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**IN THE
COURT OF APPEALS OF INDIANA**

DEREK ANTHONY LAWSON,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 10A01-0902-CR-56

APPEAL FROM THE CLARK SUPERIOR COURT
The Honorable Vicki L. Carmichael, Judge
Cause No. 10D01-0710-MR-144

October 6, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

On the day of trial, after being charged with two counts of murder and one count of Class A felony attempted murder, Derek Lawson pled guilty to the attempted murder charge and two reduced counts of Class A felony voluntary manslaughter. The State and Lawson agreed to an eighty-year sentencing cap. The trial court accepted the plea and sentenced Lawson to the advisory term of thirty years on two of the Class A felonies and the minimum term of twenty years on the remaining Class A felony and ordered that these sentences be served consecutively, resulting in an aggregate sentence of eighty years. On appeal, Lawson argues that the trial court abused its discretion by relying on improper aggravators, failing to recognize several mitigators, and ordering him to serve consecutive sentences and that his sentence is inappropriate in light of the nature of the offenses and his character. Concluding that the trial court did not abuse its discretion and that Lawson's sentence is not inappropriate, we affirm.

Facts and Procedural History

On September 27, 2007, Lawson shot and killed April Jones and Dyjuan Latendresse and shot Jonathan Jones five times, seriously wounding him. April, Latendresse, and Jonathan were siblings. The State charged Lawson with two counts of murder and one count of attempted murder.

On October 21, 2008—the morning of Lawson's jury trial—Lawson agreed to plead guilty to the attempted murder charge and two reduced counts of Class A felony voluntary manslaughter. In exchange, the State reduced the two murder charges to

voluntary manslaughter and agreed to an eighty-year sentencing cap. The trial court accepted Lawson's guilty plea.

During the sentencing hearing, the trial court heard testimony from Lawson's mother, who testified to the violent history between Latendresse and Lawson, explaining that they used to be friends but that their relationship deteriorated in high school. Lawson's mother stated that in 2003, Latendresse shot Lawson and that in 2006, Latendresse and two men broke into Lawson's house, robbed him, tied up Lawson's hands and feet, and shot one of Lawson's friends who was in the house. Lawson's mother also stated that Lawson feared Latendresse and did not feel safe living in the same city with Latendresse. Lawson's mother verified that the trial court had received the letters of support from Lawson's family and friends.

The victims' mother and Latendresse's girlfriend spoke at the sentencing hearing about the impact of the deaths of April and Latendresse, both of whom had children,¹ and asked the trial court to impose the maximum sentence. Jonathan, the attempted murder victim, testified that Lawson "killed [his] brother and sister in cold blood" and stated that April "did not try to fight him over no gun" and that Latendresse "was shot point blank in his chest, he was on the ground and shot dead in his chest." Tr. p. 65. Jonathan, who was a senior in high school at the time of the shooting, also stated that Lawson shot him five times and explained that he was not able to go to his brother and sister's funeral and had missed out on some of his high school life due to being in the hospital.

¹ April had one child, and Latendresse had two children.

Lawson made a statement to apologize to the victims' family and to the trial court. Lawson's attorney asked the trial court to consider the turbulent history between Lawson and Latendresse, the hardship to Lawson's two children, his good employment history, his acceptance of responsibility and remorse, and his lack of criminal convictions on the arrests that had been made. Lawson's counsel also argued that the trial court should not impose a sentence above twenty years or sentence Lawson to consecutive sentences.

The prosecutor argued that the trial court could sentence Lawson to consecutive sentences based on the three separate victims and recommended that the trial court sentence Lawson to the eighty-year sentencing cap as provided in the plea agreement.

When sentencing Lawson, the trial court stated:

Several people have said that this is a very difficult decision and it is. Sentencing is always a very difficult decision especially in this case, when two different families have suffered and there has been a lot of history between the families. Some good and some not so good, at this time the Court will find that there are aggravating and mitigating circumstances, however the Court believes the aggravating circumstances are that while the defendant has had multiple arrest[s] and as [defense counsel] noted, I don't know whether that resulted in a convictions [sic]. Some of them appear to still be pending, but this factor [is] considered aggravating by the Court because of this criminal activity being ongoing and escalating in nature. And resulting in death of two individuals in this case, the Court does believe that the defendant is in need of correctional or rehabilitative treatment that can best be provided by his commitment to a penial [sic] facility. Because of the escalation of his criminal activity the Court believes that prison is the only option. The imposition of a reduced sentence or suspension of the sentence and imposition of probation would only depreciate the seriousness of the crime and that does not seem to be appropriate to this Court. While imprisonment will result in undo [sic] hardship to the defendant's two children, this factor is considered and yet weighted against the fact that two of the victims of this case also have children as [the victims' mother] said "will grow up without their parents, both a mother and a father." There was an ongoing feud between Dyjuan Latendresse and the defendant in this case. And the Defendant suffer[ed] injuries at the hand of Dyjuan Latendresse and the Court has considered

that. However, the imposition of a sentence in this case to anything less than the eighty years requested by the State would depreciate the seriousness of what happened and Mr. Lawson you must understand that two people died and one person was seriously injured.

