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IN THE COURT OF APPEALS OF INDIANA

Nickalas James Kedrowitz,
Appellant/Defendant,

v.

State of Indiana,
Appellee/Plaintiff.

November 28, 2022

Court of Appeals Case No. 22A-CR-457

Appeal from the Ripley Circuit Court

The Hon. Ryan J. King, Judge

Trial Court Cause No.
69C01-1909-MR-1

Bradford, Chief Judge.

Case Summary

[1] In the spring and summer of 2017, the then thirteen-year-old Nickalas Kedrowitz killed two of his three younger siblings by smothering them. After the State petitioned to have Kedrowitz found to be a juvenile delinquent due to his committing two counts of what would be murder if committed by an adult, the State petitioned the juvenile court to waive jurisdiction over the case, and Kedrowitz petitioned the juvenile court to be found incompetent to stand trial. When two court-appointed experts found Kedrowitz competent to stand trial, he obtained funds to hire an expert evaluator who found him incompetent. Following a hearing, the juvenile court found Kedrowitz competent to stand trial and, following another hearing, waived jurisdiction over the case.

[2] The State charged Kedrowitz with two counts of murder. Following a jury trial in the Ripley Circuit Court, the jury found Kedrowitz guilty as charged, and the trial court sentenced him to fifty years of incarceration for each murder, both sentences to be served consecutively. As restated, Kedrowitz contends that the juvenile court abused its discretion in finding him competent to stand trial, the juvenile court abused its discretion in waiving his case to adult court, and the Ripley Circuit Court lacked jurisdiction to hear his case. Kedrowitz also

contends that the trial court abused its discretion in sentencing him, his sentence is inappropriately harsh, and his sentence violates Article 1, Sections 16 and 18, of the Indiana Constitution. Because we disagree with all of Kedrowitz's contentions, we affirm.

Facts and Procedural History

[3] In the spring of 2017, Kedrowitz was thirteen years old and lived in Ripley County with Christina McCartney (his mother), Stephen Ritz (his mother's boyfriend), D.M (his two-year-old half-sister), A.M. (his one-year-old half-sister), and N.R. (Ritz's infant son and Kedrowitz's de facto sibling). On May 1, 2017, among Kedrowitz's assigned chores for the day was to give all three of his siblings baths and put on their lotion and pajamas. That evening, when Kedrowitz took D.M. into the bathroom for her bath, he held a towel over her mouth and throat until her lips turned blue and she was unresponsive.

[4] When McCartney arrived home from work, Kedrowitz carried D.M. out to her, telling her that something was wrong with his sister. When first responders arrived, D.M. had no pulse, was not breathing, and had vomited. Although the first responders were able to restore a heartbeat on the way to the hospital, D.M. never began breathing again, and, after several days on life support, she died on May 7, 2017. Prior to her death, D.M. was a normal, healthy child. Kedrowitz told police that D.M. had thrown up a couple times while he was giving her a bath; he had left the bathroom to get her pajamas; and, when he returned, she was floating in the tub, unresponsive. An autopsy did not find any evidence that D.M. had drowned and did not find any damage, infection,

or genetic abnormality in her major organs that could have caused her death. The manner and cause of death, while initially classified as undetermined, were consistent with death by suffocation.

[5] On July 20, 2017, Kedrowitz took N.R., then eleven months old, into the bedroom they shared to put him to bed. He held a blanket over N.R.'s mouth and nose until N.R. was dead, and then took N.R.'s body to McCartney saying that something was wrong with him. When first responders arrived at the house, N.R. was not breathing and had no pulse. Efforts to revive him were unsuccessful.

[6] When interviewed at the Child Advocacy Center ("CAC"), Kedrowitz said that he had put N.R. in his bed and was cleaning his room when he noticed that N.R. had stopped fussing. Kedrowitz claimed that, shortly thereafter, N.R. was cold and had begun "to turn bright white." Tr. Vol. VIII p. 210. When he was asked how things had changed at his home since D.M.'s death, Kedrowitz answered "[l]ess laundry" but said that things were otherwise the same. Tr. Vol. VIII p. 230. While the autopsy uncovered nothing to explain N.R.'s death, its findings were consistent with a suffocation death; it found no problems or infections in his major organs, no genetic disease, and no indications of abuse such as bone fractures, bleeding in the eyes, or a torn frenulum. N.R.'s cause of death, like D.M.'s was initially classified as "undetermined[.]" Tr. Vol. VIII p. 134.

[7] In September or October of 2017, clinical psychologist Dr. Linda McIntire, Psy.D., evaluated Kedrowitz as part of the CHINS case that was opened in

response to the two children's deaths. During the evaluation, Kedrowitz said that he had "freed" D.M. and N.R. and that he had "let them free" because they were trapped, statements that were duly reported to law enforcement. Ex. Vol. XII p. 69. Family members also reported to law enforcement that Kedrowitz had tortured and mutilated two kittens at the home of his great-aunt, squeezing one so hard that its internal organs were pushed out of it and making puncture wounds in the heads of both.

[8] On December 13, 2017, Detectives Brent Miller and Peter Tressler went to the home of Jeff Barker, Kedrowitz's uncle with whom he was now living, to talk to Kedrowitz. Kedrowitz told the detectives that he had had a conversation with God about the deaths of D.M. and N.R. and had "freed" them from "hell" and from the "chains of fire[.]" Tr. Vol. IX p. 21. Kedrowitz then explained that he had put a blanket over N.R.'s head and a towel over D.M.'s head and pressed them down until the children were dead.

[9] One day when Kedrowitz's great-aunt, Candace Barker, was driving him home from school, Kedrowitz became "real serious" and told her, "I've GOT to tell you something." Tr. Vol. VIII pp. 23, 24 (emphasis in transcript). Kedrowitz told Candace that he had killed D.M. and N.R. When asked how he had done this, Kedrowitz said that he had held a towel over D.M.'s head and a blanket over N.R.'s head. Kedrowitz said he had known D.M. was dead when she was limp and her face had turned blue. When asked why he had done this, Kedrowitz said that he had had to "protect" them from Ritz, he had not wanted them "to go through what [he had gone] through[,]" and he had not wanted

them "to have to go through the kind of life that [he was] leading." Tr. Vol. VIII pp. 24, 25. Kedrowitz also told his Uncle Jeff and his grandmother, Anita Barker, that he had killed D.M. and N.R.

[10] Around Christmas in December of 2017, Kedrowitz's court-appointed special advocate, Sandra Wakefield ("CASA Wakefield"), visited him at his uncle's home. Kedrowitz told CASA Wakefield that he had killed D.M. and N.R., relating this information matter-of-factly, showing "no emotion" and without crying. Tr. Vol. VIII p. 99. In January of 2018, Kedrowitz told his counselor, Evan Munn, that he had killed his younger siblings, but that Munn should not tell anyone about this. After learning the information about Kedrowitz's statements and determining that they were consistent with the autopsy findings, the cause of death in both cases was amended to asphyxia by smothering.

