

Case Summary

David Michael Bell appeals his sentence for murder, arguing that his sentence is inappropriate in light of the nature of his offense and his character. Finding that Bell's sentence is not inappropriate, we affirm.

Facts and Procedural History

On May 8, 2005, which happened to be Mother's Day, Bell picked up Claire Ellis in his truck at the intersection of Columbus Avenue and 23rd Street in Anderson, Indiana. By all accounts, Bell, who was thirty years old, did not know Claire, who was twenty-six years old and had a young daughter. After driving around for approximately forty-five minutes, a dispute arose between Bell and Claire. Bell struck Claire in the head and neck with a fourteen-inch adjustable wrench. Claire died as a result of blunt force trauma to her head. Bell took Claire's body to his house and buried it in a shallow grave. The next day, Bell took his family to Arkansas.

This case was initially treated as a missing person case but became a suspected homicide case after several months passed. After discovering that Bell had placed a phone call to his nephew from Claire's cell phone, Bell became a suspect in Claire's disappearance. Bell initially denied any involvement in Claire's disappearance. However, after Bell's wife made incriminating statements about her husband to the police, including the location of Claire's body, Bell gave a detailed confession to the police. Bell was arrested more than five months after Claire's disappearance.

The State charged Bell with murder. Bell pled guilty as charged without the benefit of a plea agreement. At the sentencing hearing, the trial court identified one

aggravator, Bell's history of violence toward women as evidenced by his battery resulting in serious bodily injury felony conviction involving his aunt, and two mitigators, Bell pled guilty and expressed remorse.¹ Finding that the aggravator outweighed the mitigators "by a huge margin by any standard," Tr. p. 42, the trial court sentenced Bell to the maximum term of sixty-five years with two years suspended to probation. Bell now appeals his sentence.

Discussion and Decision

On appeal, Bell makes two distinct arguments. First, he argues that the trial court found an improper aggravator, failed to find a mitigator, and failed to give significant mitigating weight to the mitigators it did find. Second, he argues that his sentence is inappropriate in light of the nature of his offense and his character under Indiana Appellate Rule 7(B). As an initial matter, we note that Bell was sentenced under Indiana's new advisory sentencing scheme, which went into effect on April 25, 2005, a couple of weeks before Bell committed this offense. Under this scheme, "Indiana's appellate courts can no longer *reverse* a sentence because the trial court abused its discretion by improperly finding and weighing aggravating and mitigating circumstances[.]" *McMahon v. State*, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (emphasis added). As such, appellate review of sentences in Indiana is now limited to Appellate Rule 7(B). *See id.* Nonetheless, an assessment of aggravating and mitigating circumstances is still relevant to our review for appropriateness under the rule, which

¹ The record shows that in addition to Bell's 2001 felony conviction for battery resulting in serious bodily injury, he has several misdemeanor convictions. However, the trial court did not rely upon those convictions in its sentencing statement. *See* Tr. p. 40-44.

states: “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.” *Id.* at 748-49. We will therefore consider the aggravating and mitigating circumstances identified by the trial court in addressing Bell’s argument that his sentence is inappropriate.

Bell first argues that the trial court erred by identifying his history of violence toward women as evidenced by his battery resulting in serious bodily injury felony conviction involving his aunt as an aggravator. Specifically, Bell asserts that this aggravator violates *Blakely v. Washington*, 542 U.S. 296 (2004), because it was not proven to a jury beyond a reasonable doubt and he did not admit it. Bell’s argument in this regard is misplaced, as the 2005 changes to Indiana’s sentencing statutes eliminated the possibility of any violation under *Blakely*. *See* Ind. Code § 35-38-1-7.1(d) (“A court may impose any sentence that is authorized by statute and permissible under the Constitution of the State of Indiana regardless of the presence or absence of aggravating circumstances or mitigating circumstances.”) (formatting altered). Moreover, there is evidence in the record to support this aggravator. In Bell’s pre-sentence investigation report, he reported the facts underlying his 2001 battery resulting in serious bodily injury felony conviction to the probation officer. Specifically, Bell explained that he was living with his aunt when they got into an argument, at which point he struck her in the head two times with a sledgehammer. The trial court properly identified Bell’s history of violence toward women as evidenced by his battery resulting in serious bodily injury felony conviction involving his aunt as an aggravator.

Bell next argues that the trial court erred by not identifying his work history as a mitigator. Although Bell's pre-sentence investigation report indicates that he has been doing remodeling and trim work since the age of sixteen, he did not argue this mitigator to the trial court. Therefore, Bell has waived this issue for review. *See Bryant v. State*, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004), *trans. denied*. In any event, the pre-sentence investigation report indicates that Bell's employment has been interrupted by his incarceration for battery resulting in serious bodily injury and his move to Arkansas. The trial court did not err in failing to identify Bell's work history as a mitigator.

Finally, Bell argues that the trial court failed to assign sufficient mitigating weight to his guilty plea and expression of remorse. As for Bell's guilty plea, the significance of a guilty plea as a mitigating factor varies from case to case. *Francis v. State*, 817 N.E.2d 235, 238 n.3 (Ind. 2004). As the prosecutor explained here:

[T]his case was a good case. We weren't going to lose it. He was going to be found guilty. He knew he was going to be found guilty. The police officers put this case . . . they worked harder on this case or as hard on any case they've ever worked on. They, uh . . . hours and hours and hours putting this thing together and it was done right and I think everybody recognizes that.

Tr. p. 36-37. In addition, Bell gave a detailed confession to the police. A guilty plea does not rise to the level of significant mitigation where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Given the strength of the case against Bell, the trial court was not required to assign greater mitigating weight to his guilty plea.

As for Bell's expression of remorse at the sentencing hearing, the trial court is not required to give the same weight to a mitigator as the defendant does and is not obligated to explain why it did not find a factor to be significantly mitigating. *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003), *trans. denied*. In light of Bell's actions following the death of Claire, the trial court was not required to assign greater mitigating weight to Bell's expression of remorse at the sentencing hearing.

We are left, then, with one significant aggravator—Bell's history of violence toward women as evidenced by his battery resulting in bodily injury felony conviction involving his aunt—and two insignificant mitigating circumstances—Bell's guilty plea and expression of remorse. In addition to these considerations, Bell contends that his sentence is inappropriate. In particular, Bell stresses that “there was no evidence of gratuitous brutality” and that his criminal record “is minor with the exception of the battery conviction.” Appellant's Br. p. 11. The record shows that on Mother's Day 2005, Bell picked up Claire, a complete stranger, in his truck and beat her in the head and neck with a fourteen-inch wrench. He then buried her body in a shallow grave behind his house and took his family to Arkansas. Claire was missing for approximately five months, leaving her family in turmoil, before her body was finally found. Although Bell had one felony conviction at the time of this crime, he had several misdemeanors.²

² As recited by Bell, his criminal history includes the following misdemeanors and infractions: fourth degree misdemeanor assault in Kentucky in 1993 (victim also appears to be a woman); possession of a controlled substance misdemeanor in 1995; shoplifting misdemeanor and alcohol intoxication in Kentucky in 1996; and traffic offenses for no brake light in 1993, reckless driving in Kentucky in 1993, operating a vehicle under the influence of intoxication in Kentucky in 1994, operating on a revoked license in Tennessee in 1995, no operator's license in Kentucky in 2000, and driving while suspended and seatbelt violation in 2000.

Given the nature of this offense and Bell's character, we cannot say that his sixty-five-year sentence with two years suspended to probation is inappropriate.

Affirmed.

BAKER, J., and CRONE, J., concur.