

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin L. Girdler,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2022

Court of Appeals Case No.
22A-CR-546

Appeal from the Switzerland
Circuit Court

The Hon. W. Gregory Coy, Judge

Trial Court Cause No.
78C01-1807-MR-273

Bradford, Chief Judge.

Case Summary

- [1] In June of 2018, Justin Girdler and Vivian Moore, his mother, beat Dennis Dziwulski to death as he slept on a couch in the mobile home Moore and Dennis shared as a couple. Moore and Girdler went to some lengths in an attempt to conceal their crime, including disposing of Dennis's body in the woods, burning some of his belongings, abandoning his car in Kentucky, and telling others that he had moved to Maryland. Girdler eventually admitted to police that he had participated in Dennis's death but claimed that Moore had coerced him. Girdler ultimately pled guilty to Level 1 felony conspiracy to commit murder, and the trial court imposed the advisory sentence of thirty years of incarceration. Girdler contends that his sentence is inappropriately harsh. Because we disagree, we affirm.

Facts and Procedural History

- [2] In June of 2018, Moore and Dennis were living together as a couple in a mobile home in Switzerland County, Indiana. On June 2, 2018, Girdler arrived at their home for a cookout around noon. At one point during the afternoon, Girdler entered the home and saw Moore standing behind Dennis holding a cast-iron skillet in the air above Dennis's head as he sat on the couch. Girdler ran over to Moore and took the skillet from her. An argument ensued between Girdler, Moore, and Dennis. During the argument, Dennis knocked Moore to the ground. Girdler called 911 to report the incident between Moore and Dennis and wanted Dennis removed from the home. Police arrived at the home and found Girdler holding a sledgehammer and instructed him to drop it

while they investigated. Police observed that Girdler was agitated and aggressive and told him to leave the home. Moore left with Girdler, and they drove to a Taco Bell in Madison, Indiana, and then to a friend's house in Kentucky.

[3] Later that night, Moore and Girdler returned to the mobile home to gather some personal items for Moore to spend the night elsewhere, bringing Michael Hall with them. When they arrived, Dennis was asleep on the couch. Moore picked up the cast-iron skillet and hit Dennis in the face multiple times before telling Girdler to hit him as well. Girdler picked up a hammer and hit Dennis in the face three times. Dennis died from the blows.

[4] After Moore and Girdler had killed Dennis, Girdler and Hall wrapped his body in a tarpaulin and tried to put it into Dennis's car, but it was "too heavy." Tr. Vol. II p. 46. Girdler decided that they should put Dennis's body under the mobile home and take Dennis's car to cover up their crime. Girdler and Hall abandoned Dennis's car in Kentucky early in the morning on June 3, 2018. Girdler returned to the mobile home later that day "to finish what was started the night before." Tr. Vol. II p. 48. Girdler and his uncle removed Dennis's body from underneath the mobile home and left it in the woods near the home. Girdler burned the tarpaulin in a firepit, along with some of Dennis's clothes and personal items. In the days following the murder, Girdler sold his car and the hammer. An attempt to clean up the blood in the mobile home was made, and the bloody couch and cast-iron skillet were moved to Moore's storage unit.

- [5] Meanwhile, on June 3, 2018, the Kentucky State Police (“the KSP”) had located Dennis’s vehicle abandoned on a dead-end road and contacted the Switzerland County Sheriff’s Office (“the SCSO”). The SCSO informed the KSP that Dennis had been involved in a domestic incident the day before, and the KSP towed the vehicle after they were unable to contact him.
- [6] At some point after June 22, 2018, Dennis’s brother Doug called Moore to see if she knew where Dennis was because he had not heard from him. Moore told Doug that Dennis had moved back to Maryland after they had broken up on June 2, 2018. Doug had also learned by this time that Dennis had not been at work. Police contacted Dennis’s employer, his landlord, and an auto dealership to which he was indebted, and none of them had heard from him in several weeks. Moore had told them all that Dennis had moved back to Maryland. The landlord told police that Moore had moved out of the mobile home shortly after June 2, 2018.
- [7] Police spoke to Moore on June 22, 2018, and she told them that Dennis had moved back to Maryland after ending their relationship on June 2, 2018. Moore told police that on June 2, 2018, Girdler had dropped her off at the mobile home later in the evening, when she had discovered that Dennis had packed his belongings. Moore told police that she had argued with Dennis, which had led to a physical confrontation. Moore told police that she had gotten away from Dennis, and he had thrown and broken his mobile telephone, said he was moving to Maryland, and walked out.

