

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Milan Stojkovic,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 19, 2022

Court of Appeals Case No.
22A-CR-1578

Appeal from the Hamilton
Superior Court

The Honorable Michael A. Casati,
Judge

Trial Court Cause No.
29D01-2105-F3-002978

May, Judge.

[1] Milan Stojkovic appeals his sentence for convictions of two counts of Level 6 felony sexual battery¹ and one count of Class B misdemeanor battery.²

Stojkovic raises two issues on appeal, which we revise and restate as:

1. Whether the trial court abused its discretion in its consideration of aggravating and mitigating factors; and
2. Whether Stojkovic's sentence is inappropriate in light of the nature of his offense and his character.

We affirm.

Facts and Procedural History

[2] Stojkovic and Lydia Abbot were engaged to be married, and on April 3, 2021, they hosted a party at a restaurant for the bridesmaids and groomsmen. Abbot's childhood friend C.C. was a bridesmaid and attended the party at the restaurant. C.C. consumed several alcoholic beverages at the party, and she began to feel sick and intoxicated. She vomited while at the restaurant, and the party attendees determined C.C. was too intoxicated to drive back to her home that night. One of Stojkovic's groomsmen drove C.C. to Stojkovic's house in

¹ Ind. Code § 35-42-4-8(a).

² Ind. Code § 35-42-2-1(c).

Noblesville, Indiana. C.C. vomited a couple more times during the ride to Stojkovic's house.

[3] Once they arrived at the house, Stojkovic carried C.C. to the house's back porch, and C.C. vomited again. C.C. then went inside the house and fell asleep on a futon in a living room on the first floor, near the stairwell to the second floor. C.C. fell asleep facedown, lying on her stomach. Stojkovic and Abbot went upstairs to sleep in their bedroom.

[4] C.C. woke in the middle of the night when she felt Stojkovic's hands "rubbing [her] ankle and up [her] leg into [her] thigh and on [her] butt." (Tr. Vol. II at 54.) C.C. told Stojkovic to stop and "smacked him as hard as [she] could[.]" (*Id.* at 55.) Stojkovic stopped and returned upstairs, but he ventured downstairs a second time during the night. Stojkovic woke C.C. again by stroking her hair with his fingers. Stojkovic then grabbed C.C. by the hip and rolled her over. He began rubbing her left leg and inner thigh. Stojkovic then proceeded to rub "up [C.C.'s] shirt, under [her] bra, down in [her] groin area." (*Id.* at 60.) C.C. told Stojkovic to go back upstairs to Abbot. Abbot walked from the bedroom to the top of the stairs and told Stojkovic to come back upstairs. At that point, Stojkovic left C.C. and went back to his bedroom.

[5] C.C. woke a third time during the night and saw Stojkovic standing over her. Stojkovic "grabbed [C.C.'s] jaw and pulled it to him and kissed [her]." (*Id.* at 65.) C.C. told Stojkovic she felt like she was about to vomit and then went into the bathroom. C.C. barely made it to the toilet before vomiting and Stojkovic

followed her into the bathroom. After C.C. vomited, Stojkovic took her left hand and placed it on his bare, erect penis. C.C. quickly removed her hand and pushed Stojkovic out of the bathroom. C.C. then locked the bathroom. C.C. eventually left the bathroom and sat on the futon until Abbot woke up. C.C. cleaned up dry vomit from the groomsman's truck and contacted her husband to pick her up. C.C. reported these activities to the police a few days later.

[6] On May 27, 2021, the State charged Stojkovic with Level 3 felony rape³ and three counts of Level 6 felony sexual battery. The trial court held a jury trial beginning on May 9, 2022. The trial court granted Stojkovic's motion for a directed verdict on one of the sexual battery counts, and the trial court allowed the remaining charges to go to the jury. The jury found Stojkovic guilty of two counts of Level 6 felony sexual battery and of Class B misdemeanor battery as a lesser included offense of rape.