Id. at 85-87. The trial court sentenced Lawson to the advisory term of thirty years on the voluntary manslaughter conviction relating to April, the minimum term of twenty years on the voluntary manslaughter conviction relating to Latendresse, and the advisory term of thirty years on the attempted murder conviction relating to Jonathan, and the trial court ordered that these sentences be served consecutively, resulting in an aggregate eighty-year sentence. Lawson now appeals.

Discussion and Decision

Lawson argues that the trial court abused its discretion in sentencing him and that his sentence is inappropriate in light of the nature of the offense and his character.

I. Abuse of Discretion

Lawson argues that the trial court abused its discretion by considering improper aggravators, failing to recognize certain mitigators, and imposing consecutive sentences. Specifically, Lawson contends the trial court improperly considered as aggravators his arrests, the need for correctional or rehabilitative treatment, and that a reduced sentence would depreciate the seriousness of the crimes. As to the mitigators, he challenges the trial court's failure to specify his guilty plea and remorse as mitigators and challenges the weight the trial court assigned to the mitigators of undue hardship and his feud with Latendresse. Finally, Lawson contends the trial court's imposition of consecutive sentences was not justified.

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), *clarified 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.* We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491. One way in which a court may abuse its discretion is by entering a sentencing statement that omits mitigating circumstances that are clearly supported by the record and advanced for consideration. *Id.* at 490-91. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

We first address Lawson's contention that the trial court erred by considering his history of arrests as an aggravating factor. He argues that the trial court erroneously considered his history of arrests as establishing a criminal history.

Our Supreme Court has recognized that, "[a] record of arrest, without more, does not establish the historical fact that a defendant committed a criminal offense and may not be properly considered as evidence of criminal history." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). However, a record of brushes with the law "may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime." *Id.*; *see*

also Monegan v. State, 756 N.E.2d 499, 502 (Ind. 2001) (explaining that a defendant’s history of arrests can properly be considered as evidence that “subsequent antisocial behavior on the part of the defendant has not been deterred even after having been subject to the police authority of the State”).

Here, Lawson had a juvenile adjudication for resisting law enforcement that was handled informally and arrests from Indiana and Kentucky that involved carrying a handgun, trafficking drugs, and assault. While these arrests involved a conditional discharge and dismissals, the record indicates there was an outstanding fugitive warrant at the time of sentencing on a trafficking in marijuana arrest out of Kentucky.

As reflected by the trial court’s sentencing statement, the trial court did not use Lawson’s prior arrests as evidence of criminal history but as a reflection on Lawson’s character and evidence that his antisocial behavior was not deterred by numerous encounters with the law. Accordingly, we find no abuse of discretion in the trial court’s consideration of this aggravator.

We next address Lawson’s argument regarding the aggravators of need for rehabilitative treatment and depreciates the seriousness of the crime. Lawson argues the trial court’s reference to these aggravators was improper because they were removed from the sentencing statute’s list of aggravators when the legislature amended the statute in 2005. While these aggravators may no longer be specifically enumerated in the sentencing statute, the legislature made clear that the aggravators listed in the statute “do not limit the matters that the court may consider in determining the sentence.” Ind. Code § 35-38-1-7.1(c). *See also Witmer v. State*, 800 N.E.2d 571, 573 (Ind. 2003) (explaining

that the sentencing statute's list of enumerated aggravating circumstances is not exclusive to a trial court's consideration of aggravating factors).

Furthermore, the trial court's use of these two aggravators was not improper. The need for rehabilitative treatment aggravator may be used to enhance a sentence only if the trial court provides a specific and individualized reason as to why the defendant requires correctional treatment in excess of the presumptive, now advisory, term. *Cotto*, 829 N.E.2d at 524. Because every executed sentence involves incarceration, there must be a specific and individualized statement explaining why extended incarceration is appropriate. *Id.* While the trial court here did not impose a sentence above the advisory term on any of the three convictions, it did enhance the sentence by imposing consecutive terms. The trial court explained that Lawson was in need of rehabilitation in a correctional facility based on his acts of killing two individuals and his escalation and continued contact with the law. Accordingly, we find no abuse of discretion in the trial court's use of this aggravator.

