MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Lonnel Tinker,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 3, 2024

Court of Appeals Case No.
23A-CR-1177

Appeal from the Allen Superior Court

The Honorable David M. Zent, Judge

Trial Court Cause No.
02D06-2212-MR-22

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

[1] Lonnel Tinker appeals following his conviction of felony murder.[1] Tinker presents two issues for our review, which we revise and restate as three:

1. Whether the State presented sufficient evidence to sustain his conviction;

2. Whether the trial court abused its discretion at sentencing by failing to consider proposed mitigating circumstances; and

3. Whether Tinker's aggregate sentence is inappropriate given the nature of his offense and his character.

We affirm.

Facts and Procedural History

[2] On November 28, 2022, Johnny Yates agreed to trade two of his guns and marijuana for one of Anfernee Dean's handguns. Amber Koester, Yates's girlfriend, drove Yates from the apartment she and Yates shared to a house on Reed Street in Fort Wayne where the trade was to take place. Koester sat in the driver's seat. Yates sat in the front passenger seat with a backpack containing the two guns he intended to trade and seventy-one grams of marijuana. After Koester and Yates arrived at the Reed Street house, Yates called Dean and spoke with Tinker on Dean's phone. Shortly thereafter, Tinker and Diego

[1] Ind. Code § 35-42-1-1(2).

Thornton approached Koester's car, and Yates invited them into the car. There was a booster seat on the backseat of the car on the passenger side, and Tinker sat in the booster seat behind Yates. Thornton sat in the backseat behind Koester.

[3] Yates passed one of the guns he intended to trade back to Tinker, and the two discussed the planned transaction. Yates had put tape along the bottom of the gun to hold the magazine in place, and Tinker questioned him regarding whether the gun was defective. Dean then walked out of a nearby alley and approached Yates's window. Yates greeted Dean, and as Yates talked with Dean, Tinker pulled out a handgun and pointed it around the front passenger seat into Yates's abdomen. Thornton also drew his handgun and pointed it at Koester's head. Yates told Koester to drive away while the others told her to turn the car off, and she "just kind of like froze." (Tr. Vol. 1 at 196.) Thornton reached over the driver's seat to try to grab the keys, and Koester tried to prevent him from taking the keys. Koester then heard Tinker shoot Yates multiple times. After the gunshots, Koester, Thornton, and Tinker all exited the car. Thornton, Tinker, and Dean left the scene. Koester began screaming, got back into the car, and drove her car to the nearby home of Yates's brother. Emergency personnel could not save Yates, and he died from his injuries. Koester told the responding officers: "They were in the back of the car, had a gun to all of us, and was trying to steal our stuff." (State's Ex. 2 at 3:20-3:26.)

[4] Police canvassed the area around where the shooting occurred, and neighbors reported hearing between six and eight gunshots. Yates's autopsy indicated

that he suffered eight gunshot wounds. Police also found spent bullet casings and bullet holes inside Koester's vehicle. The bullet casings indicated that two guns in the vehicle fired during the robbery. A crime scene technician determined that one of the bullets that hit the center console originated from the back passenger seat. The police also reviewed footage from a surveillance camera near where the shooting occurred. The footage showed Dean approach the vehicle, the headlights dim and brighten as Koester and Thornton fought over the keys, and Dean, Tinker, and Thornton flee after the shooting. Koester knew Dean prior to the shooting, and she was able to identify him in a photo array. She also identified Tinker after finding his Facebook profile. The police executed a search warrant on Tinker's phone and found pictures of him holding the gun Yates intended to acquire from Dean, but the police never recovered that firearm. Tinker's call log also revealed that he called Thornton several times the day after the shooting.

[5] The police interviewed Tinker on December 1, 2022. During the interview, Tinker stated that he accompanied Thornton to the purported trade. He acknowledged sitting in the booster seat behind Yates, but he denied shooting Yates. Tinker blamed Thornton for killing Yates. Later in December 2022, police attempted to initiate a traffic stop of Thornton's vehicle. Thornton did not comply and led the police on a chase, but before the police could apprehend him, Thornton committed suicide. In Thornton's vehicle, the police found one of the guns Yates told Dean he would give Dean when the two arranged the trade.

[6] The State initially filed a delinquency petition against Tinker because he was only seventeen years old at the time of the shooting, but the juvenile court waived jurisdiction over his case. The State then charged Tinker with felony murder and Level 2 felony attempted robbery.[2] The State also alleged Tinker was eligible for an additional penalty because he used a firearm during the commission of his offense.[3] The trial court held Tinker's jury trial between February 28, 2023, and March 2, 2023. The jury found Tinker guilty of both felony murder and attempted robbery, but the jury returned a not guilty verdict with respect to the alleged enhancing circumstance that Tinker used a firearm in the commission of the crime. To avoid double jeopardy, the trial court only entered a judgment of conviction for felony murder.

