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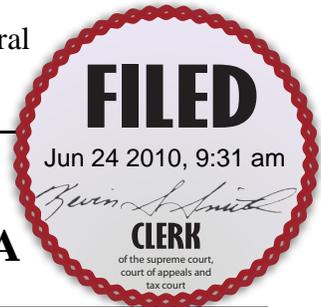
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**IN THE  
COURT OF APPEALS OF INDIANA**

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DONALD WILSON,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 10A04-1001-PC-12

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Daniel E. Moore, Judge  
Cause No. 10C01-9406-CF-86

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**June 24, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

## Case Summary and Issues

Donald Wilson appeals the denial of his petition for post-conviction relief in 2009 following his 1995 convictions for murder, two counts of attempted murder, and one count of carrying a handgun without a license. Wilson raises two issues: 1) whether trial counsel was ineffective; and 2) whether appellate counsel was ineffective. Concluding neither trial nor appellate counsel was deficient and the post-conviction court did not err in denying Wilson's petition, we affirm.

## Facts and Procedural History

The Indiana Supreme Court summarized the facts as follows in Wilson's direct appeal:

Shortly after midnight on the morning of May 27, 1994, [forty-five-year-old] Wilson drove to the Keg Liquor Lounge in Clarksville. His wife, Judith Bowles Wilson (Judy), from whom a divorce was pending, was employed at the Keg and working that night. Wilson was aware his wife was seeing someone. While standing outside the Keg, Wilson engaged in a brief conversation with Charles Wise, an employee at the liquor store next to the Keg. Wise recalled Wilson saying "looks like lover is here tonight." Wise testified that he knew Wilson was referring to Antonio Rodriguez, Judy's boyfriend, and that Rodriguez was inside the bar.

Following that conversation, Wilson walked into the Keg carrying a Ruger .357 Magnum handgun. Wilson observed his estranged wife speaking to Rodriguez, and twice demanded to see her outside. After seeing Rodriguez make some sudden movements, Wilson shot at Rodriguez at least once, striking him in the left forearm. As Rodriguez fell to the ground and crawled behind the bar, Judy, who was already behind the bar, ran towards the kitchen. Wilson then turned and fired two shots in Judy's direction.

Another patron who was in the bar at the time, Jack Bierly, later told police he believed Wilson actually fired two shots at Rodriguez. Bierly also observed Wilson raise and aim his gun in the direction of Judy. At that point, Bierly got up and ran out the front door of the bar. He heard more shots fired inside the bar as he ran. Wilson followed Bierly outside. Bierly heard Wilson yelling at him to stop running. Bierly testified that he then turned and saw Wilson pointing the .357 Magnum at him. Bierly drew his

own revolver and shot at Wilson five times. Wilson fired twice in the direction of Bierly, though Wilson contends that the discharges were accidental. Bierly was not hit by these shots. Wilson sustained multiple gunshot wounds from Bierly's shots before he fled to the car he had driven, parked in an adjacent lot.

Police found Wilson collapsed next to a car in a lot adjoining the Keg. He had been shot in the stomach, chest, and right pinky finger. Inside the lounge, they found Judy Bowles Wilson dead from a gunshot wound to the head. A bullet had entered her left temple and exited the back of her skull. Police also found the injured Rodriguez.

The police searched the car next to which Wilson had been found. The car belonged to an employee of the company where Wilson was a manager. Inside the car, they found one of Wilson's business cards. They also found a box of .357 caliber ammunition, a shotgun, and a box of shotgun shells. None of these items belonged to the owner of the car, nor had he given permission for Wilson to borrow the car or put the guns and ammunition in it.

Wilson was transported from the scene to the hospital and remained there for surgery and follow-up care. On June 3, police arrested Wilson and charged him with the murder of Judy Bowles Wilson, the attempted murder of Rodriguez and Bierly, and carrying a handgun without a license.

Wilson v. State, 697 N.E.2d 466, 469-70 (Ind. 1998) (citations omitted).

In August 1995, Wilson filed a notice of insanity defense. The court appointed two independent psychiatrists to examine Wilson. They both concluded he was not insane. Defense counsel contacted the Veteran's Hospital and the Veteran's Administration in search of an expert on post-traumatic stress disorder. Counsel was consistently recommended to use David Moore, a social worker who had treated hundreds of veterans for post-traumatic stress disorder over the previous four years. At the time of the trial, Moore was in private practice. Before that, he was associated with the V.A. Medical Center in Louisville. Moore was a licensed clinical social worker with two Master's Degrees, one in Social Work from the University of Louisville and one in Divinity from Southern Baptist Theological Seminary in Louisville. Moore had also

competed 300 hours of continuing education, had six certifications, and was published. In addition, he had a Ph.D. in Social Work from the External Degree Program at Pacific Western University in Hawaii, and had experience testifying as an expert at trial.

