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**IN THE
COURT OF APPEALS OF INDIANA**

KRYSTAL D. BAILEY,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 84A04-0603-CR-108

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable David R. Bolk, Judge
Cause No. 84D03-0412-FB-3325

September 18, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Krystal D. Bailey (“Bailey”) appeals the aggregate ten-year sentence imposed upon her following her pleas of guilty to two counts of Battery as a Class B felony.¹ We affirm.

Issues

Bailey presents two issues for review:

- I. Whether the trial court abused its sentencing discretion by considering an improper aggravator and ignoring mitigating evidence; and
- II. Whether the sentence is inappropriate and should be revised pursuant to Indiana Appellate Rule 7(B).

Facts and Procedural History

On December 1, 2004, Bailey, along with her father and step-mother, took Bailey’s thirteen-month-old daughter J.K. to Union Hospital in Terre Haute, and reported that J.K. was experiencing difficulty breathing. Attending medical personnel determined that J.K. had sustained multiple rib fractures, and arranged for her to be airlifted to Riley Hospital in Indianapolis.

At Riley Hospital, Dr. Antoinette Laskey examined J.K., who “had sustained significant injuries,” (Tr. 79), and was “progressing towards rapid respiratory failure” because of pleural effusion.² (Tr. 86.) It was necessary to insert a tube into J.K.’s chest to draw out the fluid collecting around her lungs.

In addition to the pleural effusion, J.K. had multiple fractures in different stages of

¹ Ind. Code § 35-42-2-1(a)(4).

healing. She had five cracks on the left side of her ribs and a posterior rib fracture on the right side of her ribs “causing her the most trouble.” (Tr. 86.) One leg was “broken on both sides.” (Tr. 91.) Both shinbones were broken at the knees, consistent with J.K. having been pulled or jerked. J.K. also displayed a “very extensive fracture” of the skull. (Tr. 94.) Additionally, J.K.’s jawbone was cracked on both sides, and her collarbone was fractured.

On December 7, 2004, the State charged Bailey with two counts of battery and one count of neglect of a dependent.³ Subsequently, the State and Bailey entered into a plea agreement, whereby the State would dismiss the neglect of a dependent charge, and Bailey would plead guilty to the battery charges and would receive a maximum ten-year executed sentence. On February 6, 2006, Bailey pleaded guilty to two counts of battery. She admitted that she had touched J.K. in a rude, insolent or angry manner on two occasions by squeezing her until she stopped crying. Bailey received two ten-year sentences to be served concurrently. She now appeals.

Discussion and Decision

I. Sentencing Discretion

On appeal, Bailey argues that the trial court erred when it imposed her ten-year sentences. In the present case, the trial court sentenced Bailey to the presumptive term of ten years.⁴ In its sentencing pronouncement, the trial court considered as “a statutory

² Pleural effusion is a condition where fluid collects in the lungs.

³ Ind. Code § 35-46-1-4.

⁴ In general, when a trial court imposes the presumptive sentence, it has no obligation to explain its reasons for doing so. See Morgan v. State, 675 N.E.2d 1067, 1073 (Ind. 1996). However, when the trial court relies upon aggravating and mitigating circumstances in its sentencing order, it is required to state its reasons for

aggravating factor” that J.K. was under age twelve; more specifically, she was thirteen months old. (Tr. 194.) Moreover, “the harm, injury, loss or damage suffered” exceeded that “necessary to prove the commission of the offense.” (Tr. 195.) The trial court also observed that J.K. was “in the care, custody and control of Ms. Bailey at the time these acts occurred.” (Tr. 194.) In mitigation, the trial court found that Bailey had no criminal history, had borderline intellectual functioning and was herself abused as a child. Ultimately, the trial court imposed the presumptive sentence.

Bailey now contends that she should have received a sentence below the presumptive sentence. First, she argues that the trial court erroneously considered J.K.’s age. Second, she contends that the trial court failed to recognize or to give due weight to the following mitigating circumstances: her lack of criminal history, her guilty plea, her history as an abuse victim, her borderline intellectual functioning, and her opportunity for employment upon release from incarceration.

