

Case Summary

Appellant-defendant Bradley Laycock (“Laycock”) appeals the trial court’s order sentencing him to eight years in the Indiana Department of Correction (“DOC”) following his guilty plea to Neglect of a Dependent, as a Class B felony.¹

We affirm.

Issues

Laycock raises two issues on appeal, which we restate as:

- I. Whether the trial court abused its sentencing discretion by not finding any mitigating circumstances in his case and ordering that he serve his sentence in the DOC, rather than on home detention; and
- II. Whether his sentence is inappropriate in light of his character and the nature of his offense.

Facts and Procedural History

On August 30, 2006, at approximately 9:12 p.m., two Terre Haute police officers were dispatched to conduct a well-being check on a child after receiving an anonymous tip that the child had sustained an injury but had not received medical attention. Upon arriving at the scene, the officers spoke with the child’s mother, Dawn Edwards (“Edwards”), who told them that the child, J.M.L., fell out of a swing when her three year old brother accidentally ran into it, and that she had already taken J.M.L. to the hospital. Laycock, who is J.M.L.’s biological father, brought her out of the house and one of the officers observed several bruises and a scratch on J.M.L.’s face, so he called for a medical unit. While the officer was

¹ Ind. Code § 35-46-1-4(b)(2).

on the phone, Edwards recanted her story and told the officers that she had not taken J.M.L. to the hospital. The medic evaluated J.M.L. and recommended that she see a doctor, so J.M.L. and Edwards were taken to nearby Union Hospital.

At the hospital, an emergency room doctor examined J.M.L. and ordered CT scans of her head and facial region, as well as a skeletal x-ray. The CT scans were negative, but the skeletal survey indicated multiple healing fractures. The hospital nurse observed several scattered bruises and abrasions on J.M.L.'s face, a closed wound on the outside edge of her right eye, an abrasion on her left eye, bruises on her upper chest, and severe diaper rash. Child Protective Services obtained a court order to remove J.M.L. from the home on August 31, 2006.

Dr. Antoinette Laskey, a forensic pediatrician, later reviewed J.M.L.'s medical records from the August 30-31, 2006 hospital visit, as well as medical records from an August 14, 2006 hospital visit. Dr. Laskey issued a report in which she concluded, after noting J.M.L.'s several bruises, healing fractures, and a bowing deformity of her left forearm, that J.M.L.'s injuries were consistent with inflicted trauma. On January 28, 2008, the State filed an information charging Laycock with Neglect of a Dependent Causing Serious Bodily Injury, a Class B felony. On May 25, 2010, Laycock signed a plea agreement which capped his sentence at eight years, but permitted the State to argue for the full eight years and Laycock to argue for the minimum sentence under the law. The court accepted Laycock's plea on June 17, 2010, and held a sentencing hearing on September 3, 2010, where it heard witnesses and accepted evidence from both sides. At the conclusion, the court sentenced Laycock to

eight years executed in the DOC. He now appeals.

Discussion and Decision

Sentencing

“A person who commits a Class B felony shall be imprisoned for a period of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” I.C. § 35-50-2-5. Laycock received a sentence of eight years imprisonment in the DOC, the maximum sentence possible pursuant to the sentence cap in his plea agreement. Nevertheless, Laycock argues that the trial court abused its sentencing discretion under the plea agreement because it overlooked several mitigating circumstances and ordered that he serve his sentence in the DOC, rather than on home detention as he requested.² “[S]entencing 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), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007). Still, “even where a plea agreement sets forth a sentencing cap or a sentencing range, the court must still exercise some discretion in determining the sentence it will impose.” Childress v. State, 848 N.E.2d 1073, 1078 (Ind. 2006). A trial court abuses its

² Laycock also makes the following assertion in his brief: “Here, the trial court sentencing statement does not include reasonably detailed reasons or circumstances in imposing an eight year executed sentence.” Appellant’s Br. p. 11. To the extent that Laycock intends this assertion to challenge the adequacy of the actual sentencing statement, he is incorrect. A proper sentencing statement “requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions.” Anglemyer, 868 N.E.2d at 490 (quoting Page v. State, 424 N.E.2d 1021, 1023 (Ind. 1981)). In imposing Laycock’s sentence, the trial court referenced that the victim was a child, which is not an element of the charged offense, and is a recognized aggravating circumstance peculiar to this case. Tr. 54-55, I.C. §§ 35-38-1-7.1, 35-46-1-4. The trial court’s sentencing statement is adequate.

sentencing discretion if its decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. Id.

When imposing sentence, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). “[I]f the trial court does not find the existence of a mitigating factor after it has been argued by counsel, then the trial court need not explain why it has not found that the factor does not exist.” Anglemyer, 868 N.E.2d at 493 (quoting Fugate v. State, 608 N.E.2d 1370, 1374 (Ind. 1993)). “An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.” Id. A trial court does not abuse its discretion by failing to consider a mitigating factor not argued at sentencing, and it has no obligation to weigh aggravating and mitigating factors. Id. at 491-92.

Laycock offered the following mitigating factors at his sentencing hearing: he had no criminal history prior to this offense, he has good character and attitude, and he is unlikely to commit other offenses. The trial court found none of these circumstances to be mitigating, and noted that Laycock’s lack of criminal history was assumedly already taken into consideration by the State in fashioning the plea agreement cap. Laycock advances two additional mitigating factors now on appeal: his guilty plea and the fact that the crime was a result of circumstances unlikely to recur because his parental rights to J.M.L. have been terminated.

