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IN THE
COURT OF APPEALS OF INDIANA

MELISSA STANLEY-MOSS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0705-CR-423
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Fredrick R. Spencer, Special Judge
Cause No. 48D03-0606-FB-257

December 3, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Melissa Stanley-Moss appeals the sentence she received following her conviction of Causing Death When Operating a Motor Vehicle With a Schedule I/II Controlled Substance In Blood,[1] a class B felony, Operating a Vehicle While Intoxicated Endangering a Person,[2] a class A misdemeanor, and Neglect of a Dependent,[3] a class C felony. Stanley-Moss presents the following restated issues for review:

1. Did the trial court err in finding and balancing the aggravating and mitigating circumstances?

2. Was the sentence inappropriate?

We affirm.

The facts are that sometime in the afternoon or evening of April 4, 2006, Stanley-Moss placed her eight-week-old son, A.S., in a pickup truck and drove to a drug dealer's house, where she ingested illegal drugs. Stanley-Moss, who did not have a driver's license or auto insurance, put her son back into her truck without properly securing him in a car seat and drove away. She drove so erratically that another motorist placed a 911 call to report that she was swerving on and off the road. Before she could be stopped, however, she swerved across the centerline and struck head-on a truck being driven by

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[1] Ind. Code Ann. § 9-30-5-5(2)(B)(2) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

[2] I.C. § 9-30-5-2(B) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

[3] Ind. Code Ann. § 35-46-1-4(B)(1) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007).

sixty-nine-year-old Max Callahan. Callahan was killed in the collision, and A.S. suffered a subdural hematoma, which later caused seizures.

On May 30, 2006, Stanley-Moss was charged with: Count I – causing death when operating a motor vehicle with a schedule I or II controlled substance in the blood, a class B felony, Count II – reckless homicide, a class C felony, Count III – operating a vehicle while intoxicated endangering a person (relating to A.S.), a class D felony, Count IV – operating a vehicle with a schedule I or II controlled substance or its metabolite in the body, a class C misdemeanor, Count V – operating a vehicle while intoxicated endangering a person (relating to Stanley-Moss or another person), a class A misdemeanor, and Count VI – neglect of a dependent, a class C felony. On November 6, 2006, without the benefit of a plea agreement, Stanley-Moss pleaded guilty to Counts I, V, and VI.

Following a sentencing hearing, the court sentenced Stanley-Moss to fifteen years on Count I, which is five years more than the advisory sentence for a class B felony, and a concurrent one-year sentence on Count V. In addition, the court imposed a five-year sentence on Count VI, which is one year more than the advisory sentence for a class C felony. The sentence for Count VI is to be served consecutive to the fifteen-year sentence under Count I, for a total executed sentence of twenty years.

1.

Stanley-Moss contends the trial court erred in finding and balancing aggravating and mitigating circumstances.

On April 25, 2005, the General Assembly amended Indiana's felony sentencing statutes to provide for sentences within a range of years, with an "advisory sentence" somewhere between the minimum and maximum terms. *See* Ind. Code Ann. §§ 35-50-2-3 to -7 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007). When determining the sentence to impose, the trial court "may consider" certain enumerated aggravating and mitigating circumstances in addition to other matters not listed in the statute. Ind. Code Ann. §§ 35-38-1-7.1(a) to -7.1(c) (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007). Our Supreme Court recently concluded that this new statutory scheme requires trial courts to enter sentencing statements whenever imposing sentences for felony convictions. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, No. 43505-0606-CR-230, 2007 WL 3151747 (Ind. Oct. 30, 2007). This statement must include a reasonably detailed recitation of the reasons for imposing a particular sentence. *Id*. If the recitation includes a finding of aggravating or mitigating circumstances, it must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*.

Anglemeyer clarified that a defendant may now challenge a felony sentence on two bases – one procedural and the other concerning the appropriateness of the sentence. This challenge is in the first category in that, according to Stanley-Moss, the trial court (1) entered a sentencing statement that includes reasons not supported by the record; (2) entered a sentencing statement that omits reasons clearly supported by the record and

advanced for consideration; (3) entered a sentencing statement that includes reasons that are improper as a matter of law; and (4) erred in balancing the aggravators and mitigator. We review procedural challenges for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d at 490 ("[s]o long as the sentence is within the statutory range, it is subject to review only for abuse of discretion").

