencing if we can say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Vega v. State*, 119 N.E.3d 193, 203 (Ind. Ct. App. 2019). We can say with confidence that the court would have imposed the same sentence even without this aggravator. The court found four other aggravators, two of which it dubbed "significant": Wilson's extensive criminal history and the fact that he was on parole when he committed the armed robbery. Moreover, the court found that the aggravators "dramatically" outweighed the mitigators. We have no doubt the court would have sentenced Wilson to ten years even if it had not found this aggravator. We therefore affirm Wilson's sentence.

[10] Affirmed.

May, J., and Kenworthy, J., concur.

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