During preliminary questioning of Moore regarding his qualifications as an expert, defense counsel asked Moore if he got his Ph.D. from a “correspondence school.” Transcript at 1643. Moore acknowledged he was not in Hawaii when he got his degree and that Pacific Western University was a correspondence school. Following the preliminary questioning, the trial court qualified Moore as “an expert clinical social worker for . . . [the] evaluation and treatment for Post-Traumatic Stress Disorder.” Id. at 1645.

Moore testified that he evaluated Wilson and reviewed past medical and administrative documents. Moore explained to the jury how Wilson’s family and military history related to his symptoms to show how and why Wilson suffered from post-traumatic stress disorder. He testified that Wilson suffered from severe post-traumatic stress disorder and that he was insane at the time he murdered his estranged wife and shot Bierly and Rodriguez.

Also at trial, the two court-appointed experts testified Wilson was not insane. Donald O’Brien, Judy’s brother, testified Wilson told him if he ever caught Judy with Rodriguez, he (Wilson) would kill them. Samuel Dryden, Wilson’s former employee, testified Wilson told him if he ever killed anyone, he would use “Vietnam flashback syndrome” as a defense. Id. at 1776. An August 1995 jury trial ended in a mistrial. In December 1995, Wilson was convicted of all charges in a second jury trial.

Following a sentencing hearing, the trial court found the following aggravating factors: 1) the impact on the victim's family; 2) the minimum sentence would depreciate the seriousness of the crime; 3) Wilson's need for correctional rehabilitation; 4) Wilson wounded Rodriguez and shot at Bierly; 5) the murder was premeditated; and 6) Wilson lacked remorse. The trial court found no mitigating factors and sentenced Wilson to sixty years for murder, forty years for each count of attempted murder, and one year for carrying a handgun without a license, all sentences to run concurrently. The Indiana Supreme Court affirmed his convictions. In November 1999, Wilson filed a petition for post-conviction relief, which he later withdrew. In January 2002, Wilson filed another petition for post-conviction relief, which he later amended. The trial court denied the petition in December 2009 after a hearing. Wilson now appeals the denial of his petition.

### Discussion and Decision

#### I. Standard of Review

Defendants who have exhausted the direct appeal process may challenge the correctness of their convictions and sentences by filing a post-conviction petition. Stevens v. State, 770 N.E.2d 739, 745 (Ind. 2002), cert. denied, 540 U.S. 830 (2003). A petitioner who has been denied post-conviction relief faces a rigorous standard of review on appeal. Dewitt v. State, 755 N.E.2d 167, 169 (Ind. 2001). The post-conviction court's denial of relief will be affirmed unless the petitioner shows that the evidence leads unerringly and unmistakably to a decision opposite that reached by the post-conviction court. Id. at 170. We consider only the probative evidence and reasonable inferences therefrom that support the post-conviction court's determination and will not reweigh the

evidence or judge the credibility of witnesses. Bigler v. State, 732 N.E.2d 191, 194 (Ind. Ct. App. 2000), trans. denied.

Here, Wilson argues that the trial court erred in denying his post-conviction petition because he received ineffective assistance of counsel both at trial and on appeal. The standard of review for a claim of ineffective assistance of trial counsel is the same as for appellate counsel. Reed v. State, 856 N.E.2d 1189, 1195 (Ind. 2006). To prevail on a claim of ineffective assistance of counsel, the petitioner must establish the two components first set out in Strickland v. Washington, 466 U.S. 668 (1984). Specifically, the petitioner must first demonstrate that counsel's performance was deficient. Smith v. State, 765 N.E.2d 578, 585 (Ind. 2002). This part of the test requires the petitioner to demonstrate that counsel's representation fell below an objective standard of reasonableness and that counsel's errors were so serious that they resulted in a denial of the right to counsel guaranteed under the Sixth Amendment to the United States Constitution. McCorker v. State, 797 N.E.2d 257, 267 (Ind. 2003). There is a strong presumption that counsel's representation was adequate. Stevens, 770 N.E.2d at 746. This presumption can be rebutted only with strong and convincing evidence. Elisea v. State, 777 N.E.2d 46, 50 (Ind. Ct. App. 2002).