We begin our analysis with argument (4) above. The Supreme Court determined in *Anglemyer* that this claim is no longer available under the new sentencing scheme, i.e.,

> Because the trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence, unlike the pre-*Blakely* statutory regime, a trial court can not now be said to have abused its discretion in failing to "properly weigh" such factors. *See, e.g., Jackson v. State*, 728 N.E.2d 147, 155 (Ind. 2000) (finding that the Court could not determine from the sentencing statement whether the trial court "properly weighed" the aggravating and mitigating factors).

Anglemyer v. State, 868 N.E.2d at 491.

We turn now to the claim that the trial court abused its discretion in entering an aggravating factor that is not supported by the record. Specifically, in its sentencing statement, the trial court indicated that A.S. was found on the floor of the vehicle, i.e.,

> Well, in any event, I still think the child laying on the floor wrapped in the blanket with the glass on him and they had to remove the glass, I don't think that child was properly put in the car seat. Um, I don't think so. If he had been properly put in the car seat, he wouldn't have been on the floor. It's that simple.

Transcript at 176. According to the testimony of Officer James Foutch of the Edgewood Police Department, who responded to the scene of the accident, "[T]he baby was lying in the car seat unbuckled and the car seat was facing sideways on the bench seat and the

baby was pinned in between the back of the seat and the … car seat." *Id*. at 43. Stanley-Moss contends "[t]his factual error influenced the higher sentence for neglect of a dependent." *Appellant's Brief* at 4.

We reject Stanley-Moss's contention that this factual error impacted his sentence. The comments to which she alludes were not made at a time when the trial court was discussing the length of her sentence. Rather, the trial court was discussing whether the facts showed that A.S. was not properly restrained in his car. This discussion was in response to Stanley-Moss's suggestion at the sentencing hearing that she did, in fact, properly secure the child in the car seat before setting off on the excursion that ended in the collision. Stanley-Moss is correct: the evidence does not show that A.S. was found on the floor of the truck following the collision. The two police officers that arrived at the scene shortly after the collision both testified that the child was found on the seat, unrestrained, as described above in Officer Foutch's testimony. The fact that the child was not properly restrained – a fact that Stanley-Moss admitted in entering her guilty plea – was the aggravating circumstance, not the particular location in the vehicle where he was found. Thus, it is of no moment that the evidence established the child was found on the seat and not on the floor of the truck. For purposes of this aggravating circumstance, it was enough that the evidence supported the finding that the child was not properly restrained.

Stanley-Moss also claims the trial court erred in citing the severity of the child's injuries as an aggravating circumstance. Stanley-Moss claims this was error because,

"[t]he presence of a serious bodily injury was an element of a higher grade of child neglect with which the defendant had not been charged and to which she had not pleaded guilty." *Appellant's Brief* at 4. This refers to the fact that one of the elements of the offense of neglect of a dependent to which Stanley-Moss pleaded guilty was that the neglected dependent suffered bodily injury. Stanley-Moss reasons that, in finding *serious* bodily injury as an aggravator, the trial court was, in effect, sentencing her for a crime of which she was not convicted. Stanley-Moss is mistaken. A trial court is statutorily authorized, when determining the appropriate sentence, to "consider the … harm, injury, loss, or damage suffered by the victim of an offense [that] was … greater than the elements necessary to prove the commission of the offense." Ind. Code Ann. § 35-38-1-7.1 (West, PREMISE through 2007 Public Laws, approved and effective through April 8, 2007). In order to obtain a neglect conviction as a class C felony, the State was required to prove only that A.S. suffered bodily injury. Under I.C. § 35-38-1-7.1, the trial court was permitted to find as an aggravator that A.S. suffered serious bodily injury. There was no error here.

Stanley-Moss contends the trial court erred in "fail[ing] to consider the letters submitted on behalf of the defendant attesting to her good character." *Appellant's Brief* at 15. Stanley-Moss notes that in those letters, which were written to the court on her behalf in anticipation of sentencing, she "was described as 'trustworthy', a 'good person' and a 'good mother'. She was also described as 'truly a kind-hearted person.'" *Id*. at 15 (internal citation omitted).

