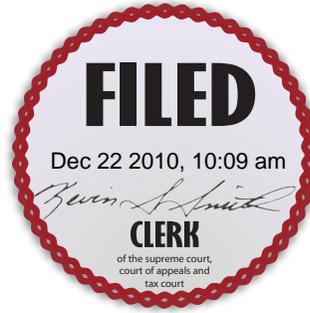


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**IN THE
COURT OF APPEALS OF INDIANA**

RYAN T. RENFROE,)
)
Appellant-Defendant,)
)
vs.) No. 40A01-1002-CR-96
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE JENNINGS CIRCUIT COURT
The Honorable Jon W. Webster, Judge
Cause Nos. 40C01-0909-MR-327 and 40C01-0912-FC-450

December 22, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Seventeen-year-old Ryan T. Renfroe shot and killed a husband and wife. He shot the sixty-nine-year-old husband in the head twice. He also shot the sixty-six-year-old wife, who was disabled and confined to a wheelchair, in the back of the head. While in jail awaiting trial, Renfroe attempted to escape his jail cell and, during the attempted escape, several correctional officers were severely injured. Pursuant to a plea agreement, Renfroe pled guilty to two counts of murder and one count of class C felony escape. The agreement provided that the sentences, to be determined at the trial court's discretion, would be served consecutively. The trial court sentenced Renfroe to an aggregate executed sentence of 124 years. Renfroe appeals, arguing that the trial court abused its discretion when it sentenced him and also that his sentence is inappropriate in light of the nature of the offenses and his character. Finding no abuse of discretion and that Renfroe has failed to establish that his sentence is inappropriate, we affirm.

Facts and Procedural History

On September 14, 2009, seventeen-year-old Renfroe went around asking people whether they knew where he could find a gun. The people he asked did not help him. The next day, on September 15, 2009, Renfroe went to a friend's house and used his friend's computer to obtain driving directions to Texas. Later that afternoon, Renfroe came into contact with sixty-nine-year-old Greg Gough. Renfroe and Greg agreed to meet at Greg's house and shoot guns. Renfroe had spent time with Greg in the past shooting guns. Renfroe went to Greg's house at approximately 5:30 p.m. They went in the backyard and shot various

types of rifles and handguns. Greg and his sixty-six-year-old wife, Margaret, invited Renfroe to stay for dinner. Following dinner, Renfroe and Greg brought the guns into a bedroom to clean them. Renfroe grabbed one of the guns off the bed and shot Greg in the head. Greg fell to the ground. When Greg struggled to stand up, Renfroe shot Greg in the head a second time. Renfroe then walked out of the bedroom and observed Margaret sitting in her wheelchair at the kitchen table. Margaret was disabled and had long been confined to a wheelchair. Renfroe aimed the gun's laser sight at Margaret and shot her in the back of the head.

After Renfroe killed his victims, he went through Greg's pockets to find keys to the couples' Chevrolet Camaro. Renfroe found the keys and proceeded to steal money, three guns, including the murder weapon, and Margaret's purse. Renfroe then sped away in his victims' car. Although Renfroe intended to drive to Texas, he crashed the vehicle shortly thereafter. Upon crashing, Renfroe grabbed his stolen items and got a ride from a passerby to a truck stop. A police officer, who had been dispatched to the truck stop to find the individual who had left the scene of the car accident, located Renfroe. While Renfroe initially gave false age and identification information to the officer, he quickly revealed his real identity and stated that two individuals were dead at the Gough residence. Renfroe subsequently made a full confession of the events that had transpired. Renfroe indicated that he had been provoked to commit the murders because Greg had made inappropriate sexual advances toward him and also that a voice in his head told him to shoot his victims. Tr. at 40-45.

On September 18, 2009, the State charged Renfroe with two counts of murder, two counts of class A felony robbery, class D felony auto theft, and class B misdemeanor failure to stop after an accident. While incarcerated awaiting trial on those counts, Renfroe and other inmates attempted escape from their jail cells, during which several correctional officers were severely injured. As a result, on December 16, 2009, the State charged Renfroe with class C felony escape. On that same date, Renfroe and the State entered into a consolidated plea agreement, and the trial court held a plea hearing. Renfroe pled guilty to two counts of murder and one count of attempted escape. Pursuant to the consolidated agreement, the sentences on those convictions were left to the trial court's discretion, but the sentences would be served consecutively.

A sentencing hearing was held on February 3, 2010. The trial court sentenced Renfroe to fifty-eight years on the first murder count, sixty years on the second murder count, and six years for attempted escape, all to be served consecutively, for a total of 124 years of imprisonment. This appeal ensued.