[11] In January of 2018, Kedrowitz was admitted to LaRue Carter Hospital pursuant to his CHINS case. On September 6, 2018, the State filed a delinquency petition alleging that Kedrowitz had committed what would be two counts of murder if committed by an adult. The State petitioned to waive jurisdiction to adult court, and Kedrowitz petitioned for a competency evaluation. The two psychologists the trial court appointed to evaluate Kedrowitz, Dr. Ed Connor, Psy.D., and Dr. David L. Winsch, Ph.D., both found him competent to stand trial. Dr. Connor had administered the Kaufman Brief Intelligence Test-2, which had shown Kedrowitz to have a standard composite IQ score of eighty-four. On the Inventory of Legal Knowledge test, Kedrowitz had answered fifty-two of sixty-one questions

correctly, which put him in the seventy-second percentile. Dr. Winsch had administered the Wechsler Intelligence Scale for Children–5th edition, which had shown Kedrowitz to have a full-scale IQ of seventy-two, placing him in the category of borderline intellectual disability. Dr. Winsch had also administered the Competency Assessment for Standing Trial for Adults with Mental Retardation ("CAST-MR"), which is a competency test designed for people with intellectual disabilities. Kedrowitz had scored an eighty-nine percent on that test, which was above average for those with intellectual disabilities and showed a strong understanding of legal concepts. Dr. Winsch did not find that Kedrowitz had had problems distinguishing fantasy from reality. Upon receiving their evaluations, Kedrowitz withdrew his challenge to competency, and the juvenile court found him competent to stand trial.

[12] Kedrowitz was subsequently given funds to hire an expert, which he used to hire psychiatrist Dr. George F. Parker, M.D., who evaluated him and opined that he was not competent to stand trial, though he acknowledged that Kedrowitz had exhibited basic knowledge regarding the roles of court personnel. Kedrowitz filed a second motion for a competency evaluation, and the juvenile court appointed psychiatrist Dr. Joseph V. Cresci, Jr., M.D., to evaluate him. Relying heavily on Dr. Parker's report, Dr. Cresci found that Kedrowitz was not competent, though he acknowledged that Kedrowitz knew the roles of court personnel and had followed the advice of his attorney not to talk about the case.

[13] The juvenile court held a competency hearing over four days, at which it received testimony from Drs. Connor, Winsch, Parker, Cresci, and McIntire and Dr. Lauren Butler, Psy.D., who had been Kedrowitz's psychologist when he had been placed at LaRue Carter Hospital. Neither Dr. McIntire nor Dr. Butler had evaluated Kedrowitz for legal competency but both opined that he was not globally competent. The defense recalled Dr. McIntire, who testified that Kedrowitz had been in active psychosis and having auditory and visual hallucinations during the hearing. The juvenile court took judicial notice of the reports it had received regarding Kedrowitz from the Dearborn County Juvenile Detention Center ("DCJDC"); Kedrowitz's school records at the DCJDC were admitted into evidence; and the juvenile court received testimony from Mary Ann Tighe, Kedrowitz's teacher, who testified that he was doing ninth-grade schoolwork with little to no help. The juvenile court issued an order finding Kedrowitz competent to stand trial and explaining why it had credited the testimony of Drs. Connor and Winsch, supported by the evidence of Kedrowitz's academic performance, over that of the other doctors and why it had not credited the claim that Kedrowitz had been in active psychosis during the hearing.

[14] At the waiver hearing, the juvenile court, at the State's request, took judicial notice of the probable-cause affidavit, prior orders finding probable cause, the preliminary inquiry report, the reports the juvenile court received from the DCJDC, and all of the evidence from the competency hearing. The juvenile court found probable cause to believe Kedrowitz had committed two acts of

murder when he had been at least twelve years old and that the State had therefore met its burden for presumptive waiver. The juvenile court further found that it was not in the best interests of Kedrowitz or the safety of the community for him to remain in the juvenile system because only the adult system could provide both rehabilitative treatment and the long-term supervision that everyone agreed Kedrowitz needed. The juvenile court granted the State's motion to waive jurisdiction over the case.

[15] The State charged Kedrowitz with the murders of D.M. and N.R. Following a trial, a jury found Kedrowitz guilty as charged. At sentencing, the trial court found as aggravating circumstances the very young ages of the victims, Kedrowitz's violation of a position of trust as their older brother, the commission of the murders in the presence or hearing of another young child, the nature and circumstances of the crime showing callousness and premeditation, and Kedrowitz's lack of remorse. As mitigating circumstances, the trial court found Kedrowitz's young age of thirteen, his immaturity, and his low cognitive ability (which, combined, warranted significant weight), his mental-health problems, and his lack of any other juvenile or criminal record. The trial court explained why it had not found the proffered mitigator of "undue hardship" to Kedrowitz due to his asserted risk of victimization. Tr. Vol. XI p. 31. The trial court also noted that it had considered the differences between juveniles and adults relevant to sentencing as discussed in appellate decisions. The trial court found that the aggravating circumstances outweighed the mitigating and that consecutive sentences were appropriate because there

were two victims. The trial court sentenced Kedrowitz to fifty years of incarceration for each conviction to run consecutively for an aggregate sentence of 100 years.

Discussion and Decision

[16] Kedrowitz argues that the juvenile court abused its discretion in finding him competent to stand trial, the juvenile court abused its discretion in waiving jurisdiction over his case, the Ripley Circuit Court lacked subject-matter jurisdiction to hear his case, the trial court abused its discretion in sentencing him, his sentence is inappropriate, and his sentence violates Article 1, Sections 16 and 18, of the Indiana Constitution. *Amicus curiae* the Indiana Public Defender Council ("IPDC") argues that circuit courts do not have jurisdiction over juvenile delinquents like Kedrowitz and that he was given an unconstitutional effective life sentence of 100 years of incarceration. The State argues that the juvenile court properly found Kedrowitz to be competent to stand trial, the juvenile court properly waived him into adult court, the Ripley Circuit Court had jurisdiction to hear his case, the trial court did not abuse its discretion in sentencing him, his sentence is not inappropriate, and his sentence is not unconstitutional. *Amicus curiae* the Indiana Prosecuting Attorneys Council ("IPAC") argues that circuit courts do, in fact, have jurisdiction over alleged juvenile delinquents and may try them as adults after waiver by a juvenile court.

I. Competency

[17] Kedrowitz contends that the juvenile court abused its discretion in finding him competent to stand trial.[1] A trial court's determination regarding competency is accorded deference and is reviewed only for an abuse of discretion. *Brewer v. State*, 646 N.E.2d 1382, 1385 (Ind. 1995); *see State v. J.S.*, 937 N.E.2d 831, 834 (Ind. Ct. App. 2019), *trans. denied*. When the evidence is in conflict, an appellate court will reverse only if the lower court's decision was "clearly erroneous" and "unsupported by the facts and circumstances before the court" and the reasonable inferences to be drawn therefrom. *Brewer*, 646 N.E.2d at 1385.