To establish the second part of the test, the petitioner must demonstrate that counsel's deficient performance resulted in prejudice to the defense. Smith, 765 N.E.2d at 585. The petitioner must show that but for counsel's unprofessional errors, there is a reasonable probability that the result of the proceeding would have been different. McCorker, 797 N.E.2d at 267. A reasonable probability is a probability sufficient to

undermine confidence in the outcome. Wesley v. State, 788 N.E.2d 1247, 1252 (Ind. 2003). We now turn to Wilson’s specific claims.

## II. Ineffective Assistance of Trial Counsel

Wilson argues that trial counsel was ineffective for relying on expert witness Moore, whom he characterizes as an “unqualified witness with a correspondence school doctorate.” Appellant’s Brief at 8.<sup>1</sup> In support of his argument, Wilson directs us to Stevens v. McBride, 489 F.3d 883 (7th Cir. 2007), cert. denied, 128 S.Ct. 2423 (2008). In the Stevens case, Stevens was charged with murder, and the State sought the death penalty. The defense team retained clinical psychologist Dr. Lawrence Lennon, the director of a child and adolescent psychiatric center at an Indianapolis hospital, as a mental health consultant. Defense counsel instructed Dr. Lennon to evaluate Stevens but not to write a report on his findings. Despite these explicit instructions, Dr. Lennon sent a written report to the defense team. The report included numerous statements that were detrimental to Stevens’s case. For example, the report stated that the murder appeared to be directly related to Stevens’s fear of having to return to prison after the victim revealed he would report Stevens’s sexual assault. The report also stated Stevens seemed well versed in pedophilia and readily accepted the diagnosis. The report concluded that Stevens was a serious danger to society and there was every reason to believe he would continue to molest children and might possibly violently assault a young victim if he felt it was necessary. When defense counsel asked Dr. Lennon why he had disobeyed their

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<sup>1</sup> Defense counsel had also retained clinical psychologist Dr. William Freeman to testify in support of Wilson’s post-traumatic stress disorder. Defense counsel did not learn until the time of trial that Dr. Freeman was unavailable to testify because he had just had surgery. Wilson does not argue that trial counsel was ineffective for failing to consult another expert in the field to replace Dr. Freeman.

instructions, the psychologist explained that he was “sandbagging the State.” Id. at 888. Specifically, Dr. Lennon explained as follows, “I’m trying to make them think that I’m going to be a good witness for them, but I’m going to take – when I take the stand, I’m going to be able to turn this all around on them.” Id.

Around the same time, the defense team learned that Dr. Lennon subscribed to an unusual psychological theory called the “myth of mental illness.” Id. Stevens’s lawyers believed Dr. Lennon’s belief in this theory placed him in the one-percent minority of psychologists who believe that mental diseases do not exist. The defense team also learned that one of Dr. Lennon’s favorite therapeutic techniques was “trust and bonding” therapy, which Dr. Lennon described as “putting 18-year-olds on his lap and sticking a bottle in their mouth.” Id. Although Stevens’s lawyers concluded Dr. Lennon was a “quack,” they did not seek an alternative defense expert. Id. In addition, prior to trial, the lawyers sent a copy of Dr. Lennon’s report to the prosecution.

Neither Dr. Lennon nor any other mental health professional testified during the guilt phase of trial. The jury convicted Stevens of murder. During the penalty phase of trial, defense counsel called Dr. Lennon as the final witness. Dr. Lennon began his testimony by describing at length his preferred form of therapy where he would give a 16- or 17-year-old a bottle. After more than twenty pages of testimony on his theories of child development and trust and bonding, Dr. Lennon testified about Stevens’s “terrible childhood.” Id. at 889. Dr. Lennon did not provide any evaluation of Stevens’s current mental health, except to say that Stevens was a “very pathetic kid” who was “emotionally like a twelve-year old.” Id.

The State's cross-examination tracked Dr. Lennon's written evaluation. The State asked Dr. Lennon to confirm his statement that the murder was directly related to Stevens's fear of having to return to prison. Dr. Lennon volunteered that Stevens had antisocial qualities and sociopathic traits. Dr. Lennon also testified that Stevens had been sexually aroused by killing the victim and had masturbated on the victim's body. Dr. Lennon had never disclosed this fact to defense counsel.

