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IN THE COURT OF APPEALS OF INDIANA

Cole G. Strack,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 29, 2021

Court of Appeals Case No. 21A-CR-922

Appeal from the Wells Superior Court

The Honorable Max C. Ludy, Jr., Senior Judge

Trial Court Cause No. 90D01-2003-F6-51

Tavitas, Judge.

Case Summary

[1] Cole Strack pleaded guilty to operating a vehicle while intoxicated and possession of marijuana, and the trial court sentenced him to six years. Strack argues that he was denied his right to allocution and that the trial court abused

its discretion by excluding pertinent evidence and by failing to afford mitigating weight to Strack's plea of guilty without the benefit of a plea agreement. We conclude that the trial court committed no reversible error and, accordingly, affirm.

Issues

[2] Strack raises the following four issues:

I. Whether the trial court denied Strack his right to allocution.

II. Whether the trial court abused its discretion by excluding evidence pertaining to the impact Strack's incarceration would have on his daughter.

III. Whether the trial court abused its discretion by failing to find that Strack's plea of guilty without a plea agreement was entitled to mitigating weight.

IV. Whether the cumulative effect of the trial court's alleged errors warrants remand for reconsideration of the sentence.

Facts

[3] On March 26, 2020, Officer Russ Mounsey of the Ossian Police Department initiated a traffic stop of Strack's car because of an inoperable license plate light. Officer Mounsey could smell alcohol as he spoke to the occupants—Strack and a female passenger. Strack's toddler-aged daughter was also in the car. Officer Mounsey asked if anyone had been drinking. Strack admitted to consuming

several beers. Officer Mounsey requested that Strack participate in field sobriety tests, and Strack agreed. As Strack stepped out of the vehicle, Officer Mounsey observed marijuana in the driver's side door pocket. Strack admitted to possessing the marijuana.

[4] Strack failed the field sobriety tests. Officer Mounsey arrested Strack for operating a vehicle while intoxicated ("OWI"). Strack was taken to a hospital where a chemical test revealed the presence of marijuana metabolites in his blood. Shortly thereafter, a breath test revealed that Strack had a .098 blood-alcohol content. The State charged Strack on March 27, 2020, with Count I, OWI, a Level 6 felony, and pursued a habitual vehicular substance offender ("HVSO") enhancement.[1] The State further charged Strack with Count II, operating a vehicle with an ACE of .08 or more, a Class C misdemeanor, and Count III, possession of marijuana, a Class B misdemeanor. On June 5, 2020, the State added Count IV, operating a vehicle with a controlled substance in the blood with a prior offense, a Level 6 felony.

[5] On November 19, 2020, the State charged Strack with domestic battery as a result of an altercation between Strack and Strack's girlfriend. The State also filed a petition to revoke Strack's bond in the instant matter, and Strack was arrested for violating the terms of his pre-trial release.

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[1] Indiana Code Section 9-30-5-3 dictates that OWI be charged as a Level 6 felony if the defendant has been convicted of OWI within the previous seven years. Strack was convicted of OWI as a misdemeanor in 2015 and had two prior OWI convictions from 2005.

[6] On March 11, 2021, Strack entered a guilty plea to all charges without the benefit of a plea agreement. The trial court held a sentencing hearing on April 22, 2021. During the testimony of Strack's mother, Strack's counsel attempted to elicit evidence pertaining to Department of Child Services ("DCS") investigations regarding Strack's daughter and her mother. The State objected, and the trial court excluded the evidence, reasoning that Strack's mother lacked personal knowledge and that the substance of DCS investigations is "confidential." Tr. Vol. II pp. 28-29. Following the testimony of Strack's parents, the following colloquy occurred between Attorney Eric Orr, the State, and the court:

> MR. ORR: Would you permit me to present Cole's facts in summation, Your Honor?
>
> THE STATE: What do you mean Cole's facts in summation?
>
> THE COURT: His facts?
>
> MR. ORR: The facts I, I was going to ask him about and have, he's, he's nervous today as can be . . . .
>
> THE STATE: Judge, the State would, the State wants to be able to cross exam, if he's going to testify and present evidence, the State's going to cross it.
>
> MR. ORR: Why, I understand that they wouldn't lose their right to cross examine him.