Discussion and Decision

Sentencing decisions rest within the sound discretion of the trial court, and we review those decisions 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. The trial court is required to enter a sentencing statement explaining its reasons for imposing the sentence which provides a recitation of facts, in some detail, which are peculiar to the particular defendant and the crime, and such facts must have support in the record. *Id.* An abuse of discretion occurs if

the trial court's 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.

During sentencing, the trial court may consider certain aggravating and mitigating circumstances. Ind. Code § 35-38-1-7.1. Still, the trial court may impose "any sentence" authorized by statute and permitted by the Constitution "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). If the trial court includes a finding of aggravating and mitigating circumstances in its recitation of reasons for imposing a particular sentence, then a sentencing statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be aggravating or mitigating. *Robinson v. State*, 894 N.E.2d 1038, 1042 (Ind. Ct. App. 2008). However, the trial court has no obligation to weigh aggravating and mitigating circumstances against each other when imposing sentence, and thus the trial court cannot be said to have abused its discretion in failing to properly weigh such factors. *Powell v. State*, 895 N.E.2d 1259, 1262 (Ind. Ct. App. 2008), *trans. denied*.

Aggravating Factors

Renfroe first challenges the trial court's finding of aggravating factors. In its sentencing statement, the trial court found the following three significant aggravating factors: that both victims were over the age of sixty-five; that one of Renfroe's victims was disabled and Renfroe knew it; and that, at the time of his arrest, Renfroe had in his possession stolen firearms and cash taken from his victims. The court found several additional aggravating

factors including: that Renfroe had two prior juvenile delinquency adjudications; that Renfroe was on juvenile probation at the time of the current offenses; that Renfroe has no high school diploma or GED certificate; and, the emotional devastation suffered by the victims' family. Regarding Renfroe's sentence for escape, the trial court again considered Renfroe's lack of education and criminal history as aggravating circumstances. The trial court also considered as aggravating factors that two jail officers were injured during the commission of that crime and there was evidence that Renfroe participated in the planning of that crime. Although Renfroe concedes that many of the factors considered by the trial court are proper aggravators, he maintains that the trial court improperly considered as separate aggravating factors his lack of a high school diploma and the impact on the victims' family. Therefore, Renfroe urges that we remand for resentencing.

First, we disagree with Renfroe that the trial court improperly considered his lack of a high school diploma as an aggravating circumstance. Our review of the record indicates that the trial court was merely considering Renfroe's failure to complete his schooling as an indicator of his general character and poor attitude. This is not an improper consideration. However, we agree with Renfroe that the trial court improperly considered the impact on the victims' family as an aggravating circumstance upon the record presented. The terrible loss that accompanies the loss of a family member accompanies almost every murder and this impact on the family is encompassed within the range of impact which the advisory sentence is designed to punish. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). Here, the record does not indicate and the trial court did not delineate what additional impact the court was

considering that would not normally be associated with loss of life. Therefore, this aggravator was improperly considered.

Even though we agree that one of the challenged aggravators is unsupported by the record, Renfroe does not challenge the other valid aggravating circumstances cited by the court. Indeed, Renfroe makes no mention of the three aggravating circumstances that the trial court specifically found to be significant with regard to his murder sentences. Moreover, Renfroe does not dispute that two officers were injured during his attempted escape. It is well settled that a single aggravator is sufficient to support an enhanced sentence. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008). Upon review of all of the evidence presented at sentencing, which includes the particularized circumstances of the crimes, we can say with confidence that the trial court would have imposed the same sentences without regard to any of the challenged aggravators. *See McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007) (remand for resentencing not warranted if record is clear that trial court would have imposed same sentence without regard to challenged aggravators). Renfroe has not shown that remand for resentencing is warranted.

Mitigators

The trial court found the following significant mitigating factor: that Renfroe pled guilty to his crimes. The additional mitigating factors found by the trial court included: that Renfroe's prior criminal history of juvenile delinquency was minor; that Renfroe was only seventeen at the time of his crimes; and that Renfroe was a victim of a lifetime of abuse and neglect from his family. Despite the trial court's finding of the above-mentioned mitigating

circumstances, Renfroe contends that the trial court abused its discretion in failing to consider as mitigating factors evidence of his deteriorating mental health or his belief that he was provoked by Greg to commit the murders.