[8] On June 25, 2018, police went to the mobile home and observed that “a significant blood-related event” had occurred in the living room. Appellant’s App. Vol. II p. 241. Police found blood spatter on the walls and ceiling, and a blood stain on the carpet that had soaked through to the subfloor. In addition to the blood spatter and blood pool in the mobile home, police located the couch with a pool of blood on it and the bloody skillet in a storage unit that belonged to Moore.

[9] Police searched the wooded area near the mobile home and located Dennis’s scattered remains. Dr. Krista Latham, Director of the University of Indianapolis Human Identification Center, was called to the scene to recover Dennis’s remains. Dr. Latham and her team found Dennis’s remains scattered over an area approximately thirty-two meters long. Dr. Latham’s report noted that this location in the woods is where Dennis’s body had begun to decompose and his body had separated into approximately eight distinct parts due to “gravity, rainwater, and carnivore activity” as the body had continued to decompose. Ex. Vol. p. 45. Dr. Latham observed Dennis’s face and head had multiple perimortem blunt force trauma bone fractures. Pathologist Dr. Michael Smith performed an autopsy after Dr. Latham concluded her recovery and determined that Dennis had died from blunt force trauma to the head and face caused by multiple blows from multiple angles with one or more heavy blunt objects. These blows would have caused extensive bleeding at the scene and severe injuries to the brain in addition to the many fractures.

[10] After finding Dennis's remains, police spoke to Moore again. Moore initially told police she had become tired of Dennis abusing her, so she had killed him while he slept on the couch. Moore stated she had killed Dennis after hitting him in the head numerous times with a cast-iron skillet and that Girdler had witnessed the murder. Moore later changed her statement, claiming that Girdler had hit Dennis in the head with a hammer two times while she was arguing with Dennis. In this statement, Moore indicated that she thought that Girdler's actions had been unprovoked, and she had initially taken responsibility to protect him.

[11] When police spoke to Girdler, he also gave conflicting statements. Girdler first told police that Moore had killed Dennis before he arrived at the mobile home. Girdler then stated he had seen Moore kill Dennis with a cast-iron skillet while Dennis was lying on the couch. Finally, Girdler told police he had hit Dennis in the head three times with a hammer after Moore had hit him with the cast-iron skillet. Girdler also stated that Hall had hit Dennis three times with a baseball bat. Girdler told police that Moore had intimidated him into hitting Dennis with the hammer. Moore and Girdler both told police that they had moved Dennis's body from the living room and had hidden it under the mobile home following the murder on June 2, 2018. Moore and Girdler both also stated that Dennis's body had been moved again on June 3, 2018, from under the mobile home to the woods nearby and that they had tried to clean up the blood in the mobile home.

[12] The State charged Girdler with murder. While in jail as his case was pending, Girdler had a picture of two hammers tattooed onto his body. Girdler eventually reached a plea agreement with the State and pled guilty to a reduced charge of Level 1 felony conspiracy to commit murder. After the change of plea hearing was over, Girdler told a corrections officer that “that’s my mom, I’d do it again[.]” Tr. Vol. II p. 138.

[13] The trial court conducted a bifurcated sentencing hearing. Girdler testified that he had a lengthy substance-abuse history and had been addicted to methamphetamine for approximately four years at the time of the murder and admitted that he had been on probation when the murder occurred. Girdler stated that he had not liked that Dennis had abused Moore when he had been drinking. Girdler also claimed that he had been responsible for his own actions regarding the murder, but also said that Moore “could have just left” and that he “never even had to do what she—we did.” Tr. Vol. II p. 53. Girdler also stated that he had hit Dennis because Moore had told him to and that she “outweighed” and “overpowered” him, even though she was legally blind and on dialysis. Tr. Vol. II p. 58. Girdler explained that he had lied to the police to “keep myself out of trouble” and avoid being caught. Tr. Vol. II p. 50. Girdler asked the trial court for “the minimum but, probably not an option, but I would at least ask the court to take into consideration, or give an advisory.” Tr. Vol. II p. 54. In his argument, Girdler asked the trial court to impose the advisory thirty-year sentence.