> THE STATE: Judge, he can testify. He's got to establish the evidence.
>
> THE COURT: *Yeah, if your client has anything to say he needs to testify.*
>
> MR. ORR: Certainly, Your Honor. I'd like to call Cole, Cole Strack.

Id. at 40 (emphasis added).

[7] Strack testified, among other things, that he believed it would be a hardship to his daughter if Strack was incarcerated. Strack expressed remorse and a commitment to bettering himself in the future. The State cross-examined Strack and, over objection, elicited testimony pertaining to facts in Strack's domestic battery case. Strack admitted that he drank several beers on the date of the alleged battery. Though Strack described his devotion to his daughter, he further acknowledged that he put his daughter in danger by having her in the car when he got behind the wheel the night of said arrest. Strack was also offered an opportunity to speak subsequent to his testimony, of which he took full advantage.

[8] The trial court found two aggravating factors—that Strack violated his pretrial release and that Strack had a criminal history—and no mitigating factors.[2] The

[2]The State disputes this and argues that the trial court *did* consider the hardship that Strack's incarceration would impose upon Strack's daughter to be a mitigating factor. State's Br. p. 8. The trial court did discuss

trial court sentenced Strack to two years for the OWI conviction enhanced by four years due to the HVSO status, as well as 180 days to run concurrently for the possession of marijuana conviction. The trial court then suspended two years to probation. Strack was, thus, sentenced to a total of six years with two years suspended to probation. The trial court dismissed Counts II and IV for double jeopardy reasons. Strack now appeals.

Analysis

I. Allocution

[9] Strack argues that the trial court denied his right to allocution. Black's Law Dictionary provides the following two definitions of allocution:

> 1. A trial judge's formal address to a convicted defendant, asking whether the defendant wishes to make a statement or to present information in mitigation of the sentence to be imposed . . . .
> 2. An unsworn statement from a convicted defendant to the sentencing judge or jury in which the defendant can ask for mercy, explain his or her conduct, apologize for the crime, or say anything else in an effort to lessen the impending sentence. This statement is not subject to cross-examination.

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whether the hardship to the child qualified as mitigating. Tr. Vol. II pp. 60-62. The trial court's written sentencing order, however, explicitly identifies two aggravating factors but is silent with respect to mitigating factors. When the trial court's oral remarks conflict with its written order in a noncapital sentencing case, our Supreme Court has held that we will not presume "the superior accuracy of the oral statement, we examine it alongside the written sentencing statement to assess the conclusions of the trial court. This Court has the option of crediting the statement that accurately pronounces the sentence or remanding for resentencing." *McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007) (citing *Willey v. State*, 712 N.E.2d 434, 446 n.8 (Ind. 1999). We are persuaded that, while the trial court may have considered the potential mitigating effect of hardship to Strack's daughter, ultimately the trial court did not find that said hardship rose to the level of a mitigating *factor* and made no formal finding of such a mitigating factor.

Allocution, BLACK'S LAW DICTIONARY (11th ed. 2019). This opportunity to speak is derived from over three centuries of common law. *Vicory v. State*, 802 N.E.2d 426, 428 (Ind. 2004) (citing *Ross v. State*, 676 N.E.2d 339, 343 (Ind. 1996)).

[10] Indiana has codified this common-law right to be heard in several ways. Indiana Code Section 35-38-1-5, for example, provides that:

> When the defendant appears for sentencing, the court shall inform the defendant of the verdict of the jury or the finding of the court. The court shall afford counsel for the defendant an opportunity to speak on behalf of the defendant. The defendant may also make a statement personally in the defendant's own behalf and, before pronouncing sentence, the court shall ask the defendant whether the defendant wishes to make such a statement. Sentence shall then be pronounced, unless a sufficient cause is alleged or appears to the court for delay in sentencing.