Additionally, the trial court's use of the depreciates the seriousness of the crime aggravator was not improper. "This factor serves only to support a refusal to impose less than the presumptive [now advisory] sentence and does not serve as a valid aggravating factor supporting an enhanced sentence." *Cotto*, 829 N.E.2d at 524. Here, Lawson argued for the trial court to impose a twenty-year sentence with no consecutive terms. The trial court imposed a minimum twenty-year sentence on the voluntary manslaughter conviction relating to Latendresse but refused to reduce sentences on the other two convictions, instead imposing the advisory thirty-year sentence on the other voluntary

manslaughter conviction and the attempted murder conviction. The trial court was entitled to recognize this aggravator in light of Lawson's argument, *see Kirby v. State*, 746 N.E.2d 440, 444 (Ind. Ct. App. 2001) (observing that the trial court properly used this factor to support its refusal to reduce the presumptive sentence), *trans. denied*, and we find no abuse of discretion in the use of this aggravator.

Turning to Lawson's argument that trial court abused its discretion in failing to identify several mitigators, we note that 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. *Anglemyer*, 868 N.E.2d at 493. "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Id.* (quotation omitted).

As to Lawson's argument that the trial court abused its discretion by failing to find his acceptance of responsibility by pleading guilty to be mitigating, we observe that a guilty plea does not automatically amount to a significant mitigating factor. *Sensback v. State*, 720 N.E.2d 1160, 1165 (Ind. 1999). "[A] guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him 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*.

Here, Lawson pled guilty to three Class A felony offenses; however, the State agreed to reduce the two murder charges to voluntary manslaughter (thereby reducing the possible maximum sentence from 65 years to 50 years), *see* Ind. Code §§ 35-50-2-3, -4,

and agreed to a sentencing cap of eighty years on the three Class A felonies, which otherwise would have an aggregate maximum sentence of 150 years, *see* Ind. Code § 35-50-2-4. As such, Lawson derived a significant benefit from the plea. Furthermore, Lawson pled guilty on the day of his scheduled jury trial, resulting in little or no benefit to the State. Thus, the trial court did not abuse its discretion by rejecting this mitigating circumstance.

We now turn to Lawson's argument that the trial court should have considered his remorse as a mitigator. At the sentencing hearing, Lawson testified as follows:

First I would like to apologize to the Jones family, entire family. I know that nothing that I can say will is [sic] going to take away the pain of my actions. I just want you all to know that I am really sorry from the bottom of my heart. I want to apologize to my family for all the stress that I have put you all through. And I would like to apologize to the Court, I would like for you to know that this is just one really bad night in my life and after I do this time, you can be assured that nothing like this will ever happen again. I just ask that you have leniency on me and that is all your honor.

Tr. p. 82.

A trial court's determination of a defendant's remorse is similar to a determination of credibility. *Pickens v. State*, 767 N.E.2d 530, 534-35 (Ind. 2002). Without evidence of some impermissible consideration by the court, we accept its determination of credibility. *Id.* The trial court is in the best position to judge the sincerity of a defendant's remorseful statements. *Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), *trans. denied*. Lawson does not allege any impermissible considerations. Additionally, Lawson's argument at sentencing tended to shift the blame for his act of shooting the three siblings away from himself and on to Latendresse. *See* Tr. p. 71-72 (arguing that Lawson was "in fear for his life" from Latendresse, which would "at least

explain why he would have not only shot at Dyjuan Latendresse, whom he had this history with” but also at April “not that she in anyway deserved to be killed, but that she had placed herself in a situation that did result in her becoming injured and taken her life” and at Jonathan, who “too was in close proximity.”). Thus, the trial court did not abuse its discretion by failing to identify Lawson’s alleged remorse as a mitigator.

Next, we address Lawson’s challenge to mitigators expressly found by the trial court. Lawson acknowledges that the trial court found an undue hardship to his dependents as a mitigating factor but suggests that the trial court erred by negating the weight assigned to this mitigator when it referred to the victims’ children, arguing that consideration of victim impact is improper. It is true that “the impact upon family is not an aggravating circumstance for purposes of sentencing,” *Bacher v. State*, 686 N.E.2d 791, 801 (Ind. 1997), but, here, the trial court did no such thing. The trial court did not use victim impact as an aggravating circumstance but referred to it to explain why it was not assigning significant weight to the undue hardship mitigator. Lawson’s argument amounts to nothing more than a challenge to the weight assigned to the mitigator, which he cannot do. *See Anglemeyer*, 868 N.E.2d at 491 (explaining that the relative weight or value assignable to aggravators and mitigators is not subject to our review for abuse of discretion).