[14] The trial court found an aggravating circumstance to be that Girdler had taken numerous steps to cover up his crime and that failing to report the crime, hiding the body under the mobile home, then dragging it to the woods was “against the peace and dignity of any human being.” Tr. Vol. II p. 146. The trial court also noted that Girdler had prior misdemeanor convictions. The trial court found that Girdler had failed to take full responsibility because he had “consistently blamed his mother for coercing him into joining her in the murder of [Dennis.]” Tr. Vol. II p. 146. The trial court found as mitigating circumstances that Girdler had pled guilty, the circumstances were unlikely to recur, he worked, and prison would pose an undue hardship on his dependents. The trial court also found that Girdler’s criminal history contained no felonies and that Girdler had been under strong provocation because he had committed his crime against a person who had abused his mother. The trial court observed that there was a “big difference in potential sentencing” between murder and a Level 1 felony. Tr. Vol. II p. 146. The trial court then weighed the aggravating and mitigating circumstances, found the “aggravating and mitigating factors essentially balance in this case[,]” and imposed the advisory sentence for a Level 1 felony, thirty years of incarceration.

Discussion and Decision

[15] 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) (citations and quotation marks omitted), *trans. denied*. “[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).

[16] The trial court sentenced Girdler to thirty years of incarceration, which is the advisory sentence for a Level 1 felony. *See* Ind. Code § 35-50-2-4(b). The advisory sentence is “the starting point that the Legislature has selected as an appropriate sentence for the crime committed.” *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Hudson v. State*, 135 N.E.3d 973, 981 (Ind. Ct. App. 2019). Moreover, “[s]ince the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed, the defendant bears a particularly heavy burden in persuading [this Court] that his sentence is inappropriate when the trial court imposes the advisory sentence.” *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App.

2011). We “are unlikely to consider an advisory sentence inappropriate.”
Shelby v. State, 986 N.E.2d 345, 371 (Ind. Ct. App. 2013), *trans denied*.

[17] The nature of Girdler’s offense does not render his advisory sentence inappropriate. Girdler secured a plea agreement for a Level 1 felony despite committing a grisly murder when he helped Moore bludgeon Dennis to death, callously discarded his body to rot in the woods, and tried to cover up his crime. Dennis’s face was smashed so hard so many times it would not have been recognizable even had his body not severely decomposed in the woods, and his remains were found scattered in eight places over an area thirty-two meters long, moved by gravity, rainfall, and carnivores. The horrific nature of Girdler’s offense does not warrant a sentence reduction.

[18] Girdler has also failed to overcome his burden of showing that his character merits a reduced sentence. *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2105). For Rule 7(B) purposes, “[t]he character of the offender is found in what we learn of the offender’s life and conduct.” *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). This includes an evaluation of the factors like the defendant’s prior criminal history, *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *modified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2007), the possibility that the defendant will be deterred from committing new criminal offenses, *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005), and whether the defendant has expressed remorse for his crimes. *Gibson v. State*, 51 N.E.3d 204, 216 (Ind. 2016).

[19] It does not speak well of Girdler’s character that, despite claiming to have been coerced into participating in Dennis’s murder, he tried to cover it up by hiding his body under the mobile home and abandoning his car in another state shortly after the crime. Girdler then returned to the mobile home “to finish what was started the night before” and moved Dennis’s body into the woods and burned his belongings. Tr. Vol. II p. 48. Girdler sold his car and the hammer he used to murder Dennis to further cover his tracks and deliberately misled police to “keep [him]self out of trouble” by giving them multiple, conflicting statements. Tr. Vol. II p. 50. *See McDonald v. State*, 861 N.E.2d 1255, 1259–60 (Ind. Ct. App. 2007), *summarily aff’d*, 868 N.E.2d 1111, 1114 (Ind. 2007) (concluding that enhanced sentence was not inappropriate where defendant lied to police about the whole event before admitting his involvement). As if all of that were not bad enough, Girdler consistently blamed Moore for the crime, tattooed a picture of two hammers onto his body, and bragged that he would kill Dennis again. *See Bryant v. State*, 984 N.E.2d 240, 253 (Ind. Ct. App. 2013) (concluding that enhanced sentence was not inappropriate where defendant bragged about his crime after he committed it), *trans. denied*. Finally, Girdler committed his offense while on probation for a prior misdemeanor conviction. *See Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017) (“Even a minor criminal record reflects poorly on a defendant’s character”). In light of the nature of his offense and his character, Girdler has failed to convince us that this thirty-year advisory sentence for conspiracy to commit murder is inappropriate. *See Messel v. State*, 80 N.E.3d 230, 233 (Ind. Ct. App. 2017) (concluding that aggravated sentence was not inappropriate where defendant “brutally bludgeoned” victim

to death before “dump[ing] her body as if it were a piece of trash” and attempted to dispose of evidence), *trans. denied*.

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

Robb, J., and Pyle, J., concur.