

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Jane Ann Noblitt
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ian McLean
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Bobby N. Truitt, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 28, 2022

Court of Appeals Case No.
22A-CR-1274

Appeal from the Bartholomew
Superior Court

The Hon. James D. Worton,
Judge

Trial Court Cause No.
03D01-2010-MR-4791

Bradford, Chief Judge.

Case Summary

- [1] In September of 2020, Bobby Truitt killed his aunt Sharon Lovins by bludgeoning her with a hammer and strangling her. After her death, Truitt penetrated her anus with his fingers. The State ultimately charged Truitt with murder and Level 6 felony abuse of a corpse. Truitt pled guilty as charged, and the trial court imposed an aggregate sentence of sixty-seven years of incarceration. Truitt contends that the trial court abused its discretion in sentencing him. Because we disagree, we affirm.

Facts and Procedural History

- [2] On September 26, 2020, Lovins bonded Truitt out of the Johnson County Jail and returned with him to her Bartholomew County residence. On September 27, 2020, Truitt knowingly or intentionally struck Lovins with a hammer in the head, oral cavity, and neck numerous times and strangled her, causing her death. After Lovins's death, Truitt penetrated her anus with his fingers. Police officers found Truitt the next day in Indianapolis near the Greyhound bus station, where he had been inquiring about purchasing tickets to New York. Truitt admitted that he had killed Lovins with a hammer and had sexually abused her corpse.
- [3] On October 5, 2020, the State charged Truitt with murder, Level 2 felony rape, and Level 6 felony auto theft. On March 25, 2022, the State amended the rape charge to a charge of Level 6 felony abuse of a corpse. On April 14, 2022, pursuant to a written plea agreement, Truitt pled guilty to murder and abuse of a corpse.

[4] On May 10, 2022, the trial court held a sentencing hearing. In sentencing Truitt, the trial court noted the “brutal, horrific” nature of his crime, in which the “innocent victim in this case, was beaten to death by a hammer, by someone who she loved and by someone she cared about.” Tr. Vol. II pp. 27–28. The trial court found, as aggravating circumstances, (1) Truitt’s history of criminal and delinquent behavior, (2) the nature of his offense went beyond the elements necessary to prove murder, (3) he had committed his crimes while on bond for his sexual-battery charge, (4) his victim was a close and loving relative who had just bonded him out of jail, and (5) the emotional harm caused to Lovins’s surviving family and friends.

[5] The trial court found that Truitt’s youth was mitigating but gave it only “slight” significance in light of the extensive social services given to him during his minority. Tr. Vol. II p. 29. The trial court also found Truitt’s guilty plea and his mental-health issues to be mitigating circumstances. The trial court considered but rejected Truitt’s childhood as a mitigating circumstance because persons often have a difficult upbringing and even those among them who commit crimes do not inflict the extreme violence and abuse Truitt had directed at his aunt. The trial court found that the aggravating circumstances “significantly outweigh any mitigators” and sentenced Truitt to sixty-five years of incarceration for murder and two for abuse of a corpse, to be served consecutively. Tr. Vol. II p. 29.

Discussion and Decision¹

[6] 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), *modified on other grounds 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.* (quotation omitted).

We review for an abuse of discretion the court’s finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law.

Baumholser v. State, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (internal citation and quotation omitted), *trans. denied*.

[7] A single aggravating circumstance may be sufficient to enhance a sentence. When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. The question we must decide is whether we are confident the trial court would have imposed

¹ Truitt frames his sentence challenge in terms of whether it is inappropriate in light of the nature of his offenses and his character. Truitt’s argument, however, only addresses the trial court’s finding and weighing of mitigating circumstances. This is more accurately characterized as a claim that the trial court abused its discretion in sentencing Truitt, so we address it as such.

the same sentence even if it had not found the improper aggravator.

Id. at 417 (internal quotation omitted). “A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.” Ind. Code § 35-50-2-3(a). “A person who commits 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(b). In sentencing Truitt, then, the trial court imposed the maximum sentence for murder and a near-maximum sentence for abuse of a corpse.

[8] As an initial matter, Truitt does not challenge the trial court’s finding of any of the five aggravating circumstances or the weight the trial court assigned to them. As mentioned, a single aggravating circumstance may support an enhanced sentence, *Baumholser*, 62 N.E.3d at 417, and, here, the trial court found five, all unchallenged. This is likely sufficient to support a conclusion that the trial court did not abuse its discretion in sentencing Truitt. We nonetheless address Truitt’s argument as stated.

[9] Truitt contends that the trial court abused its discretion in refusing to find his remorse and difficult upbringing to be mitigating and in failing to give his mental-health issues, youth, and guilty plea sufficient weight. The finding of mitigating factors falls within the court’s sentencing discretion. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. The trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant, nor is it required to explain why it does not

find a proffered factor to be mitigating. *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000). The court need not consider alleged mitigating factors that are highly disputable in nature, weight, or significance. *Newsome*, 797 N.E.2d at 293. Moreover, the trial court is not required to give the same weight to mitigating factors as does the defendant. *Id.* On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. *Spears*, 735 N.E.2d at 1167.

[10] We conclude that Truitt has not shown an abuse of discretion in the trial court’s consideration of facts bearing on his sentence, as his complaint that the trial court’s weighing of mitigating facts was erroneous is no longer part of Indiana’s review of sentences. *See Anglemeyer*, 868 N.E.2d at 491 (“Because the trial court no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence, [...] a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors.”). “[T]he weight or value assigned to any mitigating or aggravating factors that the trial court may properly find is not subject to review for abuse of the trial court’s discretion.” *Gervasio v. State*, 874 N.E.2d 1003, 1005 (Ind. Ct. App. 2007). Because we may not review the weight assigned to mitigating circumstances, Truitt has not shown any abuse of the trial court’s discretion. *Id.*

[11] The judgment of the trial court is affirmed.

Crone, J., and Pyle, J., concur.