Lawson also acknowledges that the trial court found his feud with Latendresse to be a mitigating factor but argues that “it was not addressed in a sufficient manner,” *see* Appellant’s Br. p. 18, and suggests the trial court should have found as mitigating that Lawson acted under provocation. Again, Lawson’s challenge amounts to an

inappropriate challenge to the weight assigned to the mitigator.² See *Anglemyer*, 868 N.E.2d at 491.

Finally, we turn to Lawson's argument that the trial court abused its discretion by imposing consecutive sentences. The decision to impose consecutive or concurrent sentences is within the trial court's sound discretion and is reviewed only for an abuse of discretion. *Williams v. State*, 891 N.E.2d 621, 630 (Ind. Ct. App. 2008). Although a trial court is required to state its reasons for imposing consecutive sentences, it may rely on the same reasons to impose a maximum sentence and also impose consecutive sentences. *Id.* Further, a single aggravating circumstance may support the imposition of consecutive sentences, and the presence of multiple victims is one such aggravating circumstance that justifies consecutive sentences. See *McCann v. State*, 749 N.E.2d 1116, 1120-21 (Ind. 2001). Because there were multiple victims, the trial court properly ordered Lawson to serve his sentences consecutively. See *Serino v. State*, 798 N.E.2d 852, 857 (Ind. 2003) (explaining that "consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person").

II. Inappropriate Sentence

Next, we address Lawson's argument that his sentence is inappropriate. Lawson was convicted of three Class A felonies. The advisory sentence for a Class A felony is thirty years, with a minimum of twenty years and a maximum of fifty years. Ind. Code § 35-50-2-4. The trial court sentenced Lawson to the advisory term of thirty years on the voluntary manslaughter conviction relating to April, the minimum term of twenty years

² Furthermore, because the trial court sentenced Lawson to the minimum term for his conviction relating to Latendresse, it is unclear why Lawson argues the trial court's assignment of weight to this feud mitigator was improper.

on the voluntary manslaughter conviction relating to Latendresse, and the advisory term of thirty years on the attempted murder conviction relating to Jonathan, and the trial court ordered that these sentences be served consecutively, resulting in an aggregate eighty-year sentence.

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences 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.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As for the nature of the offenses, the factual basis laid during the guilty plea hearing provides little detail beyond the statutory elements and reveals that Lawson shot April, Latendresse, and Jonathan, killing two of them and seriously injuring the third. While testimony from the sentencing hearing reveals that Lawson had previously been a victim at the hands of Latendresse and was fearful of him, there is nothing in the record indicating that Lawson or his two siblings were armed when Lawson shot at them. Instead, Jonathan stated that Lawson shot him five times, shot April even though “[s]he did not try to fight him over [the] gun,” and shot Latendresse “point blank in his chest [as] he was on the ground[.]” Tr. p. 65. The police report contained in the Appellant’s

Appendix also contains no indication that the three siblings were armed at the time Lawson shot them. Given the nature of the offenses, the two advisory sentences and the minimum sentence imposed on Lawson's three Class A felony convictions are not inappropriate.

As for twenty-six-year-old Lawson's character, the record reveals that Lawson graduated from high school, took some additional training courses, was employed at the time of the offenses, and had the support of family and friends who wrote letters to the trial court on Lawson's behalf. However, the record also reveals that Lawson, while having no adult criminal convictions, did have a history of arrests. Lawson had a juvenile adjudication for resisting law enforcement that was handled informally, and as an adult, had an arrest for carrying a handgun without a license that was conditionally discharged. In the year prior to the current offenses, Lawson had arrests from Indiana and Kentucky that involved operating while intoxicated, trafficking in a controlled substance, possession of drug paraphernalia, first degree assault, and trafficking in marijuana. At the time of the sentencing hearing, there was an outstanding fugitive warrant from Kentucky for the trafficking in marijuana charge. This history of arrests is evidence of his character and shows his disdain for the law and lack of deterrence even after having been subject to the police authority. Lastly, we observe that Lawson's claim that his sentence is inappropriate because "his character cannot be characterized as representing the worst type of offender," *see* Tr. p. 27, is not persuasive because Lawson did not receive the maximum 150-year sentence for his three Class A felony convictions.

In sum, the nature of Lawson's crime was serious, resulting in the death of two siblings and the wounding a third, and his character, while perhaps not the worst this Court has seen, is certainly not beyond reproach. Lawson has failed to persuade us that his aggregate eighty-year sentence for two Class A felony voluntary manslaughter convictions and one Class A felony attempted murder conviction is inappropriate.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.