During sentencing, the court referred to the letters, stating, "[A]nd did you want me to consider all these letters, [defense counsel]? I guess I need to say that cause I read them. … But here they come, so I read them. I don't think they helped that much. But I did read them." *Transcript* at 183. The foregoing comments belie Stanley-Moss's contention that the trial court failed to consider the letters. The court specifically stated that it had read, and, implicitly, thereby "considered" the letters in determining an appropriate sentence. Clearly, the court did not assign the letters any mitigating weight. Again, we will not review the trial court's weighing process. *Anglemyer v. State*, 868 N.E.2d 482.

2.

Stanley-Moss contends the sentence is inappropriate. Pursuant to article 7, sections 4 and 6 of the Indiana Constitution, we are authorized to independently review and revise sentences imposed by the trial court. *Anglemyer v. State*, 868 N.E.2d 482. This authority is implemented through Ind. Appellate Rule 7(B), which provides 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 fact, our Supreme Court has indicated that where, as here, "the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law," *Anglemyer*

v. State, 868 N.E.2d at 491, alleged inappropriateness is the sole basis for challenging the sentence imposed. With respect to the nature of the offense, "the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Id.*at 494. "We recognize … the special expertise of the trial courts in making sentencing decisions; thus, we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Stanley-Moss bears the burden to persuade us that her sentence is inappropriate. *See Anglemyer v. State*, 868 N.E.2d 482.

We begin by examining the nature of the offenses. We note first that the trial court properly found that the age of the victim of each offense, sixty-nine years old and eight weeks old, was a valid aggravating circumstance in each case. Pursuant to I.C. § 35-38-1-7.1(a)(3), the trial may consider it an aggravating circumstance if the victim of the offense was less than twelve years of age or at least sixty-five years of age at the time the defendant committed the offense. Moreover, this court has held on many occasions that the particularized factual circumstances of the case, most notably the victim's young or advanced age, is an aggravating factor. *See, e.g.*, *Edwards v. State*, 842 N.E.2d 849 (Ind. Ct. App. 2006).

On the night of the collision, Stanley-Moss took her infant son to a drug dealer's house, knowing she was going to ingest illegal drugs and then drive away. In fact, there was evidence that she went on something of a drug binge in the hours before the collision. Tests administered after the collision revealed that Stanley-Moss's blood and

urine contained traces of amphetamine, methamphetamine, marijuana, cocaine, and the opiates morphine, hydrocone, and hydromorphone. The nature of the offenses she committed warrant a sentence above the advisory sentence.

Turning now to the nature of the offender, the trial court correctly noted that Stanley-Moss does not have a criminal history and that she pleaded guilty to these offenses. The mitigating weight of the guilty plea is enhanced by virtue of the fact that the plea was entered without benefit of a plea agreement. It is diminished, however, by virtue of the fact that the evidence of guilt was overwhelming. *See Scott v. State*, 840 N.E.2d 376 (Ind. Ct. App. 2006).

In addition to the foregoing, we note another factor or factors bearing upon Stanley-Moss's character. Stanley-Moss admitted that she is addicted to prescription drugs, but her addiction obviously goes well beyond that. Her propensity to use those as well as other illicit drugs was largely the cause of this collision. Yet, Stanley-Moss seemed unwilling to take steps to prevent this from happening again. For instance, she consistently denied having ingested methamphetamines, but drug tests clearly showed it was present in her urine shortly after the collision. Also, she repeatedly refused to provide authorities with the identity of her drug sources. Although she admitted she has a drug problem, while she was released on bail in the months between the collision and the sentencing hearing, Stanley-Moss did not seek treatment for her addiction. Finally, she blamed her addiction on a doctor, claiming he over-prescribed pain medications.

These facts do not reflect that Stanley-Moss has accepted total responsibility for the collision and is willing to take the necessary steps to prevent any such tragedies in the future. Noting the additional facts that at the time of the collision Stanley-Moss did not have a driver's license and was driving without insurance, the State contends the circumstances reflect that "Stanley-Moss's character is simply a monument to irresponsibility", *Appellee's Brief* at 12, and that her sense of duty seems to be more directed to her drug sources than to the victims in this case. Although perhaps a bit overstated, the assertion is not entirely inaccurate.

We are not persuaded that Stanley-Moss's character or the nature of the offense she admitted committing justifies revising her sentence, which lies appropriately between the sum of the advisory sentences and the maximum allowable executed sentence under the law.

Judgment affirmed.

SHARPNACK, J., and RILEY, J., concur.