MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jonathan Washington,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 11, 2023

Court of Appeals Case No. 23A-CR-872

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-2008-F4-51

Memorandum Decision by Judge Bradford
Judges Vaidik and Brown concur.

Bradford, Judge.

Case Summary

[1] Jonathan Washington pled guilty to Level 4 felony unlawful possession of a firearm by a serious violent felon ("SVF"), Class A misdemeanor resisting law enforcement, Class B misdemeanor possession of marijuana, and Class C misdemeanor operating a motor vehicle without ever receiving a license. After accepting Washington's guilty plea, the trial court sentenced Washington to an aggregate seven-year sentence with six years executed in the Department of Correction ("DOC") and one year executed in community corrections. Washington challenges his sentence on appeal, arguing that the trial court abused its discretion in failing to find certain proffered mitigating factors and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On August 13, 2020, officers with the Lafayette Police Department observed Washington driving a vehicle with an expired plate. Officers also observed Washington attempt to conceal his face from the officers and fail to properly signal a lane change. Washington turned into a plaza, where his passenger exited the vehicle. Officers approached the vehicle while it was stopped.

[3] Upon approaching the vehicle, one of the officers observed a baggie of marijuana in the vehicle and noticed the smell of marijuana emanating from the vehicle. The encounter escalated and when officers attempted to grab Washington's wrists, Washington tensed up, pulled away, and reached for his

right hip. Officers removed Washington from the vehicle, at which time they observed a revolver on the driver's seat, which would have been under Washington's leg when he was sitting in the vehicle. During a subsequent search of the vehicle, officers also found pills that later tested positive for methamphetamine. Washington admitted to the officers that he had an outstanding warrant and did not have a driver's license.

[4] On August 14, 2020, the State charged Washington with Level 4 felony unlawful possession of a firearm by an SVF, Level 5 felony carrying a handgun without a license with a prior felony conviction, Level 6 felony possession of a controlled substance, Class A misdemeanor carrying a handgun without a license, Class A misdemeanor resisting arrest, Class B misdemeanor possession of marijuana, and Class C misdemeanor operating a motor vehicle without ever receiving a license. On April 15, 2021, the State amended the Level 6 felony possession charge to include a charge of Level 5 felony possession of methamphetamine.

[5] On July 18, 2022, Washington pled guilty to all charges but the Level 5 felony possession of methamphetamine charge. The State moved to dismiss the Level 5 felony possession of methamphetamine charge, and the trial court accepted Washington's guilty plea and entered judgment of conviction on the remaining charges. On March 23, 2023, the trial court vacated the Level 5 felony and Class A misdemeanor carrying-a-handgun judgments and dismissed those charges. The trial court sentenced Washington as follows: (1) Level 4 felony unlawful possession of a firearm by an SVF—seven years, with six years

executed in the DOC and one year executed in community corrections; (2) Class A misdemeanor resisting law enforcement—365 days; (3) Class B misdemeanor possession of marijuana—180 days; and (4) Class C misdemeanor operating a motor vehicle without ever receiving a license—sixty days. The trial court ordered the sentences for Washington's misdemeanor convictions to run concurrently with the sentence for his Level 4 felony conviction, for an aggregate seven-year sentence.[1]

Discussion and Decision

[6] In challenging his seven-year sentence, Washington contends both that the trial court abused its discretion in failing to find certain mitigating factors and that his sentence is inappropriate. "A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years." Ind. Code § 35-50-2-5.5. "A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year." Ind. Code § 35-50-3-2. "A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days." Ind. Code § 35-50-3-3. "A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days." Ind. Code § 35-50-3-4. After accepting Washington's guilty

[1] Washington was also found to have violated the terms of his probation in an unrelated prior case and was sentenced to one year in the DOC in connection with his probation violation, which was ordered to run consecutively to his sentence in this case.

plea, the trial court sentenced Washington to a slightly-aggravated, seven-year aggregate sentence.

I. Abuse of Discretion

[7] 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*. "A single aggravating circumstance may be sufficient to enhance a sentence." *Id.* at 417.

[8] At sentencing, the trial court found the following aggravating factors: Washington's criminal history, which included a prior felony conviction for

Level 3 felony armed robbery, a misdemeanor conviction for Class A misdemeanor resisting law enforcement, and juvenile adjudications for acts that, at the time they were committed, would have been Class D felony theft and Class C misdemeanor operating a motor vehicle without ever receiving a license if committed by an adult; prior attempts at rehabilitation have failed; Washington was on probation in an unrelated matter at the time he committed the instant offenses; and Washington's history of substance-abuse issues. The trial court found the following mitigating factors: Washington pled guilty, had the support of his family, and had completed courses aimed at rehabilitation and self-improvement. In arguing that the trial court abused its discretion in sentencing him, Washington asserts that while the trial court found his attempts at rehabilitation to be a mitigating factor, this factor should have been afforded greater mitigating weight. As is stated above, however, "we cannot review the relative weight assigned to" mitigating factors by the trial court. *Baumholser*, 62 N.E.3d at 416.

[9] Washington also asserts that the trial court abused its discretion by failing to find two proffered mitigating factors. Although a sentencing court must consider all evidence of mitigating factors offered by a defendant, the finding of mitigating factors rests within the court's discretion. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002).

> A court does not err in failing to find mitigation when a mitigation claim is highly disputable in nature, weight, or significance. While a failure to find mitigating circumstances clearly supported by the record may imply that the sentencing

> court improperly overlooked them, the court is obligated neither to credit mitigating circumstances in the same manner as would the defendant, nor to explain why he or she has chosen not to find mitigating circumstances.