[11] Our precedent holds, however, that the *statutory* right to allocution does not apply when a defendant pleads guilty, as Strack did here. *See, e.g.*, *Jones v. State*, 79 N.E.3d 911, 914-15 (Ind. Ct. App. 2017) (citing *Biddinger v. State*, 868 N.E.2d 407, 412 (Ind. 2007)). A defendant who has undergone a trial may have maintained his right to remain silent throughout. Thus, the sentencing hearing may represent the first opportunity for such a defendant to address a trial court. This is not so for a defendant like Strack, who pleaded guilty. Thus, Strack does not argue that he was entitled to allocution pursuant to Indiana Code Section 35-38-1-5.

[12] Rather, Strack argues that a violation of his right to make a statement without being subject to cross-examination was a due process violation, Appellant's Br. p. 15, and that this right finds roots in the Indiana Constitution. A defendant claiming that he was denied the right to allocution "carries a strong burden" in establishing the claim. *Vicory*, 802 N.E.2d at 429 (citing *Minton v. State*, 400 N.E.2d 1177, 1178 (Ind. Ct. App. 1980)). Article 1, Section 13 of the Indiana Constitution provides: "In all criminal prosecutions, the accused shall have the right . . . to be heard by himself and counsel." Indeed, "[t]he Indiana Constitution 'places a unique value upon the desire of an individual accused of a crime to speak out personally in the courtroom and state what in his mind constitutes a predicate for his innocence of the charges.'" *Vicory*, 802 N.E.2d at 429 (quoting *Sanchez v. State*, 749 N.E.2d 509, 520 (Ind. 2001)). With a guilty plea, the opportunity for the defendant to speak to his innocence is not an issue; however, our Supreme Court has found that, when a defendant pleads guilty and asks for an opportunity to speak, the trial court "should" grant that request. *Biddinger*, 868 N.E.2d at 412 (citing *Vicory*, 802 N.E.2d at 429).[3] Furthermore,

[3] Biddinger sought allocution after pleading guilty, but the trial court denied the request, reasoning that, because Biddinger pleaded guilty, he had no right to allocute. Biddinger submitted a written statement as his offer of proof that he otherwise would have read in its entirety. Our Supreme Court granted transfer in order to answer the question of whether "case authority declaring there is no right of allocution upon a plea of guilty is still good law." *Biddinger*, 868 N.E.2d at 410. The Supreme Court concluded that those who plead guilty do not have a *statutory* right to allocution; however, ". . . when a defendant specifically makes a request of the court for the opportunity to give a statement, as the defendant did in this case, then the request should be granted. Here, by failing to allow Biddinger the opportunity to make a statement the trial court erred." *Id.* at 412 (internal citation omitted). Ultimately, the Supreme Court concluded that the error was harmless because the trial court had received Biddinger's written statement, and, thus, the constitutional right to be heard was vindicated.

a defendant's statement in allocution is not subject to cross-examination. *Id*. at 413.

[13] In the case at bar, Strack was afforded both an opportunity to speak in the form of testimony, and, after the evidence phase of the hearing concluded, Strack was offered an opportunity to make a statement in allocution. Strack raised no objections to the trial court's sentencing procedures and made no argument that the trial court violated Article 1, section 13 of the Indiana Constitution. We have found that failure to object to cross-examination during allocution waives the claim for appeal. *Phelps v. State*, 914 N.E.2d 283, 290 (Ind. Ct. App. 2009). Our Supreme Court has also found that a failure to object when a trial court fails to ask a defendant if he has anything to say will waive a claim of related error on review. *Locke v. State*, 461 N.E.2d 1090, 1092-93 (Ind. 1984).