[18] Although the adult competency statutes do not apply to juvenile delinquency proceedings, due process nonetheless requires that juveniles be competent to stand trial. *In re K.G.*, 808 N.E.2d 631, 635 (Ind. 2004). Indiana Code section 31-32-12-1 allows juvenile courts to order examinations to determine a child's competency. *See K.G.*, 808 N.E.2d at 638. This process is intended to provide greater flexibility in addressing competency consistent with the great degree of discretion afforded juvenile courts to act in the best interests of the child. *Id*. at 637–38. The test for competency is whether the person understands the nature

[1] Kedrowitz also contends that the trial court erred in refusing to relitigate the question of competency to stand trial after the juvenile court waived jurisdiction. As the State notes, however, Kedrowitz does not a make a separate argument regarding this bare contention.

of the proceedings and is able to assist in the preparation of his defense. *Timberlake v. State*, 753 N.E.2d 591, 598 (Ind. 2001).

[19] We conclude that the juvenile court did not abuse its discretion by finding Kedrowitz competent to stand trial. The juvenile court engaged in a thorough inquiry into Kedrowitz's competence, appointing three doctors to examine him and holding multiple hearings at which the defense was afforded every opportunity to present and challenge evidence. The juvenile court issued a detailed order setting forth the extensive evidence on which it had relied to find Kedrowitz competent and explaining why it had not credited the contrary evidence.

[20] The first two doctors to examine Kedrowitz, Drs. Connor and Winsch, both found him to be competent to stand trial, finding that he understood the nature of the proceedings and the charges against him and that he was able to assist in his defense. Dr. Connor tested Kedrowitz and found him to have an IQ of eighty-four. Moreover, Kedrowitz answered fifty-two of sixty-one questions correctly on the Legal Inventory Test, which put him in the seventy-second percentile and was consistent with the level of understanding he displayed when conversing with Dr. Connor. Kedrowitz understood the charges, trusted and could talk to his attorneys, understood the roles of various court actors, understood legal concepts, and demonstrated no significant deficits in the ability to focus and pay attention. As the juvenile court noted, Dr. Connor's was the first competency examination so there were no practice effects, biases, or outside influences potentially affecting the results.

[21] Dr. Winsch tested Kedrowitz and found that he had an IQ of seventy-two, which falls in the borderline category for intellectual disability. Kedrowitz had scored a ninety-two on the Peabody Picture Vocabulary Test, which measures receptive language skills, which falls within the average range. On the CAST-MR, Kedrowitz had answered eight-nine percent of the questions correctly, performing "extremely well[,]" placing him "significantly above" the range for those with mental disabilities, and demonstrating a "strong" basic understanding of the relevant concepts. Appellant's App. Vol. II p. 112; Tr. Vol. II p. 94. If things had been explained to Kedrowitz in a direct and straightforward manner, he had been able to understand "quite a bit." Tr. Vol. II p. 110. Dr. Winsch disagreed with Dr. McIntire's claims that Kedrowitz had a limited ability to solve problems, had trouble distinguishing fantasy from reality, and was prone to making faulty judgments, stating that those claims were "not consistent" with his findings "at all." Tr. Vol. II p. 101.

[22] Even Drs. Parker and Cresci, who both opined that Kedrowitz was not competent to stand trial, acknowledged that Kedrowitz had been able to explain the roles of various court personnel in criminal proceedings and had displayed a basic understanding of the charges against him. Moreover, Kedrowitz had demonstrated an ability to follow instructions from his attorneys intended to protect his interests. For example, he had told both Drs. Winsch and Cresci that, at the advice of his attorney, he could not discuss the specifics of his case. The juvenile court also noted that when his attorney had counseled Kedrowitz

to stop shaking his head in the affirmative during his teacher's testimony at the competency hearing, he had immediately stopped doing so.

[23] The juvenile court also heard additional evidence corroborating the conclusions of Drs. Connor and Winsch that Kedrowitz possessed sufficient cognitive ability to understand the proceedings and assist in his defense. The report from the DCJDC showed that Kedrowitz was doing ninth-grade work "with very little help." Appellant's App. Vol. II p. 199. Tighe agreed with the report and opined that Kedrowitz was "very capable" of doing that level of schoolwork but had not always put in the effort to do so. Tr. Vol. III p. 179. While Tighe opined that Kedrowitz was an average student compared to others at the detention center, she acknowledged that the school records included examples where Kedrowitz had been simply clicking through the test questions and guessing, resulting in bad test scores and that he was "pretty good" at manipulating the testing system. Tr. Vol. III p. 211. There are numerous other examples in the records where Kedrowitz had spent much more time on the mastery tests and had done very well on them. Consistent with Tighe's testimony, the juvenile court concluded that Kedrowitz's inconsistent academic performance was "more a function of effort than cognition." Appellant's App. Vol. II p. 219.

[24] Other evidence supporting Kedrowitz's cognitive functioning included a statement he had made to his CASA that he was waiting to follow a classmate, whom he had wanted to "pound into the ground like a nail," into the bathroom "because there are no cameras there[,]" Ex. Vol. XII pp. 63–64, which showed

that he understood how evidence would be gathered. When Kedrowitz was forensically interviewed following D.M.'s death, he had noticed the camera in the interview room and had asked whether the camera was recording. The first time Kedrowitz had seen Dr. McIntire after telling her that he had set D.M. and N.R. "free," when she asked him to clarify what he had meant, he had yelled "I can't believe I told you my secret" and had appeared to panic, Ex. Vol. XII p. 70, indicating that he had done something for which he might be punished. After his arrest, Kedrowitz had told a staff member at the detention center that he had not killed his siblings, identified Ritz as the person who had killed them, and said that he had only confessed to help Ritz, showing that he was capable of identifying and articulating a potential theory of defense.

[25] The opinions of two doctors that Kedrowitz was competent are sufficient to support the juvenile court's discretionary determination of competency. *See J.S.*, 937 N.E.2d at 834 (upholding a juvenile court's competency determination in the face of conflicting evidence because it was supported by the reports of two of the doctors who examined the juvenile). Although the juvenile court was presented with conflicting expert opinion, the court was under no obligation to credit the conclusions of the experts who had found Kedrowitz incompetent, and the relative weight to be accorded conflicting expert testimony rests within the "exclusive province" of the lower court as trier of fact. *Ind. Fam. & Soc. Servs. Admin. v. Hospitality Home of Bedford*, 783 N.E.2d 286, 292 (Ind. Ct. App. 2003); *see also Barcroft v. State*, 111 N.E.3d 997, 1003 (Ind. 2018).

[26] In any event, the juvenile court thoroughly explained why it had found the testimony of Drs. Parker, Cresci, and McIntire to be unpersuasive. Dr. Parker's opinion had been based in large part on his belief that Kedrowitz was only capable of functioning at a second or third grade level, which the court found disproven by the school records, and Dr. Cresci's opinion, by his own admission, had been heavily influenced by Dr. Parker's. Dr. McIntire had not evaluated Kedrowitz for legal competency, and her opinion had been based, in part, on her belief that Kedrowitz suffered from visual and auditory hallucinations. None of the other evaluators found that Kedrowitz had experienced visual and auditory hallucinations, and Kedrowitz had not displayed any symptoms of psychosis during the entire period of his treatment at Larue Carter and his pre-trial detention at the DCJDC. Moreover, the juvenile court, which had had the ability to observe Kedrowitz, found Dr. McIntire's claim that Kedrowitz had been in active psychosis during the competency hearing to be uncredible. These were reasonable determinations, based on evidence, that were well within the discretion of the juvenile court to make. In the end, Kedrowitz's argument amounts to nothing more than a request for us to reweigh the evidence and reassess the credibility of the witnesses, which we will not do. *See, e.g.*, *Smith v. State*, 427 N.E.2d 1156, 1158 (Ind. 1981) (stating that when reviewing a competency determination, an appellate court "may not reweigh the evidence nor reassess the credibility of the witnesses"). "It was for the juvenile court to assess the credibility of the reports and the parties, weigh the evidence, and reach a conclusion as to competency."