The jury unanimously recommended a death sentence. Stevens's attorneys called Dr. Lennon to testify a second time at the sentencing hearing, during which Dr. Lennon described Stevens as presenting a great risk to society. The trial court accepted the jury's recommendation of death. Specifically, the court found that the murder was calculated, motivated by self-preservation, coolly performed with deliberation, and coupled with Stevens's sexual satisfaction. The Indiana Supreme Court affirmed Stevens's conviction and sentence on direct appeal, and affirmed a later denial of Stevens's petition for post-conviction relief. Stevens filed a petition for habeas corpus, which the district court denied.

The case upon which Wilson relies is the appeal of that denial. In that appeal, the federal appeals court noted that although defense counsel concluded Dr. Lennon was a quack and was aware that Dr. Lennon's views favored the prosecution, counsel used Dr. Lennon as the defense expert in the penalty phase of trial. Id. at 891. Defense counsel offered no rationale for the decision not to seek an additional expert. Id. Further, defense counsel knew what Dr. Lennon had written in his evaluation of Stevens, but called him to the stand at sentencing and turned over Dr. Lennon's report to the State before trial. The

appellate court further noted that the defense team called Dr. Lennon a second time to testify at the sentencing hearing where Dr. Lennon expressed his belief in Stevens's future dangerousness. Based upon the foregoing, the Seventh Circuit Court of Appeals concluded Stevens received ineffective assistance of counsel during the penalty phase of the trial and was therefore entitled to a new sentencing proceeding. Id. at 899.

Stevens, however, is inapposite. Here, the defense team did not view Moore as a quack. Further, Moore's expert opinion that Wilson suffered from severe post-traumatic stress disorder and was insane at the time he murdered his estranged wife and shot at Rodriguez and Bierly was favorable to the defense. Further, to the extent Wilson challenges Moore's correspondence Ph.D., we note that Moore had two Master's degrees and four years of experience working with hundreds of veterans suffering from post-traumatic stress disorder. Moore has also completed 300 hours of continuing education, has six certifications, and is published. Given his education and work history, it is unlikely the trial court certified him as an expert in the evaluation and treatment of post-traumatic stress based solely on his doctorate degree. Counsel was not ineffective for relying on Moore as an expert witness.

Wilson also argues that trial counsel was ineffective for failing to object to the prosecutor 1) calling the defense team "The Dreaming Team" and 2) referring to Wilson's defense as a smoke screen, both during closing argument. As to the first argument, Wilson claims calling his defense team "The Dreaming Team" was a personal attack against defense counsel. In support of his argument, Wilson directs us to Marcum v. State, 725 N.E.2d 852 (Ind. 2000), wherein the prosecutor made numerous demeaning

remarks directed at defense counsel throughout the trial. For example, the prosecutor commented that defense counsel's continued questioning of a witness in the face of an objection was "outrageous behavior for anyone who calls themselves a professional lawyer," and that defense counsel "need[ed] to pay a little more attention to what is going on." Id. at 858-59. The prosecutor also suggested the defense attorney was trying to mislead the jury.

The Indiana Supreme Court concluded that although many of the prosecutor's comments were improper and some appeared to be direct violations of the Rules of Professional Conduct, the appellant failed to show that the improper comments had a probable persuasive effect on the jury's decision. Id. at 859-60. The supreme court also pointed out that breaches of civility and attacks on the integrity or competence of counsel are ordinarily matters for another forum. Id. at 860. Here, even if the prosecutor's comments were improper, Wilson, like Marcum, has failed to show the improper comments had a probable persuasive effect on the jury's decision and that trial counsel was therefore ineffective for failing to object to them.

Wilson also argues that trial counsel was ineffective for failing to object to the prosecutor referring to Wilson's defenses as smoke screens during closing argument. Specifically, the prosecutor argued that Wilson's defenses that 1) he shot Rodriguez in self-defense, and 2) it was Bierly who shot Judy were smoke screens. However, even if such remarks were improper, Wilson has again failed to show the improper comments had a probable persuasive effect on the jury, and that trial counsel was therefore ineffective for failing to object to them. Wilson's trial counsel was not ineffective.