Id. (citations and quotations omitted). An allegation that the trial court failed to find a mitigating factor "requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999).

A. Loss of Numerous Family Members

[10] In arguing that the trial court should have found his loss of numerous family members during the three years prior to sentencing to be a mitigating factor, Washington acknowledges that "the hardship of loss to the person being sentenced is not a statutory mitigator." Appellant's Br. p. 21. Washinton argues, however, that "the court has discretion to consider non-statutory factors as mitigators" and "[s]ignificant family loss should be considered as a mitigator." Appellant's Br. pp. 21–22. The trial court, however, was "not obligated to weigh or credit mitigating factors in the manner a defendant suggests." *Scott v. State*, 840 N.E.2d 376, 382 (Ind. Ct. App. 2006), *trans. denied*. As Washington acknowledges, the trial court expressed condolences for his losses but did not find them to warrant mitigating weight. Thus, it is apparent to us that rather than overlooking Washington's losses, the trial court considered the losses but ultimately decided that Washington's loss of multiple family members was not entitled to significant mitigating weight. That was the

trial court's decision, and we will not second-guess the trial court's finding. As such, we cannot say that the trial court abused its discretion in this regard.

B. Mental Illness

[11] Washington further argues that the trial court abused its discretion by failing to find his mental illness to be a mitigating factor. Again, "[a] trial court is not obligated to weigh or credit mitigating factors in the manner a defendant suggests." *Scott*, 840 N.E.2d at 382. Furthermore, a trial court is not required to find mental illness to be a mitigating factor that is always entitled to significant mitigating weight. *See Ousley v. State*, 807 N.E.2d 758, 762 (Ind. Ct. App. 2004).

[12] The record contains multiple references to Washington's prior mental-health diagnoses and his prior participation in therapy. At sentencing, Washington's counsel referred to Washington's mental-health issues as "[n]ot bad, but some that need to be addressed." Tr. p. 45. The issue of Washington's alleged mental illnesses, including prior diagnoses and treatment, was clearly before the trial court at both his guilty-plea and sentencing hearings. Thus, it is again apparent to us that, rather than overlooking Washington's mental health, the trial court decided that it was not entitled to significant mitigating weight. As we stated above, that was the trial court's decision, and we will not second-guess the trial court's finding. As such, we cannot say that the trial court abused its discretion in this regard.

II. Appropriateness

[13] Indiana Appellate Rule 7(B) provides that "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[14] "The nature of the offenses is found in the details and circumstances of the commission of the offenses and the defendant's participation." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). Again, in this case, Washington was stopped by police after officers saw him commit two traffic infractions. Prior to the stop, Washington, who subsequently admitted that he had known that there had been an active warrant out for his arrest, had attempted to conceal his face. After officers approached Washington's vehicle, an officer observed a baggie containing plant material which the officer recognized to be marijuana and smelled the odor of marijuana emanating from the vehicle. When officers attempted to remove Washington from the vehicle, "Washington tensed up, and was reaching towards his right hip and pulling away while the officers tried

to handcuff him." Appellant's App. Vol. II p. 48. Officers subsequently recovered a "loaded Charter Arms .38 revolver" from the driver's seat, which had been "under Washington's leg while he was sitting in the vehicle." Appellant's App. Vol. II p. 48. Washington acknowledges that "possessing a gun is certainly a serious offense," but argues that his possession of the firearm did not justify a slightly-aggravated sentence because "he did not use the weapon to harm anyone" and "[t]here was no damage done to others." Appellant's Br. p. 16. We cannot agree.

[15] We have previously concluded that mere possession of a handgun by an SVF is not a mild crime. *See Teer v. State*, 738 N.E.2d 283, 290 (Ind. Ct. App. 2000) (noting that the General Assembly has prohibited SVFs from possessing firearms "presumably, to make it harder for them to continue committing other violent crimes"), *trans. denied*. As is noted above, prior to his removal from the vehicle, Washington had reached toward the area from which the loaded firearm was subsequently recovered. The fact that the officers were able to remove Washington from the vehicle before the situation potentially escalated further does not render the serious nature of the encounter any less so.

[16] As for Washington's character, we note that "[t]he character of the offender is found in what we learn of the offender's life and conduct." *Croy*, 953 N.E.2d at 664. Washington's criminal history includes a prior felony conviction for Level 3 felony armed robbery, a misdemeanor conviction for Class A misdemeanor resisting law enforcement, and juvenile adjudications for acts that, at the time they were committed, would have been Class D felony theft and Class C

misdemeanor operating a motor vehicle without ever receiving a license if committed by an adult. At the time that his chronological case summary was completed, Washington also had two pending criminal cases in Newton and Tippecanoe Counties involving Class C misdemeanor charges for operating a motor vehicle without ever receiving a license, in both of which the trial courts had previously agreed to withhold prosecution but, again in both cases, Washington had failed to abide by the courts' conditions.

[17] In addition, prior attempts at rehabilitation have failed, including prior placements on probation and in community corrections while awaiting sentencing in the instant case. Washington was also found to be a "moderate" risk to reoffend. Appellant's App. Vol. II p. 69. Washington's criminal history, including his failure to follow the rules set by probation and community corrections, reflects poorly on his character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (providing that even a minor criminal history is a poor reflection of a defendant's character). Although Washington claimed to have matured and rehabilitated himself, he has made these claims before but has previously failed to take advantage of the trial court's prior attempts at leniency. Consequently, Washington has failed to convince us that his sentence is inappropriate.

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

Vaidik, J., and Brown, J., concur.