J.S., 937 N.E.2d at 834. The juvenile court did not abuse its discretion in finding Kedrowitz competent to stand trial.[2]

II. Waiver

[27] Kedrowitz contends that the juvenile court improperly waived jurisdiction over his case. A juvenile court's decision regarding waiver is reviewed for an abuse of discretion. *State v. C.K.*, 70 N.E.3d 900, 902 (Ind. Ct. App. 2017), *trans. denied*; *Hagan v. State*, 682 N.E.2d 1292, 1295 (Ind. Ct. App. 1996). Waiver decisions are reviewed as any other sufficiency question. *McDowell*, 456 N.E.2d at 715; *Phelps v. State*, 969 N.E.2d 1009, 1016 (Ind. Ct. App. 2012), *trans. denied*. This Court will not reweigh the evidence or judge the credibility of witnesses. *McDowell*, 456 N.E.2d at 715; *Villalon v. State*, 956 N.E.2d 697, 705 (Ind. Ct. App. 2011), *trans. denied*. "Where there is adequate factual support in the record, it is within the juvenile court's province to weigh the effects of retaining or waiving jurisdiction and to determine which alternative is the more desirable." *Villalon*, 956 N.E.2d at 704–05; *see Gerrick v. State*, 451 N.E.2d 327, 330 (Ind. 1983); *Brooks v. State*, 934 N.E.2d 1234, 1238–39 (Ind. Ct. App. 2010), *trans. denied*.

[28] Indiana Code section 31-30-3-4, which governs waiver into adult court for acts that constitute murder, provides as follows:

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[2] Kedrowitz did not attempt to interpose an insanity defense and did not request that the jury enter a verdict of guilty but mentally ill.

> Upon motion of the prosecuting attorney, and after full investigation and hearing, the juvenile court shall waive jurisdiction if it finds that:
>
> (1) the child is charged with an act that would be murder if committed by an adult;
>
> (2) there is probable cause to believe that the child has committed the act; and
>
> (3) the child was at least twelve (12) years of age when the act charged was allegedly committed;
>
> unless it would be in the best interests of the child and of the safety and welfare of the community for the child to remain within the juvenile justice system.

Proof of the three enumerated requirements creates a presumption in favor of waiver. *Moore v. State*, 723 N.E.2d 442, 446 (Ind. Ct. App. 2000); *Hagan*, 682 N.E.2d at 1294–95. Once the statutory presumption is triggered, "the burden to present evidence that waiver is not in the best interests of the juvenile or of the safety and welfare of the community remains at all times on the juvenile seeking to avoid waiver." *Hagan*, 682 N.E.2d at 1295; *see also Villalon*, 956 N.E.2d at 705. Kedrowitz concedes that the State met its burden to prove that there was probable cause to believe he committed murder when he was at least twelve years old and that there is therefore a statutory presumption that he should be waived to adult court. That leaves only the question of whether the juvenile court abused its discretion by finding that Kedrowitz failed to meet his burden of proving that it would be in his best interests and in the best interests of the safety and welfare of the community for his case to remain in the juvenile-justice system.

[29] The serious and disturbing nature of the crimes showed the risk to the safety and welfare of the community presented by Kedrowitz. The juvenile court was

presented with probable cause to believe Kedrowitz had smothered to death two young children who were only two years old and eleven months old, respectively. Moreover, these deaths were not the result of quick, impulsive decisions, with Kedrowitz having to hold the blanket or towel over his young siblings' mouth and nose for several minutes until they were dead. This evidence showed Kedrowitz to be a clever, deliberate, and persistent killer who preyed on young and defenseless children who were supposed to be in his care. *See McDowell*, 456 N.E.2d at 715 (affirming a waiver order because there was evidence that the juvenile "represented a threat to the safety of the general community").

[30] Although Kedrowitz had no prior juvenile record, he began by committing the most serious crimes possible.[3] The juvenile court was presented with additional evidence supporting the conclusion that Kedrowitz posed a high risk to reoffend. Kedrowitz had previously had problems with stealing, lying, aggression, altercations with other students, and damaging property. After the commission of these murders, Kedrowitz tortured and mutilated two kittens almost to the point of death, squeezing one until its internal organs were protruding out of it and making puncture wounds in the heads of both. Kedrowitz also put his hands around the neck of a classmate at school, choked him during an altercation, and drew a picture of him hanging from a noose.

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[3] Had Kedrowitz committed his murders as an adult, the State could have pursued imposition of the death penalty on two grounds: he murdered two persons, Ind. Code § 35-50-2-9(b)(8), and each of his victims was less than twelve years of age, Ind. Code § 35-50-2-9(b)(12).

Dr. McIntire reported that he was "fixated" on his desire to harm this other child and had expressed the desire to do "serious damage" to him. Ex. Vol. XII p. 68. Kedrowitz also told his CASA that he was going to "pound [this student] into the ground like a nail." Ex. Vol. XII p. 63. While at the DCJDC, Kedrowitz threatened a teacher with harm if she did not help him cheat on his schoolwork. Dr. Cresci testified that Kedrowitz met the criteria for anti-social personality disorder, including callousness, lack of empathy or caring for others, lying, threatening violence, harming others, stealing, oppositional behavior, and problems abiding by the law. He particularly noted that Kedrowitz displayed a "complete lack of empathy." Tr. Vol. IV p. 77.

[31] Shannon Schmaltz, the chief probation officer and director of court services in Ripley County, testified that local juvenile services were not able to adequately handle Kedrowitz or appropriately address his needs, Kedrowitz posed a high risk to reoffend, Kedrowitz was dangerous to others, it would not be appropriate or safe to place Kedrowitz in a juvenile residential treatment facility, and Kedrowitz would not be rehabilitated by the age of twenty-one and had correctional and treatment needs that would extend beyond that age. *See Phelps*, 969 N.E.2d at 1016–17 (affirming a waiver order based on the testimony of the juvenile probation officer that the juvenile was beyond rehabilitation in the juvenile system).

[32] Under the circumstances, we cannot say that the juvenile court abused its discretion in concluding that juvenile detention until the age of twenty-one (at the latest) was inadequate to treat a disturbed individual who had allegedly

killed two children. It is worth noting that, through DCS and the courts, Kedrowitz had already received services by that time through Lifeline Home Therapy, Ireland Home-Based Services, Greenbrier, Wellstone, Larue Carter, and the DCJDC. Despite receiving these services, no witness testified that Kedrowitz had been successfully rehabilitated by them such that he no longer posed a risk of danger to others or needed any further treatment addressing his own needs.