[14] "'A defendant, especially one under these circumstances, may not sit idly by at a sentencing hearing, fail to object to a statutory defect in the proceeding, then seek a new sentencing hearing on that basis on appeal. The failure to object constitutes waiver.'"[4] *Woods v. State*, 98 N.E.3d 656, 662 (Ind. Ct. App. 2018) (quoting *Angleton v. State*, 714 N.E.2d 156, 159 (Ind. 1999)), *trans. denied*; *see also Abd v. State*, 120 N.E.3d 1126, 1137 (Ind. Ct. App. 2019), *trans. denied*; *but see Jones*, 79 N.E.3d 911 (finding reversible error when a trial court asked defendant's counsel—rather than defendant directly—if defendant had anything

[4] This reasoning has no less force under the circumstances of this case, despite the fact that Strack was not entitled to allocution as a statutory matter.

to say). If Strack believed that the trial court's ambiguous statement—"if your client has anything to say he needs to testify"—constituted error, then it was incumbent upon Strack to object in order to preserve the issue for review. Accordingly, we conclude that Strack has waived this claim on appeal.

[15] Strack contends that, waiver notwithstanding, he should prevail upon his claim because it is tantamount to fundamental error. "The fundamental error doctrine is extremely narrow. Fundamental error is defined as an error so prejudicial to the rights of a defendant a fair trial is rendered impossible." *White v. State*, 846 N.E.2d 1026, 1033 (Ind. Ct. App. 2006) (citing *Howard v. State*, 816 N.E.2d 948, 955 (Ind. Ct. App. 2004), *vacated on other grounds*), *trans. denied.* This exception "applies only when the error constitutes a blatant violation of basic principles [of due process], the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process." *Isom v. State*, 31 N.E.3d 469, 490 (Ind. 2015) (quoting *Halliburton v. State*, 1 N.E.3d 670, 678 (Ind. 2013), *trans. denied*), *cert. denied*.

[16] Strack asserts that a "defendant's right to speak on his own behalf without being cross[-]examined is a basic and elementary principle of sentencing. It stems from common law, a statute[,] and the Indiana Constitution." Appellant's Br. p. 15. The mere fact that an error may have a constitutional dimension, however, does not necessarily render the error fundamental. *See, e.g., Decker v. State,* 179 Ind. App. 472, 492-93, 386 N.E.2d 192, 205 (1979) ("Defendant apparently feels since the error in this case invaded his Constitutional rights it must necessarily have risen to the stature of fundamental error. Such is not the

law."). There are rights that find their home in Article 1, Section 13 of the Indiana Constitution that have been hailed by our Supreme Court as "a bedrock of our criminal justice system." *Horton v. State*, 51 N.E.3d 1154, 1158 (Ind. 2016). The right to allocute is not among them. A trial court affording a defendant who pleaded guilty the opportunity to speak at a sentencing hearing, free from cross-examination, may be *sufficient* to satisfy that defendant's constitutional right to be heard. It is not, however, a *necessary* pre-requisite to the satisfaction of that right. We decline, therefore, to find fundamental error here.

[17] Regardless of waiver and Strack's unavailing fundamental error argument, we would not find that Strack was deprived of his right to be heard. Our Supreme Court held in *Vicory*:

> The fact that Vicory was given the opportunity to testify at his probation revocation hearing demonstrates that the goal of allocution was largely accomplished. Vicory did in fact address the court and was able to tell his side of the story. This is essentially what the right of allocution would have allowed him to do.

802 N.E.2d at 430. In other words, as a substantive matter, the opportunity to testify at one's sentencing hearing is sufficient to vindicate a defendant's right to be heard by the trial court under Article 1, Section 13 of our Indiana Constitution.

[18] The trial court failed to clarify an ambiguity here, and, as a result, Strack did not understand that he was not required to submit to cross-examination. We

reiterate that trial courts must be ever vigilant in providing clarity, both in their procedures and in the exposition of the rights of criminal defendants. Nevertheless, our precedent is clear, and, because Strack had an opportunity to be heard by the trial court, including an opportunity for allocution after his testimony, the trial court did not err.

II. Abuse of Discretion

[19] Strack next argues that the trial court abused its discretion when it failed to find as mitigating factors: (1) the potential negative impact that incarcerating Strack would have on Strack's daughter; and (2) Strack's guilty plea. "[S]ubject to the review and revise power [under Indiana Appellate Rule 7(B)], sentencing 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) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse of discretion occurs only 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." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[20] 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 in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing

> statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[21] "This Court presumes that a court that conducts a sentencing hearing renders its decision solely on the basis of relevant and probative evidence." *Schuler*, 132 N.E.2d at 905. "When an abuse of discretion occurs, this Court 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.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491).