As to the mitigating factors offered for the first time on appeal—his guilty plea and that the criminal circumstances are unlikely to recur—because Laycock did not raise these at the sentencing hearing, the trial court did not abuse its discretion in failing to recognize them. See Anglemyer, 868 N.E.2d at 492. In any case, “[a] guilty plea is not automatically a significant mitigating factor,” Mull v. State, 770 N.E.2d 308, 314 (Ind. 2002) (quoting Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)), and “[w]hen the defendant has already received a substantial benefit from the plea agreement, a guilty plea may not be a significant mitigator.” Brown v. State, 907 N.E.2d 591, 594 (Ind. Ct. App. 2009). Here, Laycock already received a benefit from his plea because his sentence was capped at eight years, which is two years less than the advisory sentence and twelve years below the maximum sentence for a Class B felony. I.C. § 35-50-2-5. Nor do we think that the trial court erred in not recognizing the termination of Laycock’s parental rights as a mitigating factor, since the termination of those rights was an outgrowth of his crime, and finding this to be a mitigating circumstance would be tantamount to rewarding him for his criminal activity.

As to the other mitigating circumstances that Laycock offered, he has not met his burden on appeal of convincing us that these factors are significant. In his appellate brief Laycock asserts that the trial court should have considered his lack of criminal history, but he makes no argument to support finding this fact significant. Regardless, trial courts are not required to give significant weight to a lack of criminal history, Townsend v. State, 860 N.E.2d 1268, 1272 (Ind. Ct. App. 2007), trans. denied, and, in any case, we do not review a trial court’s weighing of mitigating factors. J.S. v. State, 928 N.E.2d 576, 579 (Ind. 2010).

Laycock's assertion that his character and attitudes show that he is unlikely to commit another crime is likewise unavailing. At sentencing, Laycock introduced into evidence a parenting class completion certificate and several letters from family and friends attesting to his good character. While this evidence may represent some indication of good character and attitude, in Ware v. State, 816 N.E.2d 1167, 1178 (Ind. Ct. App. 2004), we affirmed a trial court's decision to reject a defendant's argument that he was unlikely to commit another crime when his offense involved an on-going event (illicit sexual relationship) rather than an isolated criminal incident in the offender's life. Such is the case here: Dr. Laskey testified that J.M.L.'s bruises likely did not result from a single occurrence, and two weeks elapsed after J.M.L. first went to the hospital on August 14, 2006, until the police took her on August 31, 2006. In fact, J.M.L. likely would not have received medical attention at all had the anonymous tip not been placed. Thus, Laycock's crime was not a mere isolated incident, but rather stretched on for days as his daughter suffered, and the trial court was within its discretion in rejecting this offered mitigating factor.

Finally, Laycock has not persuaded us that the trial court abused its discretion when it placed him with the DOC, rather than with community corrections. Placement in a community corrections program is an alternative to commitment to the DOC, and is made at the sole discretion of the trial court. Holmes v. State, 923 N.E.2d 479, 482 (Ind. Ct. App. 2010). A defendant is not entitled to serve a sentence in community corrections, and placement in such a program is a "matter of grace" and a "conditional liberty that is a favor, not a right." Id. (quoting Cox v. State, 706 N.E.2d 547, 549 (Ind. 1999)). Although Laycock

asserts that incarceration in the DOC costs the State much more than home detention, he has not explained why this cost differential is compelling enough to warrant reversal of the trial court's placement decision—a decision which is, again, made at the trial court's "sole discretion." Id. We find no error in Laycock's placement in the DOC and not on home detention.

Appropriateness of the Sentence

Laycock next contends that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). In Reid v. State, the Indiana Supreme Court reiterated the standard by which our state appellate courts independently review criminal sentences:

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence through Indiana Appellate Rule 7(B), which provides that a 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. The burden is on the defendant to persuade us that his sentence is inappropriate.

876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

The Court more recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to "leaven the outliers." Id. at 1225. "Whether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of

the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

The trial court ordered that Laycock serve eight years in the DOC—the maximum penalty available under his plea agreement, but two years less than the advisory. The nature of Laycock’s offense is such that, as a result of neglect, his two-month old infant daughter suffered a “bowing deformity” of her left forearm. Ex. D. According to Dr. Laskey, this type of injury was probably very painful to J.M.L. As an infant, J.M.L. was completely subject to the handling and picking up of others, and would have been unable to verbalize her pain to prevent others from touching her arm. J.M.L. also sustained injuries to the head and face that could have caused permanently disabling or fatal brain injuries.

The character of the offender is such that, despite his lack of formal criminal history, Laycock permitted his infant daughter to suffer the pain of multiple physical injuries over several days. Moreover, he and Edwards told medical professionals during their mid-August visit to the hospital that J.M.L.’s older brother had inflicted J.M.L.’s injuries, which Dr. Laskey concluded was not a possible explanation for her injuries. Had Laycock been more truthful with the medical professionals, he may have lessened the physical harm to J.M.L. In the end, even though he received the maximum penalty under his plea agreement, his sentence is still two years below the advisory for a Class B felony, and we are not persuaded that his character or the nature of his offense warrants revision.

Conclusion

The trial court did not abuse its discretion in sentencing Laycock or in placing him in

the DOC as opposed to community corrections. Furthermore, Laycock's character and the nature of his offense do not indicate his sentence needs revision.

Affirmed.

FRIEDLANDER, J., and BROWN, J., concur.