

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Deangelo Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 6, 2022

Court of Appeals Case No.
22A-CR-1120

Appeal from the Marion Superior
Court

The Honorable Angela Dow
Davis, Judge

Trial Court Cause No.
49D27-1910-F3-40172

Bailey, Judge.

Case Summary

- [1] Deangelo Davis (“Davis”) challenges the sentence imposed upon his convictions for Sexual Misconduct with a Minor, as a Level 4 felony,¹ Battery, as a Level 3 felony,² and Battery, as a Level 5 felony.³ We affirm.

Issues

- [2] Davis presents two issues for review:
- I. Whether the trial court abused its sentencing discretion by failing to make a reasonably detailed sentencing statement because it did not articulate a reason for the imposition of consecutive sentences; and
 - II. Whether the twenty-five-year aggregate sentence is inappropriate.

Facts and Procedural History

- [3] In 2011, Davis began a romantic relationship with G.J. Davis moved in with G.J. and her five children. Together, they had three more children.
- [4] In 2016, when G.J. was six months pregnant with her seventh child, she asked Davis to vacate the motel room where the family had been staying. Davis

¹ Ind. Code § 35-42-4-9(a)(1).

² I.C. § 35-42-2-1(j).

³ I.C. § 35-42-2-1(g)(3).

became angry and began to punch and slap G.J. In an attempt to protect her unborn child, G.J. curled into a ball on a bed. Davis grabbed a bedside lamp, swung it at G.J., and struck her leg. G.J.'s flesh was torn, leaving a permanent scar. All of G.J.'s children and Davis's child from a previous relationship were present during the incident.

[5] On a separate occasion while the family was residing in the same motel, Davis became angry with one of the children, A.S.J. He choked A.S.J. until she lost consciousness. Davis shook A.S.J. until she regained consciousness. Again, G.J. and all of her children were present. They were hindered in making any report of Davis's conduct because Davis would at times threaten to burn down the residence or stab each family member to death.

[6] In January of 2019, the family was residing in a house in Indianapolis. Fifteen-year-old A.Y.J. slept on the living room sofa. One January evening when G.J. was at work and all the children were asleep, Davis entered the living room and awoke A.Y.J. Davis demanded that A.Y.J. remove her clothing. When she did so, Davis climbed on top of her and engaged in sexual intercourse. A few nights later, Davis again awakened A.Y.J. and performed sexual intercourse. On a third such occasion, Davis became angry at A.Y.J.'s crying and threw her to the floor. He warned her against telling anyone what he had done.

[7] In April of 2019, A.Y.J. approached Davis and told him that she might be pregnant. Davis instructed A.Y.J. to tell G.Y. that A.Y.J. had been impregnated by a boy at school; A.Y.J. complied. When G.Y. took A.Y.J. to a

medical appointment, testing revealed that A.Y.J. was pregnant and had chlamydia. In August or September of 2019, after G.Y. had left Davis, A.Y.J. revealed that she had been impregnated by Davis. A.Y.J. gave birth to a child in November of 2019, and DNA testing confirmed Davis's paternity of the child.

[8] On October 15, 2019, the State of Indiana charged Davis with Sexual Misconduct with a Minor and two counts of battery (one for his conduct against G.Y., a pregnant woman, and one for his conduct against A.S.J., a child under aged fourteen). On March 22, 2022, Davis was tried in a bench trial. He was convicted as charged.

[9] On April 21, 2022, the trial court sentenced Davis to three years imprisonment for battering G.Y., eleven years (with two years suspended) for battering A.S.J., and eleven years for his sexual misconduct with A.Y.J. The trial court ordered that all sentences be served consecutively. Davis now appeals.

Discussion and Decision

Abuse of Discretion

[10] In its oral sentencing statement, the trial court found as mitigators: Davis did not have a significant criminal history and he had family and community support. In aggravation, the trial court found: Davis had been in the position of a stepfather; he encouraged lying to cover up his criminal activity; he committed offenses in front of the children; and the harm from sexual

misconduct was significantly greater than the elements necessary to prove the offense, because he impregnated his victim and gave her a sexually transmitted disease. The trial court did not articulate a separate reason for the imposition of consecutive sentences. According to Davis, this amounts to an abuse of discretion necessitating our remand for resentencing.

[11] When imposing a sentence for a felony offense, the trial court must issue “a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). We review the sentence for an abuse of discretion. *Sloan v. State*, 16 N.E.3d 1018, 1026 (Ind. 2014). The trial court abuses its discretion by (1) failing to issue a sentencing statement; (2) finding aggravating or mitigating factors that are not supported by the record; (3) omitting factors that are clearly supported by the record and advanced for consideration; or (4) by finding factors that are improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490-91.

[12] When a trial court decides to impose a consecutive sentence, it must articulate, explain, and evaluate the aggravating circumstances that support the sentence. *Monroe v. State*, 886 N.E.2d 578, 580 (Ind. 2008). But we need not remand for articulation of the trial court’s reasoning and resentencing where “the rationale for consecutive sentences is apparent on the face of the record.” *Lewis v. State*, 31 N.E.3d 539, 543 (Ind. Ct. App. 2015).

[13] It is well established that “enhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.” *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003). Further, “the same factors may be used to enhance a presumptive sentence and to justify consecutive sentences.” *Kilpatrick v. State*, 746 N.E.2d 52, 62 (Ind. 2001). Here, there were three direct victims of offenses and several children who were present as indirect victims of the offenses. We find no abuse of sentencing discretion that would require us to remand for resentencing.

Inappropriateness

[14] Upon conviction of a Level 3 felony, Davis was subject to a sentence of between three and sixteen years, with an advisory sentence of nine years. I.C. § 35-50-2-5. The executed portion of his sentence is equal to the advisory sentence. Upon conviction of a Level 4 felony, Davis was subject to a sentence of between two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. Davis received an enhanced sentence of eleven years. Upon conviction of a Level 5 felony, Davis was subject to a sentence of between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Davis received the advisory sentence.

[15] Davis maintains that his sentence is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a trial court’s sentencing order. *E.g., Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018). This appellate authority is implemented through Indiana Appellate Rule

7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. *See* Ind. Appellate Rule 7(B); *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. It is the defendant’s burden to “persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007).

[16] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to “leaven the outliers.” *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court “prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as

substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[17] As to the nature of the offenses, Davis concedes that they were contemptible and committed over the course of several years. He does not attempt to portray his offenses in a positive light. Indeed, the record reveals that Davis committed multiple offenses against and in the presence of multiple family members and then terrorized them into silence. Thus, Davis’s crimes were not accompanied by a show of “restraint” or “lack of brutality” on his part. *Id.* at 122. And the harm to A.Y.J. was particularly appalling – she was impregnated, battered, infected with a sexually transmitted disease, and coerced into protecting Davis.

[18] Nor does Davis’s character support a sentence revision. He was adjudicated a juvenile delinquent, violated his probation, was convicted of the felony of receiving stolen property, and has had other contacts with the criminal justice system, including an arrest for a dismissed charge of robbery. He was a parent to three young children and placed in a position of trust with regard to several other children and violated that trust on numerous occasions. We perceive no “substantial virtuous traits or persistent examples of good character.” *Id.*

We cannot say that Davis’s sentence is inappropriate in light of the nature of his offenses and his character.

Conclusion

[19] Davis has failed to identify an abuse of sentencing discretion necessitating remand for resentencing, and he has failed to persuade us that his sentence is inappropriate.

[20] Affirmed.

Riley, J., and Vaidik, J., concur.