[22] The trial court "'is not obligated to accept the defendant's contentions as to what constitutes a mitigating circumstance or to give the proffered mitigating circumstances the same weight the defendant does.'" *Weisheit v. State*, 26 N.E.3d 3, 9 (Ind. 2015) (quoting *Wilkes v. State*, 917 N.E.2d 675, 690 (Ind. 2009), *cert. denied*. "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." *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)).

A. Undue Hardship

[23] Strack argues that the trial court abused its discretion by refusing to hear evidence of the undue hardship that would befall Strack's daughter if Strack was incarcerated. We have long recognized undue hardship on a dependent child as a potential mitigating factor, as has our legislature. Ind. Code § 35-38-1-7.1(b)(10). It is not enough, however, for Strack to establish mere hardship. The trial court correctly observed that any time a parent is incarcerated a hardship is encountered by that parent's children. The question is whether the hardship was undue. *Teeters v. State*, 817 N.E.2d 275, 280 (Ind. Ct. App. 2004) (". . . [J]ail is always a hardship on dependents . . . the hardship imposed on Teeters' three children was not undue."), *trans. denied*.

[24] Strack's argument is not that he established undue hardship and that the trial court subsequently failed to properly take that hardship into account. Rather, Strack argues that the trial court refused to hear evidence pertinent to the hardship, thereby abrogating Strack's due process rights. The Fifth and Fourteenth Amendments of the U.S. Constitution provide in part that no person shall be "deprived of life, liberty, or property, without due process of law[.]" U.S. Const. am. V; XIV. That due process right entitles those convicted of a crime to present evidence pertinent to mitigating factors at a sentencing hearing. *See, e.g., Wilson v. State*, 865 N.E.2d 1024, 1029 (Ind. Ct. App. 2007). "A federal constitutional error is reviewed de novo and must be "'harmless beyond a reasonable doubt.'" *Id.* (quoting *Davies v. State*, 730 N.E.2d 726, 735 (Ind. Ct. App. 2000), *trans. denied*).

[25] The trial court precluded evidence of the DCS investigations pertaining to the mother of Strack's child ("Mother"). Mother is alleged to have tested positive for drugs on multiple occasions. Mother had custody of Strack's daughter at the time of the sentencing hearing as a result of the domestic violence incident and Strack's arrest. Strack argues that his strategy at the sentencing hearing was to seek community corrections "in the hopes that he could regain custody of [his daughter] soon." Appellant's Br. p. 17.

[26] The trial court noted that Strack endangered his daughter by driving while under the influence of alcohol with his daughter in the back seat. The trial court did acknowledge that Strack's daughter "may be in a bad situation with the mother," Tr. Vol. II p. 60, but concluded that such circumstances combined with Strack's potential incarceration did not rise to the level of an undue hardship for the child. The trial court was unable to find that the child would be any better off if Strack had custody rather than Mother. *Id*.

[27] We agree with Strack that the trial court committed error by disallowing evidence pertinent to the child's circumstances while living with Mother. *See Wilson,* 865 N.E.2d at 1030 (holding that the trial court committed error by refusing to allow evidence of "family history, employment history, mental health history" in the context of a potential undue hardship to a child).[5]

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[5] We are unpersuaded by Strack's contention that this was prima facie error. Appellant's Reply Br. pp. 6-7. In *Wilson*, the trial court prevented Wilson from presenting *any* mitigating evidence. Strack was not similarly deprived, and we are not aware of any authority that holds that a trial court must allow *all* evidence that

"Whether this amounts to reversible error, however, is another question." *Id*. (citing *Bussberg v. State*, 827 N.E.2d 37, 44 (Ind. Ct. App. 2005), *trans. denied*). We find the error here to be harmless. Assuming, *arguendo*, that the trial court had permitted evidence pertaining to the DCS investigations and Mother's unsuitability to care for her daughter, that does not give rise to a reasonable doubt that the sentence would have differed from the one actually imposed.[6]