[33] Waiving Kedrowitz to adult court did not mean foregoing any treatment for his needs. Kedrowitz can receive mental-health treatment in the DOC, which offers many educational, mental-health, and behavioral programs for offenders. Indeed, the DOC is statutorily required to provide medical care, mental-health treatment, and academic and vocational programs, including special education programs, for offenders. *See* Ind. Code chaps. 11-10-3; 11-10-4; 11-10-5. Moreover, juvenile offenders who are waived to adult court are still placed in facilities limited to juveniles until they turn eighteen. The DOC also has the duty to take reasonable precautions to protect the safety of the offenders in its custody. *See Cole v. Ind. Dept. of Corr.*, 616 N.E.2d 44, 45–46 (Ind. Ct. App. 1993), *trans. denied*. These facts address the concerns of Dr. Parker, and others, that Kedrowitz's intellectual disability may place him at greater risk of victimization by other offenders. Even if Kedrowitz was waived to adult court, he would not be housed with adult offenders until he was also an adult, and the DOC will have a duty to take reasonable steps to protect his safety if he is threatened with victimization. Consequently, as the juvenile court found,

unlike the juvenile justice system, which would end all supervision and treatment at the age of twenty-one, the adult justice system would combine treatment with the long-term supervision Kedrowitz needs given his serious criminal conduct.

[34] Kedrowitz's argument amounts to nothing more than a request to reweigh the evidence and credit the testimony of the witnesses who opined that it was in his best interests to remain within the juvenile system. The juvenile court was "under no obligation to accept the recommendations of expert witnesses[,]" and did not. *Hall v. State*, 870 N.E.2d 449, 457 (Ind. Ct. App. 2007), *trans. denied*; *see Gerrick*, 451 N.E.2d at 330 (stating that a juvenile court holding a waiver hearing "is not compelled to give overriding weight to testimony that supports a finding the juvenile should remain in the juvenile system"). Where, as here, the juvenile court is presented with conflicting evidence as to whether it is in the best interests of society and the child for the case to be waived to adult court, the juvenile court's decision to accord greater weight to the evidence in favor of waiver will be affirmed on appeal. *See, e.g.*, *McDowell*, 456 N.E.2d at 715; *Gerrick*, 451 N.E.2d at 329–30; *Phelps*, 969 N.E.2d at 1016–17; *Brooks*, 934 N.E.2d at 1239–40; *Hall*, 870 N.E.2d at 456–57; *Moore*, 723 N.E.2d at 446–47. We affirm the juvenile court's decision to waive jurisdiction over Kedrowitz's case.

III. Whether the Circuit Court Lacked Subject-Matter Jurisdiction to Hear Kedrowitz's Case

[35] Kedrowitz and IPDC contend that, even if the juvenile court had a proper basis for waiving jurisdiction over his case, the Ripley Circuit Court lacked subject-matter jurisdiction to hear it. The State and IPAC argue that, pursuant to clear statutory authority, it did. Where the pertinent facts are not in dispute, the existence of subject-matter jurisdiction and the interpretation of statutes are both questions of law that are reviewed *de novo*. *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020). In construing statutes, the primary goal is to give effect to the legislature's intent. *Id.* at 1216. The best evidence of legislative intent is the language of the statute itself, and the words in a statute must be given their plain and ordinary meaning unless otherwise indicated by the statute. *Erkins v. State*, 13 N.E.3d 400, 407 (Ind. 2014); *State v. Oddi-Smith*, 878 N.E.2d 1245, 1248 (Ind. 2008). If the text of the statute is clear and unambiguous, it is not subject to judicial interpretation and must be held to mean what it plainly says. *D.P.*, 151 N.E.3d at 1216. This Court presumes that the legislature intended for the statutory language to be applied in a logical manner consistent with the statute's underlying policy and goals. *Nicoson v. State*, 938 N.E.2d 660, 663 (Ind. 2010). Statutes concerning the same subject should be read together and harmonized to give effect to each. *Clippinger v. State*, 54 N.E.3d 986, 989 (Ind. 2016).

[36] Subject-matter jurisdiction is the constitutional or statutory power of a court to adjudicate cases of a particular kind, *D.P.*, 151 N.E.3d at 1213, which is

conferred only by the Indiana Constitution or a statute and cannot be altered by the agreement of the parties. *Twyman v. State*, 459 N.E.2d 705, 707 (Ind. 1984). All circuit courts in Indiana have "original and concurrent jurisdiction" in "all criminal cases." Ind. Code § 33-28-1-2(a). A "crime" is a felony or a misdemeanor. Ind. Code § 33-23-1-4; *see also* Ind. Code § 33-23-1-10 (defining "offense" as "a felony, a misdemeanor, an infraction, or a violation of a penal ordinance"). Murder is a felony. Ind. Code § 35-42-1-1. Thus, as a general rule, circuit courts in Indiana have subject-matter jurisdiction to adjudicate criminal cases, including murder charges such as those filed against Kedrowitz.

[37] The legislature has carved out part of this jurisdictional grant by generally giving juvenile courts "exclusive *original* jurisdiction" over all proceedings in which a child, defined in relevant part as a person under the age of eighteen, is alleged to have committed a delinquent act. Ind. Code § 31-30-1-1(1) (emphasis added); *see* Ind. Code § 31-9-2-13 (defining "child"); *see also State v. Neukam*, 189 N.E.3d 152, 153 (Ind. 2022); *State ex rel. Camden v. Gibson Circuit Ct.*, 640 N.E.2d 696, 697–99 (Ind. 1994). A "delinquent act" is defined, in relevant part, as an act that would be an "offense if committed by an adult," *i.e.*, a felony or a misdemeanor. Ind. Code § 31-37-1-2(1); *see also* Ind. Code § 31-9-2-29 (defining "'[c]rime,' for purposes of the juvenile law" as "an offense for which an adult might be imprisoned or incarcerated"). The age of the offender thus serves to limit the subject-matter jurisdiction of the juvenile court. *D.P.*, 151 N.E.3d at 1213–16; *Twyman*, 459 N.E.2d at 708. The General Assembly, however, has never removed all subject-matter jurisdiction from circuit courts with respect to

prohibited criminal conduct committed by juveniles. Since the earliest inception of Indiana's juvenile court system some 120 years ago, the General Assembly has provided for some juvenile offenses to fall within the criminal courts' jurisdiction rather than that of the juvenile courts. When all of these statutes are read together, the General Assembly has made abundantly clear its intent to allow circuit courts to exercise criminal jurisdiction over minors who are alleged to have committed delinquent acts under certain circumstances.

