MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Michael D. Dean
Withered Burns, LLP
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Marlon Anthony McLaurin, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 22, 2022

Court of Appeals Case No. 22A-CR-1153

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Case No. 79D01-2112-F2-49

Darden, Senior Judge.

Statement of the Case

[1] Marlon Anthony McLaurin, Jr., appeals the sentence the trial court imposed after he pleaded guilty to conspiracy to commit burglary with a deadly weapon, a Level 2 felony.[1] We affirm.

Issue

[2] McLaurin raises two issues, which we consolidate and restate as: whether the trial court abused its discretion in the course of identifying aggravating and mitigating sentencing factors.

Facts and Procedural History

[3] The guilty plea transcript reveals some of the facts and circumstances surrounding McLaurin's offense, but more detailed versions exist in the probable cause affidavit, which McLaurin cited to in his appellate brief. *See* Appellant's Br. p. 5. In addition, both the probable cause affidavit and the charging information are referred to in, and attached to, the pre-sentence investigation report, and McLaurin did not object to the consideration of those documents at sentencing.

[4] On the night of December 12, 2021, McLaurin and a companion, who he knew as "Kash" but whose real name is Justin Avant, agreed to break into Jameese

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[1] Ind. Code §§ 35-41-5-2 (2014) (conspiracy), 35-43-2-1 (2014) (burglary).

Martin's (hereinafter Jameese) apartment in Lafayette, Indiana, and take her property. McLaurin used a minivan to drive Avant, who he knew was carrying a handgun, to the apartment complex. They were accompanied by a woman and her child, who had obtained a ride from McLaurin.

[5] As the men approached the apartment complex, McLaurin pulled the hood of his shirt over his head, and Avant put on a facemask. They both donned blue medical gloves.

[6] Jameese responded to a knock at her front door, and both men forced their way inside of her apartment. Once inside, Avant forced Jameese to lie on the floor, put the barrel of the handgun to the back of her head, and demanded guns and drugs. The woman waiting in McLaurin's minivan heard a woman scream inside the apartment as the men entered. Jameese denied having any guns or drugs, and she told them there were kids in another room of the apartment. Later, she heard one of the men, as he searched the rest of the apartment, tell the children to stay where they were.

[7] Next, the men allowed Jameese to stand up, and she went to retrieve her purse. She gave the men all of her money in her purse, and they left the apartment. Upon returning to the minivan, the woman waiting inside saw that Avant was wearing a mask and carrying a handgun.

[8] Someone had called the police, and Officer David of the Lafayette Police Department was near the apartment complex when he heard the reported burglary. As he approached the location, he observed a silver minivan, without

its headlights on, drive out of the apartment complex at a high rate of speed. The van's headlights remained off until it turned onto a road outside the complex. David called in a description of the van as he continued on to Jameese's apartment.

[9] Soon thereafter, another police officer saw a silver minivan parked in front of a nearby residence, but as he pulled up, the van drove off at a high rate of speed. The driver of the van attempted to evade the officer, but several other officers converged on the scene and successfully stopped the van. McLaurin was driving the van, and there was a woman and child inside with him. The van smelled of marijuana, and a search of the van revealed marijuana and blue medical gloves.

[10] During subsequent questioning, McLaurin admitted and described planning the robbery with Avant. He also acknowledged that there were "several children" inside the apartment. Appellant's App. Vol. 2, p. 29. McLaurin further stated that he had dropped off Avant shortly before the vehicle chase. McLaurin gave officers permission to search his phone, and they found messages between McLaurin and Avant, appearing to plan the robbery.

[11] On December 17, 2021, the State charged McLaurin with conspiracy to commit burglary with a deadly weapon, a Level 2 felony; burglary with a deadly weapon, a Level 2 felony; conspiracy to commit armed robbery, a Level 3 felony; armed robbery, a Level 3 felony; criminal confinement, a Level 3

felony; intimidation, a Level 5 felony; residential entry, a Level 6 felony; theft, a Class A misdemeanor; and possession of marijuana, a Class B misdemeanor.

[12] The parties later negotiated a plea agreement. McLaurin agreed to plead guilty to conspiracy to commit burglary with a deadly weapon, and the State agreed to dismiss the other eight charges at sentencing. The parties further agreed the sentence would be left to the trial court's discretion.

[13] During the May 3, 2022 sentencing hearing, the trial court accepted the parties' plea agreement and heard arguments as to sentencing. In addition, the prosecution submitted Jameese's written victim impact statement, which the trial court accepted, without objection from McLaurin. The trial court noted the following sentencing factors:

> The Court finds as mitigating factors that the defendant did plead guilty and in a timely manner; has taken responsibility for his actions; and has the support of family.
>
> The Court finds as aggravating factors the defendant's juvenile and adult criminal history; was on parole at the time of the instant offense; substance abuse history; crime of violence; there were persons under the age of 18 present during the instant offense; the impact on the victim; was placed in segregation while these charges were pending; and previous attempts at rehabilitation have failed.

Appellant's App. Vol. 2, pp. 34-35.

[14] The trial court imposed an executed sentence of sixteen years, consisting of fourteen years at the Indiana Department of Correction and two years at Tippecanoe County Community Corrections, to be followed by four years of

supervised probation, for a total sentence of twenty years. This appeal followed.

Discussion and Decision

[15] McLaurin argues that the trial court erroneously overlooked certain mitigating sentencing factors and erred in citing at least one aggravating sentencing factor. By law, the Indiana General Assembly has provided:

> A court may impose any sentence that is:
>
> (1) authorized by statute; and
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> (2) permissible under the Constitution of the State of Indiana; regardless of the presence or absence of aggravating circumstances or mitigating circumstances.