[28] The fact that Strack recently lost custody of his daughter as a result of a domestic violence incident, which also constituted a bond violation and resulted in his arrest, is of particular significance. Strack's criminal history, specifically its length and the fact that it is replete with alcohol-related crimes, is suggestive of a person that has yet to effectively grapple with the fact that alcohol is a problem in his life. Additionally, Strack's toddler-aged daughter was in the back seat when he got behind the wheel after drinking, which suggests a lack of parenting perspective.[7] The trial court considered all of these factors and determined that Strack's daughter would be no better off if Strack

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might potentially be mitigating. Trial courts are not so firmly divested of evidentiary discretion in the context of sentencing hearings.

[6] A person convicted of a Level 6 felony "shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Ind. Code § 35-50-2-7. "The court shall sentence a person found to be a habitual vehicular substance offender to an additional fixed term of at least one (1) year but not more than eight (8) years of imprisonment. . . ." I.C. § 9-30-15.5-2. "A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days. . . ." I.C. § 35-50-3-3. Therefore, Strack faced a potential sentence of approximately eleven years. The trial court entered an aggregate sentence of just six years, with two suspended to probation and four executed.

[7] We note that, while these facts may have been contextualized by Strack's testimony, they were, or could be, established independently of that testimony.

were to serve his sentence in community corrections and regain custody. We agree with the State that additional testimony regarding Mother's difficulties and interactions with DCS would not have changed the trial court's analysis. Appellee's Br. pp. 14, 17.

B. Strack's Guilty Plea

[29] Strack argues that the trial court failed to afford mitigating weight to his entry of a guilty plea. With respect to Strack's guilty plea, our Supreme Court has found:

> This Court has recognized before that "a defendant who willingly enters a plea of guilty has extended a substantial benefit to the state *and deserves to have a substantial benefit extended to him in return.*" *Scheckel v. State*, 655 N.E.2d 506, 511 (Ind. 1995) (quoting *Williams v. State*, 430 N.E.2d 759, 764 (1982), *reh'g denied*, 459 U.S. 808, 103 S. Ct. 33 [ ] (1982)). A guilty plea demonstrates a defendant's acceptance of responsibility for the crime and extends a benefit to the State and to the victim or the victim's family by avoiding a full-blown trial. *Id*. *See also Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999); *Trueblood v. State*, 715 N.E.2d 1242, 1257 (Ind. 1999). *Thus, a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return*. *Scheckel*, 655 N.E.2d at 511; *Widener v. State*, 659 N.E.2d 529, 534 (Ind. 1995). We find that the court erred in not considering the guilty plea to be a mitigating circumstance.

Francis v. State, 817 N.E.2d 235, 237-38 (Ind. 2004) (emphasis added).

[30] On the other hand, our Supreme Court has found:

> As for the acceptance of responsibility, the record shows that the plea agreement was "more likely the result of pragmatism than

> acceptance of responsibility and remorse." *Mull v. State*, 770 N.E.2d 308, 314 (Ind. 2002) (citations omitted). This is so because the evidence against Anglemyer was overwhelming. *See Primmer v. State*, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006), *trans. denied* (declaring a plea may "be considered less significant if there was substantial admissible evidence of the defendant's guilt"). And although Anglemyer expressed some remorse for his actions, stating, "I would just like to tell [the victim] myself, personally that I am very sorry . . . . I am very, very sorry," Tr. at 16, Anglemyer attempted to minimize his culpability by relying upon his lack of employment, mental impairment, and history of emotional and behavioral problems. Tr. at 13-15. In this case, Anglemyer has not demonstrated that his guilty plea was a significant mitigating circumstance. We therefore conclude that the trial court did not abuse its discretion by omitting reference to the plea when imposing sentence.

Anglemyer v. State, 875 N.E.2d 218, 221 (Ind. 2007).