The finding of mitigating circumstances is within the trial court's discretion, and the court is not required to find mitigating factors or explain why it has chosen not to do so. *Antrim v. State*, 745 N.E.2d 246, 248 (Ind. Ct. App. 2001). This is especially the case where the record reveals that a proffered mitigator is disputed. *Id.* The trial judge may not ignore facts in the record that would mitigate an offense, and a failure to find mitigating circumstances that are clearly supported by the record may imply that the trial court failed to consider them properly. *Chambliss v. State*, 746 N.E.2d 73, 78 (Ind. 2001). 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. *Gray v. State*, 790 N.E.2d 174, 177 (Ind. Ct. App. 2003). Moreover, the trial court is not required to include within the record a statement that it considered all proffered mitigating circumstances, only those that it considered significant. *Id.*

As far as the proffered mitigating circumstance of Renfroe's deteriorating mental state, we do not disagree that there was evidence presented that Renfroe was taking medications and that he had at some point been diagnosed with intermittent explosive disorder, bipolar disorder, and depression. However, Renfroe did not demonstrate that he was unable to control his behavior due to any type of mental illness, nor did he demonstrate any nexus between any alleged mental illness and the commission of the crime. *See Biehl v.*

State, 738 N.E.2d 337, 340 (Ind. Ct. App. 2000) (mitigating weight attributed to mental illness depends upon the extent of defendant’s ability to control behavior due to illness, overall limitations on functioning, duration of mental illness, and extent of any nexus between illness and commission of crime), *trans. denied*. Accordingly, although mental illness is a mitigating factor to be considered and given significant weight under certain circumstances, such circumstances are not present here. Our concern upon appeal is to determine whether the trial court improperly overlooked a significant mitigating factor that is clearly supported by the record. *Ousley v. State*, 807 N.E.2d 758, 763 (Ind. Ct. App. 2004). Given the limited evidence concerning Renfroe’s alleged deteriorating mental state, the trial court did not abuse its discretion when it declined to apply significant mitigating weight to such evidence.

Renfroe also claims that the trial court failed to consider provocation as a mitigating factor. Indiana Code Section 35-38-1-7.1(b)(5) provides that the trial court may consider as a mitigating circumstance that the defendant “acted under strong provocation.” Here, however, there was ample conflicting and contradictory evidence as to whether Renfroe was provoked by inappropriate sexual advances by Greg. Renfroe’s story regarding Greg’s behavior was inconsistent with other evidence presented, especially the evidence of planning and premeditation. Renfroe obtained driving directions to Texas before he went to the Goughs’ house, killed them, and stole their money, guns, and car. Because Renfroe’s claim of provocation is not clearly supported by the record, the trial court was within its discretion to disregard that evidence or to find it insignificant. We find no abuse of discretion.

Appropriateness

We finally address Renfroe’s challenge to the appropriateness of his sentence. Indiana Code Section 35-50-2-3 provides that a person who commits murder shall be imprisoned for a fixed term between forty-five and sixty-five years, with the advisory sentence being fifty-five years. A person who commits a class C felony shall be imprisoned for a fixed term between two and eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6. The trial court sentenced Renfroe to fifty-eight years for one count of murder, sixty years for the second count of murder, and six years for class C felony escape. Renfroe contends that the 124-year aggregate sentence¹ imposed by the trial court was inappropriate in light of the nature of the offenses and his character and urges us to reduce his sentence.

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence otherwise 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 defendant bears the burden to “persuade the appellate court that his or her sentence has met this inappropriateness standard of review.” *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). “[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

¹ We note that, per his plea agreement, Renfroe agreed to consecutive sentences.

Regarding the nature of the offenses, we note that the advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *See Anglemeyer*, 868 N.E.2d at 494. Renfroe committed two violent murders. He murdered an elderly couple, one of whom was disabled and in a wheelchair, by shooting each of them in the head. Renfroe then stole items from both of his victims' dead bodies. Moreover, there was evidence that these murders were premeditated. The crime scene photos speak for themselves as to the heinous nature of Renfroe's offenses. Regarding the nature of his attempted escape, Renfroe participated in the planning and execution of that crime with other inmates. During the commission of that offense, two correctional officers were stabbed with a homemade knife. The circumstances surrounding Renfroe's offenses lend little support to his contention that his aggregate sentence is inappropriate.

Renfroe's character is one of a repeat juvenile delinquent who was on probation at the time he committed two murders. Despite attempts by the juvenile system, Renfroe has been unable to correct his behavior problems. His contradictory statements and testimony both before and during sentencing regarding the details of his crimes indicates a propensity for dishonesty and an inability to truly accept responsibility for his actions. Although we acknowledge Renfroe's troubled and abusive childhood and the tragedy that a young man will spend his life in prison, his repeated poor choices and demonstrated poor character justify nothing less. Renfroe has not met his burden of persuading us that the sentence imposed by the trial court is inappropriate, and we decline his invitation to reduce his sentence.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.