Ind. Code § 35-38-1-7.1(d) (2019). Upon imposing a sentence for a felony conviction, a court "shall issue a statement of the court's reasons for selecting the sentence that it imposes unless the court imposes the advisory sentence for the felony." Ind. Code § 35-38-1-1.3 (2014). Indiana Code section 35-38-1-7.1 provides a nonexclusive list of aggravating and mitigating sentencing factors that trial courts may consider.

[16] If a sentence is within the statutory range, the trial court's sentencing decision "is subject to review 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 (2007). An abuse of sentencing 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. *Salhab v. State*, 153 N.E.3d 298, 304 (Ind. Ct. App. 2020).

[17] A trial court may abuse its sentencing discretion in several ways, including "entering 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, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration . . . ." *Anglemyer*, 868 N.E.2d at 490-91.

I. Aggravating Sentencing Factors

[18] McLaurin argues the record does not support the trial court's determination, as an aggravating sentencing factor, that he committed the offense in the presence of persons under the age of eighteen. Specifically, he claims there was no direct evidence that Jameese's children were minors. We disagree. In Jameese's victim impact statement, she stated that, while she was being held at gunpoint by McLaurin and Avant, she denied having guns or drugs and further told them, "I have kids here." Appellant's App. Vol. 2, p. 64. It is reasonable to infer from that statement that she was asking them to stop their dangerous misconduct because there were vulnerable persons (minors) present.

[19] Even if we were to conclude that the aggravating factor is unsupported by direct evidence, McLaurin has not demonstrated grounds for reversal. Further, undisputed circumstantial evidence reveals that McLaurin acknowledged that while Avant was holding Jameese at gunpoint, he searched the apartment and

saw several children in an adjacent room. When a trial court errs in identifying aggravating circumstances, remand for a new sentencing hearing is appropriate "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." *Anglemyer*, 868 N.E.2d at 491.

[20] Also, in McLaurin's case, the trial court identified six other aggravating sentencing circumstances. During the sentencing hearing, the trial court focused its discussion on McLaurin's juvenile and adult criminal record, which includes numerous juvenile delinquency determinations and three adult felony convictions. Based upon our review of the record, any trial court error in identifying the one aggravating sentencing factor McLaurin challenges herein would not require a new sentencing hearing.

II. Mitigating Sentencing Factors

[21] The trial court identified three mitigating sentencing factors: pleading guilty in a timely manner; taking responsibility for the offense; and family support. However, McLaurin argues that the trial court erred in overlooking the following mitigators: his youth; his remorse; and his difficult childhood.

[22] A trial court is not obligated to accept and give the desired suggested weight to the defendant's argument as to what constitutes a mitigating factor. *Smoots v. State*, 172 N.E.3d 1279, 1288 (Ind. Ct. App. 2021). In addition, the trial court is under no obligation to explain why a proposed mitigator does not exist or why the court found it to be insignificant. *Id.* An allegation that the trial court failed

to find a mitigating factor requires the defendant on appeal to establish that the mitigating evidence is both significant and clearly supported by the record. *Hunter v. State*, 72 N.E.3d 928, 935 (Ind. Ct. App. 2017), *trans. denied*.

[23] McLaurin was twenty years old when he committed the instant offense. The trial judge noted his age and stated, "given everything that has happened up to your age of 20, I don't know that the age of 20, how that kicks in other than lack of maturity, I guess." Tr. Vol. II, p. 35. Thus, the trial court considered and rejected McLaurin's age as a mitigating factor, and we cannot conclude the trial court abused his discretion.

[24] Turning to the question of remorse, the trial court determined that McLaurin accepted responsibility for the crime, which would appear to address any statement of remorse. To the extent that McLaurin argues that remorse is separate from acceptance of responsibility, we note that the trial court's determination on remorse is "similar to a determination of credibility." *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002).

[25] Here, during sentencing, McLaurin apologized "to the Courts and my family and friends and also to the victim." Tr. Vol. II, p. 30. But the rest of his lengthy statement (covering almost three pages of the transcript) focused on himself and his perception that he needed to make better life choices. He referred to his offense as merely a "mistake." *Id.* at 31. In addition, McLaurin submitted a written statement to the trial court prior to sentencing, and in that statement he minimized the nature and consequences of the offense, noting:

"No one was harmed. Nothing was took [sic] or broken that couldn't be replaced." Appellant's App. Vol. 2, p. 61. Indeed, the trial court noted McLaurin had omitted any discussion of the children's loss of innocence and long-term mental health consequences. Based on these mixed statements, we cannot conclude that the evidence of McLaurin's remorse was significant and clearly supported by the record.

[26] Finally, McLaurin argues the trial court erred in failing to conclude that his difficult childhood is a valid mitigating circumstance. The Indiana Supreme Court "has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007). The presentence investigation report indicated that, based on Tippecanoe County records, McLaurin and his brother were placed in a care home for a week, followed by placement with a relative for five months, when McLaurin was sixteen, because their mother was facing criminal charges. The only other information about McLaurin's childhood came from McLaurin, which can be constructed as a self-serving declaration. The trial court noted, "Based on your statements maybe you didn't get the support that you needed as you were growing up, I'm not sure." Tr. Vol. II, pp. 35-36. We will not second-guess the trial court's credibility determination, and we cannot conclude McLaurin's evidence of a difficult childhood was significant and clearly supported by the record. In summary, McLaurin has failed to demonstrate the trial court abused its discretion in rejecting three of his proposed mitigating sentencing factors.

Conclusion

[27] For the reasons stated above, we affirm the judgment of the trial court.

[28] Affirmed.

May, J., and Vaidik, J., concur.