[38] Moreover, the Indiana Supreme Court has repeatedly and consistently upheld the validity of juvenile court waivers and the criminal convictions of waived juveniles tried in criminal courts. *See, e.g.*, *Vance v. State*, 640 N.E.2d 51 (Ind. 1994); *Daniel v. State*, 582 N.E.2d 364 (Ind. 1991); *Goad v. State*, 516 N.E.2d 26 (Ind. 1987); *Turner v. State*, 508 N.E.2d 541 (Ind. 1987); *McDowell v. State*, 456 N.E.2d 713 (Ind. 1983); *Gerrick v. State*, 451 N.E.2d 327 (Ind. 1983); *Taylor v. State*, 438 N.E.2d 275 (Ind. 1982); *Shepard v. State*, 273 Ind. 245, 404 N.E.2d 1 (1980); *Gregory v. State*, 270 Ind. 435, 386 N.E.2d 675 (1979); *Edwards v. State*, 250 Ind. 19, 234 N.E.2d 845 (1968) (opinion on reh'g). Although an appellate court has the duty to raise *sua sponte* a lower court's lack of subject-matter jurisdiction, *Wedmore v. State*, 233 Ind. 545, 549, 122 N.E.2d 1, 3 (1954), the Indiana Supreme Court has affirmed these convictions for decades without ever questioning the existence of subject-matter jurisdiction in the criminal court. We think it also worth noting that the General Assembly has never expressed any disagreement with any of this through revision of the relevant statutes.

[39] Currently, in addition to several statutes describing circumstances under which juvenile courts never have jurisdiction over cases involving juveniles (which are not relevant to this case),[4] Indiana has four separate permissive or presumptive waiver statutes authorizing the prosecution of juveniles in criminal court, all of which are predicated on a finding of probable cause to believe the child committed the charged act.[5] Of interest to us here is Indiana Code section 31-30-3-4, pursuant to which the juvenile court "shall" waive jurisdiction if a child at least twelve years old is charged "with an act that would be murder if committed by an adult" unless it would be in the best interests of the child and the community for the child to remain in the juvenile system.

[40] Kedrowitz, however, argues that the Indiana Supreme Court's recent decision in *Neukam*, 189 N.E.3d at 152, has effectively nullified all of the statutes allowing permissive or presumptive waiver of a juvenile into adult court by depriving the Ripley Circuit Court of jurisdiction to hear his case. We cannot

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[4] Under the current iteration of the code, the General Assembly has enumerated nine offenses, along with any offense that may be joined with them, over which the juvenile court has no jurisdiction. Ind. Code § 31-30-1-4(a). In addition, "juvenile law does not apply" to a child alleged to have committed "an act that would be a felony if committed by an adult" if the child has previously been waived to adult court in a different case. Ind. Code § 31-30-1-2(3); *see also* Ind. Code § 31-30-3-6 (establishing mandatory waiver of jurisdiction when a child charged "with an act that would be a felony if committed by an adult" has "previously been convicted of a felony or misdemeanor").

[5] Indiana Code section 31-30-3-2 allows for permissive waiver in certain cases if the child is charged with "an act that is a felony [] that is heinous or aggravated, with greater weight given to acts against the person than to acts against property [or] that is a part of a repetitive pattern of delinquent acts, even though less serious[.]" Indiana Code section 31-30-3-3 allows for permissive waiver in certain cases where the child has been alleged to have committed what would be certain qualifying drug-related felonies if committed by an adult. Indiana Code section 31-30-3-5 provides for presumptive waiver in certain cases where the child is alleged to have committed a Level 1 through Level 4 felony, involuntary manslaughter, or reckless homicide if committed by an adult.

agree that *Neukam* has done this. To get straight to the point, *Neukam* addressed a different jurisdictional question, one that arose in the absence of a juvenile court waiver, and, by its own terms, did not reach the validity of the waiver statutes. *Neukam* addressed a circumstance where the juvenile court no longer possessed subject-matter jurisdiction to waive because the offender was no longer a "child," and the existence of a child is a necessary prerequisite to subject-matter jurisdiction of juvenile courts. *Id.* at 153; *see also D.P.*, 151 N.E.3d at 1215–16. The holding in *Neukam* simply does not extend to the question of whether circuit courts lack subject-matter jurisdiction when criminal charges are filed following a valid waiver of juvenile-court jurisdiction.

[41] Moreover, while the *Neukam* Court rejected the State's argument that the statutes at issue should be read harmoniously with waiver statutes, it did so on the basis that "our harmonious-reading canon applies only to related statutes on the same subject"[6] and noting that "neither waiver nor transfer is a dispositive subject here." *Id.* at 157. In this case, however, one of the waiver statutes is at the very heart of Kedrowitz's argument; because waiver *is* a dispositive subject in this case, the waiver statutes must be read in harmony with one another. When we do that, we note, as mentioned, that the General Assembly has enacted an extensive statutory framework in Indiana Code chapter 31-30-3

[6] In *Neukam*, there were no other such statutes. As IPAC points out, "*Neukam* addressed a relatively rare situation in which a juvenile's criminal conduct is not discovered until after he or she 'aged out' of the juvenile system, and for which there was no explicit statutory answer for what should happen in such a situation." Brief of *Amicus Curiae* IPAC p. 11.

pursuant to which cases involving delinquent acts may be waived into adult court to be tried as criminal cases. In other words, were we to accept Kedrowitz's argument on this point, we would effectively nullify almost an entire chapter of the Indiana Code, a potential that did not exist in *Neukam*. We think, however, that the correct approach in this case is to read all of the relevant statutes as permitting our circuit and superior courts to accept jurisdiction over cases waived by juvenile courts, so as not to render that process nothing more than a waiver to nowhere. The *Neukam* Court's acknowledgement that its decision "raises questions about circuit-court jurisdiction vis-à-vis the juvenile court's waiver statutes" is not the same thing as answering those questions. *Neukam*, 189 N.E.3d at 157.

[42] We will therefore restrict ourselves to the holding of *Neukam*—which does not address the waiver of juvenile delinquency cases into adult court—and decline Kedrowitz and IPDC's request to rely on *obiter dictum* to essentially nullify almost an entire chapter of the Indiana Code. We conclude that the Ripley Circuit Court had jurisdiction to hear Kedrowitz's criminal case.

IV. Whether the Trial Court Abused its Discretion in Sentencing Kedrowitz

[43] 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), *modified on other grounds 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*. (quotation omitted).

> We review for an abuse of discretion the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law.

Baumholser v. State, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (internal citation and quotation omitted), *trans. denied*.

[44] > A single aggravating circumstance may be sufficient to enhance a sentence. When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. The question we must decide is whether we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator.

Id. at 417 (internal quotation omitted).

[45] "A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years." Ind. Code § 35-50-2-3(a). In sentencing Kedrowitz to fifty years of incarceration for each of his murders, the trial court imposed sentences somewhat near the minimum sentence for murder. Kedrowitz contends that the trial court abused its discretion in finding improper

aggravating circumstances and in failing to find mitigating circumstances clearly supported by the record.

A. Aggravating Circumstances

[46] Kedrowitz challenges the following aggravating circumstances found by the trial court: 1) violation of a position of trust; 2) commission of crime in the presence or hearing of children; 3) lack of remorse; and 4) the nature and circumstances of the crimes demonstrate callousness and premeditation. All of the aggravating factors Kedrowitz challenges were valid as a matter of law and supported by the evidence.