[31] We acknowledge the difference between a defendant that pleads guilty in order to acquire some benefit via an agreement with the State, and one who simply owns up to the crime but receives nothing in return. Here, Strack entered a guilty plea without the benefit of an agreement, so we cannot say that he pleaded guilty for pragmatic reasons. Thus, we conclude that the trial court should have afforded Strack's entry of a guilty plea mitigating weight. We cannot confidently conclude, however, that the trial court would have ordered a different sentence if it had attributed mitigating weight to Strack's guilty plea, and, accordingly, we affirm.

III. Cumulative Effect of the Alleged Errors

[32] Finally, Strack argues that, even if the alleged errors standing alone do not warrant reversal, the cumulative effect of those errors does warrant reversal. Though Strack cites no authority for this position, his argument finds some legitimacy in our precedents. *See Myers v. State*, 887 N.E.2d 170, 196 (Ind. Ct. App. 2008) (citing *Hubbell v. State*, 754 N.E.2d 884, 895 (Ind. 2001)) ("The Indiana Supreme Court has provided for the possibility that the cumulative effect of trial errors may warrant reversal."), *trans. denied*; *see also Hadley v. State*, 165 Ind. App. 416, 421, 332 N.E.2d 269, 272 (1975) ("Even if no one of these instances of [prosecutorial] misconduct was severe enough to compel reversal, their cumulative effect necessitates that Hadley be given a new trial."). We read the precedents of the Indiana Supreme Court as contemplating, rather than holding, that the cumulative effect of errors might result in reversible error as a whole:

> *Assuming, for the sake of argument*, that under some circumstances the cumulative effect of trial errors may warrant reversal even if each might be deemed harmless in isolation, in this case it is clear in light of the evidence of guilt that no prejudice resulted from any of the erroneous rulings, individually or cumulatively.

Hubbell, 754 N.E.2d at 895 (citing *Thompson v. State*, 728 N.E.2d 155, 163 (Ind. 2000)) (emphasis added).

[33] Our Supreme Court further opines that "[a]lleged '[t]rial irregularities which standing alone do not amount to error do not gain the stature of reversible error

when taken together.'" *Kubsch v. State*, 934 N.E.2d 1138, 1154 (Ind. 2010) (quoting *Reaves v. State*, 586 N.E.2d 847, 858 (Ind. 1992)), *cert. denied*. "'Generally, trial errors that do not justify reversal when taken separately also do not justify reversal when taken together.' Isom does not explain why the trial errors he alleged are exceptions to this general rule." *Isom v. State*, 170 N.E.3d 623, 649 (Ind. 2021) (quoting *Weisheit v. State,* 109 N.E.3d 978, 992 (Ind. 2018), *cert. denied*), *cert. denied*.[8] Thus, as a general rule, cumulative errors will not result in reversal, but there are potentially some exceptions to that rule.

[34] We have previously found that the cumulative effect of errors warranted reversal when we could not find that the effect was harmless. *Gaby v. State*, 949 N.E.2d 870, 882 (Ind. Ct. App. 2011) (". . . we are unable to say that the cumulative effect of these errors was harmless."). Therefore, exceptions to the general rule regarding cumulative errors may result from prejudice to the defendant stemming from the combination of errors. The Indiana Supreme Court has not, however, set forth standards for determining what the exceptions are. We decline to find such an exception here. Strack was entitled to a fair sentencing hearing—not a perfect one. Even if the trial court had considered the additional mitigating evidence of which Strack now complains, 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

[8] We are aware that these cases arose in the context of trial rather than sentencing. Considering the effect of cumulative errors in sentencing is not, however, new ground. *See, e.g., Bluck v. State,* 716 N.E.2d 507, 515 (Ind. Ct. App. 1999).

reasons that enjoy support in the record.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491). Those circumstances are not present in this case.

Conclusion

[35] The trial court did not violate Strack's right to allocution. The trial court's error in precluding evidence pertaining to Mother's parenting issues was harmless. The trial court's failure to afford mitigating weight to Strack's entry of a guilty plea was an abuse of discretion. We decline, however, to remand for resentencing due to the abuse of discretion and alleged cumulative effect of the trial court's errors. We affirm Strack's sentence.

[36] Affirmed.

Mathias, J., and Weissmann, J., concur.