[7] The trial court then held a sentencing hearing on June 23, 2022. C.C. read a statement at the hearing. She explained Stojkovic's assaults made her feel "disrespected, violated, gaslighted, manipulated, and lied to. Traumatized." (Tr. Vol. III at 59.) She described the fourteen months between the assaults and Stojkovic's sentencing as "the most surreal, humiliating, dark, and lonely months of my entire life." (*Id.* at 60.) C.C. explained the events changed her life forever, and she has trouble seeing herself as the same person she was before

³ Ind. Code § 35-42-4-1(a).

the assault. She explained she continues to have trouble sleeping, and she has “taken off work many days and even full months because [her] emotional capacity is always at max capacity.” (*Id.* at 65.) Prior to the hearing, Stojkovic submitted twenty-two letters from family, friends, and members of his church attesting to his character, and in his statement of allocution, Stojkovic stated he was “terribly sorry for the pain that [he] caused to [C.C.] and all of her family[.]” (*Id.* at 67.) He also stated that he took time during the period between when he committed the crimes and his sentencing date to “work on [himself] and to better [himself].” (*Id.*) Stojkovic expressed a willingness to comply with treatment for alcohol abuse.

[8] The trial court acknowledged Stojkovic’s comments but observed: “I’m presented with no evaluation for alcohol or substance abuse and following any recommended treatment. I’m provided with no assessment for your deviant sexual conduct and any recommended counseling.” (*Id.* at 75.) The trial court also noted as “a significant aggravating circumstance” Stojkovic’s criminal history, which included several alcohol related offenses. (*Id.*) After explaining that Stojkovic was on probation after being convicted of operating a vehicle while intoxicated when he committed the instant offense, the trial court remarked: “I’m struck by the fact that you committed this offense, one, after having been through the courts on numerous occasions and been told over and over to participate in treatment for alcohol abuse and to correct your conduct and be a law abiding person.” (*Id.* at 75-76.)

[9] The trial court also stated:

You were on the verge of being married when you committed these offenses. You were apparently deeply engaged in your faith when you committed these offenses by the testimony received through the numerous letters that were submitted.

You were caring for your son when these offenses were committed. And none of these things, including the laws of this state, prevented you from committing these offenses. And I'm deeply troubled by that. All those things that were in place to try to encourage you to live as a law abiding person had no ability to control your conduct. And your conduct had a devastating impact upon the victim, on [C.C.], and upon her entire family. And upon your fiancé and upon all the other people that were there.

(*Id.* at 76.) The trial court listed as a mitigating factor that Stojkovic had joint custody of his seventeen-year-old son.

[10] The trial court then sentenced Stojkovic to a two-year term of imprisonment for each of the Level 6 felony sexual battery convictions and a 180-day term for the Class B misdemeanor battery conviction. The trial court ordered the sentences for the two Level 6 felony sexual battery convictions to be served consecutively and the sentence for the Class B misdemeanor battery conviction to be served concurrently with the first sentence for sexual battery, for an aggregate sentence of four years.

Discussion and Decision

1. Sentencing Discretion

[11] We afford trial courts broad discretion in fashioning sentences, and we review a trial court's sentencing decision for an abuse of discretion. *Gober v. State*, 163 N.E.3d 347, 353 (Ind. Ct. App. 2021), *trans. denied*. "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.* (internal quotation marks omitted). A trial court may abuse its discretion at sentencing by:

(1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

Hudson v. State, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). However, even if the trial court considers an improper aggravating factor in imposing sentence, we will remand for resentencing only if we cannot say with confidence the trial court would have imposed the same sentence had it solely considered proper reasons that enjoy support in the record. *Kayser v. State*, 131 N.E.3d 717, 722 (Ind. Ct. App. 2019).

[12] Stojkovic contends the trial court abused its discretion at sentencing by considering several aggravating factors that are inappropriate as a matter of law or not supported by the record. Specifically, Stojkovic takes issue with the trial court considering as aggravating factors that Stojkovic "was caring for his son

when the offense was committed; that [Stojkovic] was on the verge of getting married; that he was deeply engaged in his faith; that no substance abuse evaluation was presented; and that no deviant sexual conduct treatment was presented.” (Appellant’s Br. at 8.) Stojkovic also argues the trial court’s consideration as an aggravating factor of the impact of his crimes on others besides C.C. was not appropriate. The State maintains the trial court did not list Stojkovic’s care for his son, engagement to Abbot, and his faith as aggravating factors in and of themselves, but rather, the State asserts the trial court used “those examples merely as aspects of Stojkovic’s life that should have motivated Stojkovic to lead a law-abiding life[.]” (Appellee’s Br. at 11.)

[13] However, a single aggravating factor may justify an enhanced sentence. *Madden v. State*, 162 N.E.3d 549, 563 (Ind. Ct. App. 2021). As Stojkovic acknowledges, the trial court properly considered as aggravating factors the impact the crime had on C.C., Stojkovic’s criminal history, and the offense being a violation of probation. C.C. spoke at Stojkovic’s sentencing about the emotional pain and anxiety she has experienced since Stojkovic sexually battered her. Moreover, prior to the instant offense, Stojkovic’s criminal history included three convictions of Class A misdemeanor operating a vehicle while intoxicated⁴ and one conviction of Class A misdemeanor criminal trespass.⁵ The State also previously charged Stojkovic with Class A misdemeanor

⁴ Ind. Code § 9-30-5-2(b).