[47] "Indiana courts have long held that the violation of a position of trust is a valid aggravating factor." *Stout v. State*, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), *trans. denied*. The trial court found this an aggravating circumstance based on the fact that Kedrowitz was the big brother, or de facto big brother, of the two children he killed. As their big brother, Kedrowitz should have loved them but killed them instead. Kedrowitz was in a position of trust because of his familial relationship with the victims, and he violated the trust D.M. and N.R. placed in their big brother when he smothered them to death. *See Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) (stating that a "harsher sentence" is warranted when "the defendant violated a position of trust that arises from a particularly close relationship between the defendant and the victim"). We conclude that Kedrowitz's position of trust with his victims was a valid aggravating circumstance.

[48] The knowing commission of a crime of violence in the presence of or within the hearing of a child, other than the victim, under the age of eighteen is a valid statutory aggravating circumstance. *See* Ind. Code § 35-38-1-7.1(a)(4); *Abrajan v. State*, 917 N.E.2d 709, 712 (Ind. Ct. App. 2009). "[I]t is well established that this aggravator 'does not require that a child under eighteen actually see or hear the offense taking place.'" *Abrajan*, 917 N.E.2d at 712 (quoting *Firestone v. State*, 838 N.E.2d 468, 474 (Ind. Ct. App. 2005)). This aggravating circumstance is amply supported by the record. When Kedrowitz killed D.M. in the bathroom, A.M. and N.R., who were one-year-old and nine-months-old respectively, were in the nearby living room. Similarly, A.M. was either in her bedroom or in the living room when Kedrowitz killed N.R. in the nearby boys' bedroom. The house in which the murders took place is not large, and A.M. was within hearing distance and could have heard either victim cry out while struggling to breathe; she also could have walked in on either killing as it was occurring. The presence of another young child in the house during the murders is a valid aggravating circumstance.

[49] As for the trial court's finding that Kedrowitz's lack of remorse was an aggravating circumstance, it is well-settled that "[l]ack of remorse is a valid aggravating factor." *Barnes v. State*, 634 N.E.2d 46, 49 (Ind. 1994); *see Salone v. State*, 652 N.E.2d 552, 562 (Ind. Ct. App. 2002), *trans. denied*. This factor was also amply supported by the record. As the trial court noted, Kedrowitz kept his culpability for killing D.M. and N.R. a secret for many months, successfully deceiving family members, police, his CASA, and service providers as to his

role in the deaths. Kedrowitz demonstrated little to no emotion regarding his siblings' deaths when he was interviewed shortly after them. Notably, when asked during his CAC interview if anything had changed in his house after D.M.'s death, Kedrowitz answered "[l]ess laundry" but apart from that everything was the same. Tr. Vol. VIII p. 230. When Kedrowitz later told his CASA that he had killed his siblings, he said it matter-of-factly, showed "no emotion," and did not cry at all. Tr. Vol. VIII p. 99. Again, the trial court was not required to credit the evidence claiming Kedrowitz did not understand the meaning of death or accept that as the explanation for why he showed no remorse.

[50] Finally, the trial court did not abuse its discretion in finding the nature and circumstances of the crimes to be aggravating. *Anglemyer*, 868 N.E.2d at 492; *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001). The trial court's characterization of the murders as callous and premeditated is supported by the record. The evidence showed that Kedrowitz murdered both children by smothering them, holding a towel over D.M.'s mouth and nose and a blanket over N.R.'s mouth and nose until they were dead. As the trial court correctly noted, this is a mechanism of murder that involves intimate, personal contact with the victim and takes several minutes to complete. This means that, although Kedrowitz would have had plenty of time in which to stop what he was doing before it was too late, he did not. After experiencing D.M.'s death, Kedrowitz had months in which to reflect before he murdered N.R. in exactly the same way. Neither murder was an impulsive act that was completed before

it could be regretted, nor was it the result of careless or accidental conduct. Given Kedrowitz's relationship to the victims, the ages of his victims, and the manner in which he killed them, it was entirely fair for the trial court to characterize his conduct as extremely callous. The trial court did not abuse its discretion by finding that, although "all murders involve a degree of callousness," "the events in this case are uniquely heinous." Appellant's App. Vol. IV p. 232.

B. Mitigating Circumstances

[51] The finding of mitigating circumstances falls within the court's sentencing discretion. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. The trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant, nor is it required to explain why it does not find a proffered circumstance to be mitigating. *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000). The court need not consider alleged mitigating circumstances that are highly disputable in nature, weight, or significance. *Newsome*, 797 N.E.2d at 293. Moreover, the trial court is not required to give the same weight to mitigating circumstances as does the defendant. *Id*. On appeal, the defendant must show that the proffered mitigating circumstance is both significant and clearly supported by the record. *Spears*, 735 N.E.2d at 1167.

[52] Kedrowitz first argues that the trial court abused its discretion by not finding his alleged PTSD to be mitigating. First, it is apparent that the trial court did not ignore evidence that Kedrowitz suffers from PTSD, considering it along with

the other evidence regarding his mental health. When discussing that evidence at sentencing, the trial court noted that Kedrowitz had "been frequently diagnosed with mental health disorders. So, I think that covers the PTSD or what have you. I think that's an aggra- or a mitigating circumstance." Tr. Vol. XI pp. 29–30.

[53] In any event, the evidence regarding whether Kedrowitz suffers from PTSD is disputable. Although Dr. Jeffrey Aaron, Ph.D., performed a forensic psychological evaluation in preparation for sentencing and diagnosed Kedrowitz with PTSD, the other doctors who examined him had not made the same diagnosis. At LaRue Carter, Kedrowitz had been diagnosed with unspecified schizophrenia spectrum or other psychotic disorder, while Dr. Connor had diagnosed him with major depressive disorder and anxiety disorder NOS, Dr. Cresci had diagnosed him with antisocial personality disorder and believed that he would become a paranoid schizophrenic, Dr. McIntire had diagnosed him with unspecified schizophrenic spectrum or other psychotic disorder and adolescent antisocial behavior, and Dr. Winsch had not rendered any diagnosis and noted that Kedrowitz was "not exhibiting serious psychiatric symptoms." Appellant's App. Vol. II p. 112. In light of the highly-disputable nature of the evidence regarding Kedrowitz's PTSD, he has failed to establish that the trial court abused its discretion in refusing to give it more mitigating weight.

[54] Kedrowitz also contends that the trial court abused its discretion in declining to find that imprisonment would be an undue hardship on him. First, the trial

court was required to impose, at minimum, a forty-five-year sentence, and Kedrowitz does not claim that it is the difference between that sentence and the one he received that will cause undue hardship. Rather, Kedrowitz contends that his age, maturity level, and mental-health issues place him at risk of victimization, issues that would exist in the same measure with even the minimum sentence. It is well-settled that the hardship mitigator is not entitled to be given any weight where the defendant fails to show why or how incarceration for a longer term will cause more or greater hardship than incarceration for a shorter term. *Abel v. State*, 773 N.E.2d 276, 280 (Ind. 2002); *Weaver v. State*, 845 N.E.2d 1066, 1074 (Ind. Ct. App. 2006), *trans. denied*.