### III. Ineffective Assistance of Appellate Counsel

Wilson also argues that appellate counsel was ineffective because she failed to challenge Wilson's sentence on appeal. When reviewing a claim of ineffective assistance of counsel regarding the selection and presentation of issues, a defendant must overcome the strongest presumption of adequate assistance. Seeley v. State, 782 N.E.2d 1052, 1059 (Ind. Ct. App. 2003), trans. denied. Ineffectiveness is very rarely found in these cases because the decision of what issues to raise is one of the most important strategic decisions to be made by appellate counsel. Ritchie v. State, 875 N.E.2d 706, 723-24 (Ind. 2007). Accordingly, our review is particularly deferential to counsel's strategic decision to exclude certain issues in favor of others. Id. at 724. In addition, an ineffective assistance of counsel claim may not be predicated upon the failure to present an appellate issue that is meritless. Staton v. State, 640 N.E.2d 741, 744 (Ind. Ct. App. 1994), trans. denied. Therefore, if the trial court did not err in sentencing Wilson, appellate counsel was not ineffective for failing to challenge Wilson's sentence.

#### A. Standard of Review for Sentencing

At the outset, we note that the crimes in this case occurred in 1995. It is well settled that the sentencing statute in effect at the time the crime is committed governs the sentence for the crime. Gutermuth v. State, 868 N.E.2d 427, 432 n.4 (Ind. 2007). At the time of the crimes in this case, the presumptive sentence for murder was forty years, with no more than twenty years added for aggravating circumstances and no more than ten years subtracted for mitigating circumstances. Ind. Code § 35-50-2-3 (1985). Here, the trial court ordered Wilson to serve the maximum sixty-year sentence for the murder of his

estranged wife. The court also ordered this sentence to run concurrently with the two forty-year sentences imposed for the two attempted murder convictions, and the one-year sentence imposed for carrying a handgun without a license.

We further note that because the crimes in this case occurred before the 2005 amendments to the sentencing statutes were adopted, we review the sentences under the presumptive sentencing scheme. See Gutermuth, 868 N.E.2d at 432 n.4. Under the presumptive sentencing scheme, sentencing determinations are within the trial court's discretion, and we will reverse only for an abuse of discretion. Padgett v. State, 875 N.E.2d 310, 316 (Ind. Ct. App. 2007), trans. denied. It is within the trial court's discretion to determine whether a presumptive sentence will be enhanced due to aggravating factors. Id. When the trial court does enhance a sentence, it must: 1) identify significant aggravating and mitigating circumstances; 2) state the specific reasons why each circumstance is aggravating or mitigating; and 3) evaluate and balance the mitigating against the aggravating circumstances to determine if the mitigating offset the aggravating factors. Id. It is generally inappropriate for us to substitute our judgment or opinions for those of the trial court. Id.

#### B. Mitigating Circumstances

Wilson first argues that the trial court overlooked certain mitigating circumstances. A finding of mitigating circumstances, like sentencing decisions in general, lies within the trial court's discretion. Wilkie v. State, 813 N.E.2d 794, 799 (Ind. Ct. App. 2004), trans. denied. When a defendant alleges that the trial court failed to identify or find a mitigating circumstance, the defendant must establish that the

mitigating evidence is both significant and clearly supported by the record. Corbett v. State, 764 N.E.2d 622, 630 (Ind. 2002). The trial court is not required to make an affirmative finding expressly negating each potentially mitigating circumstance. Id. at 630-31.

Wilson first contends that the trial court improperly failed to consider his military service as a mitigating factor. We recognize that Wilson was honorably discharged from the United States Army in 1970 after three years of service and commend him for his service to this nation, but military service is not necessarily a mitigating factor and Wilson does not explain why it should be so in this case. The trial court did not abuse its discretion in failing to consider Wilson's military service as a mitigating factor. See Forgey v. State, 886 N.E.2d 16, 23 (Ind. Ct. App. 2008) (finding trial court did not abuse its discretion when it declined to consider Forgey's honorable military service as a mitigator).

Wilson also contends that the trial court improperly failed to consider his post-traumatic stress disorder as a mitigating factor. However, the trial court noted during the sentencing hearing that the jury had determined that "mental illness was not established to their satisfaction." Tr. at 1977. Although an expert defense witness testified Wilson suffered from post-traumatic stress disorder at the time of the murder, the State's witnesses provided no such testimony. Rather, Dryden testified Wilson told him if he did commit murder, he would use "Vietnam flashback syndrome" as a defense. Given this conflicting evidence, the trial court did not abuse its discretion in failing to consider post-traumatic stress as a mitigating factor. See Capps v. State, 598 N.E.2d 574, 579 (Ind. Ct.

App. 1992) (stating conflicting evidence on the question of Capps's sanity raised issues of credibility and did not constitute reversible error).