Bailey’s battery charges were elevated from Class C felonies to Class B felonies because the victim was under age fourteen. See Ind. Code § 35-42-2-1(a)(4). As Bailey observes, a fact that comprises a material element of the offense may not also constitute an aggravating circumstance to support an enhanced sentence. Stone v. State, 727 N.E.2d 33, 37 (Ind. 2000). However, a trial court may properly consider the particularized circumstances of the material elements of the crime. Id. Here, the trial court could properly consider that the victim was only thirteen months of age.

imposing the sentence it did. See, e.g., Jackson v. State, 728 N.E.2d 147, 155 (Ind. 2000); see also, Jones v. State, 698 N.E.2d 289, 290 (Ind. 1998) (recognizing that because the trial court imposed the presumptive

The finding of mitigating factors is not mandatory and rests within the discretion of the trial court. Wingett v. State, 640 N.E.2d 372, 373 (Ind. 1994). 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. Matshazi v. State, 804 N.E.2d 1232, 1239 (Ind. Ct. App. 2004), trans. denied. Additionally, trial courts are not required to include within the record a statement that it considered all proffered mitigating circumstances, only those that it considered significant. Id.

Bailey argues that the trial court should have been inherently aware that her guilty plea was a significant mitigator. Indiana courts have recognized that a guilty plea is a significant mitigating factor in some circumstances because it saves judicial resources and spares the victim from a lengthy trial. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). Where the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned. Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). However, a guilty plea is not automatically a significant mitigating factor. Id. at 1165. Here, the record demonstrates that one charge against Bailey was dismissed in exchange for her plea of guilty to the remaining charges. Additionally, her plea agreement with the State provided for a maximum executed sentence of ten years, as opposed to the sixty-year sentence she potentially faced if convicted of each of the Class B felonies charged. Because Bailey reaped a substantial benefit from her decision to plea guilty, the trial court did not abuse its discretion by failing to accord Bailey's guilty plea additional

term for murder it "was not required to state a basis for imposing that sentence").

mitigating weight at sentencing.

The trial court did not overlook Bailey's lack of criminal history, the results of her intelligence testing, or the "documented history of [her] abuse as a child." (Tr. 196.) Rather, the trial court determined that, on balance, giving weight to mitigators "to the extent that you are asking" (i.e., below a presumptive or advisory sentence) would depreciate the seriousness of the crime. (Tr. 194.) As previously observed, the trial court is not obligated to accord the same weight to a mitigating factor as the defendant urges. Klein v. State, 698 N.E.2d 296, 300 (Ind. 1998). See also Blanche v. State, 690 N.E.2d 709, 715 (Ind. 1998) (determining that "evidence of a troubled childhood does not require a trial court to find it a mitigating circumstance.")

Finally, the trial court was not required to find Bailey's employment opportunity to be a substantial mitigator. See Newsome v. State, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) (observing that "many people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as [the defendant] proposes"), trans. denied. As such, Bailey has demonstrated no abuse of discretion in the imposition of the ten-year sentence.

II. Appropriateness of Sentence

Next, Bailey requests our consideration of the nature of the offense and character of the offender pursuant to Indiana Appellate Rule 7(B). Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the

offense and the character of the offender.” Nevertheless, we do not merely substitute our opinion for that of the trial court. Bennett v. State, 787 N.E.2d 938, 949 (Ind. Ct. App. 2003), trans. denied.

The nature of the offense is that life-threatening injuries were inflicted upon an infant by one entrusted with her care and protection. J.K. had sustained numerous fractures, in various stages of healing. Her skull, shins, ribs and collarbone were all fractured. In the opinion of Dr. Laskey, this suggested a repetitive pattern of child abuse. The character of the offender is such that she lived a law-abiding life for twenty-one years. In light of the nature of the offense and the character of the offender, we do not find Bailey’s sentence to be inappropriate.

Affirmed.

RILEY, J., and MAY, J., concur.