[55] In any event, the record indicates that Kedrowitz had not suffered any significant deterioration of his mental health during the years he was held in the juvenile detention center, nor did he present any evidence at sentencing tending to show that he had been victimized by other, smarter students during that time. Juvenile detention center authorities described Kedrowitz as a generally "happy, social, and well-adjusted" person who participated actively in various programs and "[got] along with the other juveniles[.]" Ex. Vol. XII pp. 40, 41. This real-world experience suggested that concerns about Kedrowitz's well-being while incarcerated were not well-founded. The trial court did not abuse its discretion by declining to find undue hardship a significant mitigating circumstance.

V. Whether Kedrowitz's Sentence Is Inappropriate

[56] We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the 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). In addition to the "due consideration" we are required to give to the trial court's sentencing decision, "we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). The trial court sentenced Kedrowitz to fifty years of incarceration for each of his murder convictions and ordered that both sentences be served consecutively; his aggregate sentence of 100 years is far shorter than the 130-year sentence that could have been imposed. *See* Ind. Code § 35-50-2-3(a).

[57] The nature of Kedrowitz's offenses was, to put it mildly, horrific. Kedrowitz's two victims were family members entrusted to his care—one only weeks away

from her third birthday and the other only weeks away from his first—who were completely incapable of defending themselves as life was taken from their bodies. Moreover, both of Kedrowitz's victims must have suffered unimaginable pain and terror as he suffocated them over the course of several minutes, which also means that he had ample opportunity to stop in both cases but did not. Finally, the two murders took place months apart, which means that, despite having had ample opportunity to reflect on what he had done to D.M. and observe the pain he had caused to the rest of the family, Kedrowitz killed again. Kedrowitz's 100-year sentence is fully justified by the nature of his offenses.

[58] As for Kedrowitz's character, we cannot say that the fact that he had no prior criminal or juvenile history reflects "very favorably" on his character as it would for a person who had lived a law-abiding life for many decades. Appellant's Br. 56. The record contains a great deal of material reflecting poorly on Kedrowitz's character, which, to the extent that it may seem insignificant in this case, only does so because it pales in comparison to double murder. *Inter alia*, Kedrowitz tortured and mutilated two kittens; attacked and choked another student at school, drew a picture of that student hanging by a noose, and continued to express a desire to inflict physical harm on him; and threatened to harm a teacher if she did not help him cheat. Kedrowitz has also had problems with stealing, lying, and destroying property. And, of course, he deliberately killed his two younger siblings, showed no remorse, and lied about what happened, successfully deceiving the authorities for months, none of

which speaks well of his character. Kedrowitz has failed to establish that his 100-year sentence is inappropriate in light of the nature of his offenses and his character.

VI. Whether Kedrowitz's Sentence Violates the Indiana Constitution

[59] Kedrowitz contends that his sentence violated Article 1, Sections 16 and 18, of the Indiana Constitution. "Questions arising under the Indiana Constitution are to be resolved by examining the language of the text in the context of the history surrounding its drafting and ratification, the purpose and structure of our constitution, and case law interpreting the specific provisions." *Boehm v. Town of St. John*, 675 N.E.2d 318, 321 (Ind. 1996).

A. Article 1, Section 16

[60] Article 1, Section 16 provides in relevant part: "All penalties shall be proportioned to the nature of the offense." This express requirement of proportionality goes beyond Eighth Amendment protections and permits review of the duration of a sentence, as it is possible for a sentence within the statutory range to be unconstitutional as applied to a particular case. *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014). Nevertheless, its protection is "still narrow." *Id.* The nature and extent of penal sanctions are primarily the province of the legislature, and a court may not set aside a legislatively-sanctioned penalty merely because it seems too severe. *Id*. at 1290; *Clark v. State*, 561 N.E.2d 759, 765 (Ind. 1990); *see also State v. Moss-Dwyer*, 686 N.E.2d

109, 111-12 (Ind. 1997) (stating that Indiana's "separation of powers doctrine" requires a "highly restrained" approach under Section 16 and permits a court to engage only in a "very deferential" review of legislatively-sanctioned penalties).

[61] As the State points out, however, Kedrowitz's argument is based entirely on his personal characteristics, not the "nature of [his] offense[s,]" and it notes that there is no authority for the proposition that such an offender-based argument is cognizable pursuant to Article 1, Section 16. Because the plain language of Article 1, Section 16, requires that, if a sentence is to be found disproportionate, it will be because of the nature of the offenses, we need not address this argument further.

B. Article 1, Section 18

[62] Article 1, Section 18, of the Indiana Constitution provides as follows: "The penal code shall be founded on the principles of reformation, and not of vindictive justice." Section 18 "'is an admonition to the legislative branch of the state government and is addressed to the public policy which the legislature must follow in formulating the penal code.'" *Lowery v. State*, 478 N.E.2d 1214, 1220 (Ind. 1985) (quoting *Dillon v. State*, 454 N.E.2d 845, 852 (Ind. 1983)). It is well-settled that Section 18 "applies only to the penal code as a whole, not to individual sentences." *See, e.g.*, *Henson v. State*, 707 N.E.2d 792, 796 (Ind. 1999). Consequently, a claim that a particular defendant's sentence violates Section 18 is not a cognizable claim on which relief can be granted because "particularized, individual applications are not reviewable" pursuant to this provision. *Ratliff v. Cohn*, 693 N.E.2d 530, 542 (Ind. 1998). Section 18 simply

"does not protect fact-specific challenges." *Id.*; *see Newkirk v. State*, 898 N.E.2d 473, 478 (Ind. Ct. App. 2008), *trans. denied*.

[63] Kedrowitz can obtain no relief by arguing that his sentence violates Section 18, and his and IPDC's arguments are based solely on a particular, individualized application of that system. The established interpretation that Section 18 applies only to the penal code as a whole and not to individual sentences does not contain any exception for particularly lengthy sentences. *See Henson*, 707 N.E.2d at 796 (rejecting a Section 18 challenge to a 100-year sentence imposed on a juvenile despite Henson's argument that it amounted to a *de facto* life sentence). "[T]he obstacle which a sentence that extends beyond normal life expectancy poses to the achievement of reformation does not violate the guarantee of [Section 18]." *Williams v. State*, 426 N.E.2d 662, 670–71 (Ind. 1981) (rejecting a Section 18 challenge to a 130-year sentence). Kedrowitz's claim that his sentence violates the provisions of Article 1, Section 18, is not cognizable.

Conclusion

[64] We conclude that the juvenile court did not abuse its discretion in finding Kedrowitz competent to stand trial, the juvenile court did not abuse its discretion in waiving jurisdiction, and the Ripley Circuit Court had jurisdiction to hear the case following a valid waiver by the juvenile court. As for Kedrowitz's sentence, we conclude that the trial court did not abuse its discretion in sentencing him, his aggregate 100-year sentence is not inappropriate in light of the nature of his offenses and his character, and he has

not made cognizable challenges pursuant to Article 1, Sections 16 and 18, of the Indiana Constitution. Consequently, we affirm.

[65] We affirm the judgment of the trial court.

Pyle, J., and Altice, J., concur.