### C. Aggravating Circumstances

The trial court in this case found six aggravating circumstances: 1) the impact on the victim's family; 2) the minimum sentence would depreciate the seriousness of the crime; 3) Wilson's need for correctional rehabilitation; 4) Wilson wounded Rodriguez and shot at Bierly; 5) the murder was premeditated; and 6) Wilson lacked remorse. Wilson argues that four of these aggravators are improper. We address each of his contentions in turn.

Wilson first contends that the impact to the victim's family was an improper aggravator. The Indiana Supreme Court has held that under normal circumstances, the impact upon the family is not an aggravating circumstance for the purposes of sentencing. Bacher v. State, 686 N.E.2d 791, 801 (Ind. 1997). This is because such an impact on family members accompanies almost every murder and is encompassed within the range of impact which the presumptive sentence is designed to punish. Id. The impact to the victim's family is only a proper aggravating circumstance where the impact is more substantial than that typically associated with the offense and where the defendant could foresee the impact. Id. Here, we find no unique facts and circumstances beyond those normally associated with the violent killing of a loved one. Wilson is correct that this is an improper aggravator.

Wilson further contends it was an improper aggravator that the imposition of a minimum sentence would depreciate the seriousness of the crime. This factor may be

considered to support the refusal to impose a sentence less than the presumptive. Pickens v. State, 767 N.E.2d 530, 533 (Ind. 2002). During the sentencing hearing, the trial court noted that although the defense had requested the minimum sentence, the court “certainly wouldn’t even consider reducing any sentences and going below what even would be considered presumptive.” Tr. at 1979. Because the trial court used this factor to support its refusal to impose a sentence less than the presumptive, it was not an improper aggravator.

Wilson further contends that his need for correctional rehabilitation was also an improper aggravator. For this aggravating circumstance to justify an enhanced sentence, it must be understood to mean the defendant is in need of correctional and rehabilitative treatment that can best be provided by a period of incarceration in a penal facility in excess of the presumptive term. Mitchem v. State, 685 N.E.2d 671, 679 (Ind. 1997). Here, the trial court refused to impose the minimum sentence as requested by the defense and stated it would not even consider reducing any of the sentences and going below the presumptive. Clearly, the trial court meant Wilson was in need of a period of incarceration in a penal facility in excess of the presumptive term. This factor was not an improper aggravator.

Lastly, Wilson argues the aggravator that he wounded Rodriguez and shot at Bierly was improper because a court cannot consider a material element of a charged offense as an aggravator. It is true that a factor constituting a material element of a crime cannot be considered an aggravating circumstance when sentencing a defendant. Rogers v. State, 878 N.E.2d 269, 274 (Ind. Ct. App. 2007), trans. denied. However, Wilson

mischaracterizes the trial court's consideration of Rodriguez's wound and the shots fired at Bierly. The record clearly indicates the trial court considered its reference to the wound and the shots as a comment on the nature and circumstances of the crime. This is a valid aggravating factor. See Hart v. State, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005).

Even when a trial court improperly considers certain aggravators, a sentence enhancement may be upheld if other valid aggravators exist. Pickens, 767 N.E.2d at 535. Even one valid aggravator may be sufficient to support an enhanced sentence. Means v. State, 807 N.E.2d 776, 788 (Ind. Ct. App. 2004), trans. denied. Here, excluding the one improper aggravating circumstance, five valid aggravators remain to weigh against no mitigating circumstances. From our review of the trial court's remarks at the sentencing hearing, it is clear the court relied primarily on the two unchallenged aggravating factors, Wilson's premeditation and lack of remorse, in enhancing Wilson's sentence. Given the trial court's oral remarks at the sentencing hearing and the weight of the remaining aggravating factors, the trial court did not err in sentencing Wilson to an enhanced sixty-year sentence for the murder of his estranged wife.<sup>2</sup> Appellate counsel was therefore not ineffective for failing to challenge Wilson's sentence, and the post-conviction court did not err in denying Wilson's petition.

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<sup>2</sup> We further note that the trial court could have ordered the murder and attempted murder sentences to run consecutively for a total sentence of 140 years. The existence of multiple victims is a valid aggravator that can support a trial court's imposition of consecutive sentences. French v. State, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005). The Indiana Supreme Court has explained that when there is more than one victim, consecutive sentences vindicate the fact there were separate harms and separate acts against more than one person. Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003).

### Conclusion

The post-conviction court properly concluded neither Wilson's trial counsel nor his appellate counsel was ineffective. Therefore, the post-conviction court did not err in denying Wilson's petition.

Affirmed.

FRIEDLANDER, J., and KIRSCH, J., concur.