⁵ Ind. Code § 35-43-2-2.

domestic battery,⁶ but the State dismissed that charge after Stojkovic successfully completed a pretrial diversion program. Therefore, even if some of the aggravating factors considered by the trial court were inappropriate, any such error is harmless because several proper aggravating factors considered by the trial court justify Stojkovic's sentence. *See McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007) (holding even if the trial court's consideration of challenged aggravating factors was improper, remand for resentencing was not required because unchallenged aggravating factors justified the defendant's sentence).

2. Appellate Rule 7(B)

[14] Stojkovic also argues his sentence is inappropriate in light of the nature of his offense and his character. Our standard of review regarding such a challenge is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

⁶ Ind. Code § 35-42-2-1.3.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020), *trans. denied*.

[15] When considering the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). “[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Id.* Indiana Code section 35-50-2-7 provides: “A person who commits a Level 6 felony (for a crime committed after June 30, 2014) 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.” While the Indiana Code does not provide advisory sentences for misdemeanors, a Class B misdemeanor is punishable by a fixed term of imprisonment of not more 180 days. Ind. Code § 35-50-3-3. Thus, the trial court imposed sentences above the advisory term for each of Stojkovic’s sexual battery convictions and the maximum term for his Class B misdemeanor battery conviction.

[16] Stojkovic argues his sentence is inappropriate in light of the nature of his offense because he “showed some regard and restraint” and “there was no brutality.” (Appellant’s Br. at 10.) He also asserts his actions were “fueled by alcohol.” (*Id.* at 11.) Yet, as even Stojkovic admits, his crimes were “detestable[.]” (*Id.* at 10.) He took advantage of C.C.’s intoxicated state to commit his crimes. Stojkovic’s actions caused C.C. significant psychological pain, which she described at his sentencing hearing. In the course of one night, Stojkovic battered C.C. three times. While we can imagine an offender in Stojkovic’s position perpetrating more brutal acts, that does not diminish the

seriousness of the crimes he committed. *See Brown v. State*, 760 N.E.2d 243, 248 (Ind. Ct. App. 2002) (“Although one can imagine facts that might be worse than those before us here, such does not lessen the severity of [the defendant’s] conduct or bolster the quality of his character by comparison.”), *trans. denied*. Moreover, Stojkovic’s voluntary intoxication does not render his offenses any less egregious. *See McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020) (holding nature of defendant’s offense justified an above-advisory term, in part, because defendant “had cannabinoids in his system at the time of the offense”), *trans. denied*.

[17] With respect to Stojkovic’s character, he contends he is not “a psychopath or inherently deviant.” (Appellant’s Br. at 11.) Stojkovic also references the twenty-two letters submitted to the trial court by his friends, family, and fellow members of his church attesting to his good character. Nonetheless, “[w]hen considering the character of the offender, one relevant fact is the defendant’s criminal history.” *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*. The significance of an offender’s criminal history turns on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.*

[18] As explained above, Stojkovic has a long history of alcohol related offenses. Stojkovic has three convictions of operating a vehicle while intoxicated, and he was serving probation for one of these convictions when he committed the instant offenses. While the Pre-Sentence Investigation Report indicates Stojkovic received treatment for substance abuse in the past, this treatment was

nevertheless inadequate because Stojkovic still chose to drink alcohol and sexually batter C.C. Thus, in light of Stojkovic's criminal history and past failures to meaningfully address his substance abuse issues, we cannot say his sentence is inappropriate given his character. *See Frank v. State*, 192 N.E.3d 904, 908 (Ind. Ct. App. 2022) (holding defendant's sentence was not inappropriate given his criminal history and his commission of the instant offense while on pretrial release), *trans. denied*.

Conclusion

[19] Stojkovic's aggregate four-year sentence was justified by several aggravating factors including his history of alcohol-related offenses, his being on probation when he committed the instant offenses, and the impact of Stojkovic's offenses on C.C. Likewise, Stojkovic's sentence is not inappropriate given the nature of his offenses and his character. Therefore, we affirm the trial court.

[20] Affirmed.

Crone, J., and Weissmann, J., concur.