[7] The trial court held Tinker's sentencing hearing on April 24, 2023. The State asked the trial court "to impose a significantly aggravated sentence consistent with the overwhelming aggravation and the lack of mitigation." (Tr. Vol. 3 at 106.) The State noted Tinker's youth was a mitigating factor, but it asked the trial court to afford that factor little weight because of Tinker's juvenile history. That history consisted of seven juvenile delinquency adjudications, three of which were for acts that would have been felonies if committed by an adult. The State noted Tinker had been unsuccessful on probation, and the juvenile court ultimately sent him to Indiana Boys' School. In addition, the State

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[2] Ind. Code § 35-42-5-1 (robbery) & Ind. Code § 35-41-5-1 (attempt).

[3] Ind. Code § 35-50-2-11.

explained Yates "leaves behind a couple of children and a large family that will miss him." (*Id*. at 103.)

[8] The trial court found Tinker's age at the time he committed the offense to be a mitigating factor, but the trial court explained it did "not give that a ton of weight" because of Tinker's history of juvenile delinquency adjudications. (*Id*.) With respect to aggravating factors, the trial court stated:

> So, as aggravators, obviously the juvenile record that I just detailed, seven juvenile adjudications, three would have been felonies if you were an adult. Prior attempts at rehabilitation have failed. The services as detailed in the PSI that were provided by the juvenile system. You've been in juvenile center. You've been to boys' school. You've been on the juvenile anklet program that they call DAP. Show the nature and circumstances of the crime as an aggravator. Show the victim impact as an aggravator. And while it was a short period of time, there was definitely an escalation of criminal behavior from the misdemeanor up to the murder charge.

(*Id*. at 107.) The trial court then sentenced Tinker to a sixty-five-year term in the Indiana Department of Correction.

Discussion and Decision

1. Sufficiency of the Evidence

[9] Tinker contends the State presented insufficient evidence to support his conviction of felony murder. We apply a well-settled standard of review to such challenges:

> Sufficiency-of-the-evidence claims ... warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[10] A person commits felony murder if the person kills another human being while committing one of several felonies including robbery. Ind. Code § 35-42-1-1(2). Robbery is the knowing or intentional taking of property from another person or from the presence of another person by using or threatening the use of force on any person or putting any person in fear. Ind. Code § 35-42-5-1. The defendant need not be the killer to be guilty of felony murder if the defendant was an accomplice to the underlying offense. *Dean v. State*, 222 N.E.3d 976, 989 (Ind. Ct. App. 2023), *trans. denied*. "[W]hat matters is whether the accused reasonably should have foreseen that his felonious conduct would result in the mediate or immediate cause of the victim's death." *Id*. (internal quotation marks omitted).

[11] Tinker asserts "[t]here was no evidence presented to suggest that Yates's death was a probable or natural consequence of Tinker's actions, nor the actions known to Tinker of his accomplices." (Appellant's Br. at 11.) Tinker notes that a person's mere presence at the scene of a crime is insufficient to establish accomplice liability. *See Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014)

("A defendant's mere presence at the crime scene, or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability."), *trans. denied*. However, Koester did not testify Tinker was merely present at the scene of the shooting. She explained Tinker was actively involved in the robbery and that he was the person who shot Yates. Even though Koester did not see Tinker's gun fire because she was struggling with Thornton, Tinker was the only other person in the car besides Yates when the shots were fired. In addition, Koester stated that "where [Yates's] wounds were when I was holding him was in the same vicinity that [Tinker] had pointed the gun to him." (Tr. Vol. 1 at 228.) Tinker was the person sitting behind Yates at the time of the shooting, and Yates's autopsy indicated he was shot from behind with the bullets traveling along an upward trajectory. Two of Yates's gunshot wounds were contact wounds indicating the shooter held the gun close to Yates's skin while firing, and Koester testified that she saw Tinker holding his gun close to Yates before the shooting. Koester further explained:

> [Koester:] Also there is like bullet holes like in my car that's in between the center console and the passenger seat, and it's coming this way.
>
> [State:] In other words, consistent with where he was sitting?
>
> [Koester:] It would be where [Tinker] was sitting, yes.

(*Id*.) Therefore, we hold the State presented sufficient evidence to sustain Tinker's conviction.[4] *See*, *e.g.*, *Green v. State*, 756 N.E.2d 496, 498 (Ind. 2001) (eyewitness's testimony was sufficient to sustain murder conviction).

2. Consideration of Mitigating Factors at Sentencing

[12] Tinker asserts "the trial court's aggravated sentence in this matter was inappropriate and an abuse of the trial court's discretion." (Appellant's Br. at 11.) However, we separately analyze claims related to the trial court's discretionary imposition of a sentence and claims that a sentence is inappropriate under Indiana Appellate Rule 7(B). *Crouse v. State*, 158 N.E.3d 388, 394 (Ind. Ct. App. 2020). We trust sentencing decisions to the sound discretion of the trial court, and we review such decisions for an abuse of discretion. *Id*. at 393. An abuse of discretion occurs if the trial court's decision is "clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom." *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). A trial court may abuse its discretion at sentencing by:

> (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly

[4] We acknowledge that the jury's not guilty verdict with respect to the use of a firearm sentence enhancement seems inconsistent with the conclusion that Tinker shot Yates, but we do not review jury verdicts in criminal cases for consistency on appeal. *See Beattie v. State*, 924 N.E.2d 643, 644 (Ind. 2010) ("inconsistent verdicts are permissible and not subject to appellate review").

> supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

Id. The trial court is not required to accept a defendant's arguments regarding what constitutes a mitigating circumstance, nor is the trial court required to give proposed mitigating circumstances the same level of importance as the defendant does. *Comer v. State*, 839 N.E.2d 721, 728 (Ind. Ct. App. 2005), *trans. denied*. Moreover, we will remand for resentencing only "if we cannot say with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances." *McCann v. State*, 749 N.E.2d 1116, 1121 (Ind. 2001).

[13] Tinker contends "[t]he trial court failed to properly consider Tinker's youth, the trauma he had experienced prior to the underlying events, and the remorse he showed at sentencing to Yates' family." (Appellant's Br. at 11.) However, the trial court did list Tinker's youth as a mitigating factor at sentencing. While the trial court explained it did "not give that a ton of weight," (Tr. Vol. 3 at 106), the degree of weight the trial court assigns to a particular mitigating factor is not an appropriate basis for appeal. *See Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) ("Because the trial court no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence . . . a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors."), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

[14] Tinker addressed Yates's family before the trial court pronounced sentence and said: "I'm sorry for y'all's son passing, but I ain't do that to y'all son." (Tr. Vol.

3 at 106.) We disagree with Tinker that this statement is a showing of "remorse" when Tinker did not accept responsibility for his crime or express regret for his actions. In addition, while the State noted in its argument at sentencing that Tinker was present when his cousin was shot and killed, the State also asked the trial court to not consider that event to be a mitigating factor because Tinker's juvenile history predated that traumatic event and demonstrated a pattern of escalating unlawful behavior. Moreover, Tinker did not argue there was any nexus between his cousin's death and his perpetration of the instant offense. Therefore, Tinker has not demonstrated an abuse of discretion in the trial court's consideration of mitigating factors at sentencing. *See*, *e.g.*, *Guzman v. State*, 985 N.E.2d 1125, 1134 (Ind. Ct. App. 2013) (trial court did not abuse its discretion in failing to find as a mitigating factor that victim had a trace amount of narcotic in her system when defendant failed to establish a nexus between that fact and his crime).

3. Inappropriate Sentence

[15] Tinker also contends his sentence is inappropriate in light of the nature of his offense and his character. Our standard of review regarding such claims is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate.

George v. State, 141 N.E.3d 68, 73 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We may look at any factors appearing in the record when assessing the nature of the offense and character of the offender. *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). The defendant bears the burden of persuading us that his sentence is inappropriate. *Hubbert v. State*, 163 N.E.3d 958, 960 (Ind. Ct. App. 2021), *trans. denied*.

[16] "Our analysis of the nature of the offense requires us to look at the nature, extent, heinousness, and brutality of the offense." *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). As our Indiana Supreme Court has explained, "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality)" may lead to a downward revision of the defendant's sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When we evaluate whether a sentence is inappropriate given the nature of the offense, we first look to the advisory sentence. *Anglemyer*, 868 N.E.2d at 494. A person convicted of 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.

[17] Here, the trial court sentenced Tinker to the maximum term of incarceration. Tinker's offense was premeditated and brutal. As the State explained during the sentencing hearing, "the victim was lured basically to a location where the defendant and his colleagues could attack and kill him, basically. Rob, attack, and kill him, over guns." (Tr. Vol. 3 at 102.) Thus, we cannot say Tinker's sentence is inappropriate in light of the nature of his offense. *See*, *e.g.*, *Knapp v.*

State, 9 N.E.3d 1274, 1292 (Ind. 2014) (nature of defendant's offense did not render his sentence of life imprisonment without parole inappropriate when he lured victim under false pretenses and murdered her), *cert. denied*, 135 S. Ct. 978 (2015).

[18] Turning to Tinker's character, one factor we consider in assessing the appropriateness of a defendant's sentence is the defendant's criminal history. *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021). Despite Tinker's youth, his history of juvenile delinquency adjudications reflects poorly on his character. His history of unlawful behavior escalated from an act that would have been Class A misdemeanor criminal trespass[5] if committed by an adult to an act that would be Level 3 felony armed robbery[6] if committed by an adult to the instant felony murder offense. His repeated failures to abide by the terms of his probation and home detention resulted in escalating sanctions. Throughout, as the State noted at the sentencing hearing, there were "lots and lots of attempts to put him in basically . . . every program that is available through the Juvenile Justice Center, and here we are on a homicide." (Tr. Vol. 3 at 104.) Therefore, we hold Tinker's maximum sentence is not inappropriate given his character. *See*, *e.g.*, *Dean*, 222 N.E.3d at 991 (sixty-year sentence for felony

[5] Ind. Code § 35-43-2-2.

[6] Ind. Code § 35-42-5-1.

murder not inappropriate given defendant's extensive criminal history and lack of success on probation).

Conclusion

[19] The State presented sufficient evidence to sustain Tinker's felony murder conviction. Moreover, the trial court considered Tinker's youth in imposing sentence, and the trial court did not abuse its discretion in not finding any other mitigating factors. Finally, Tinker's sentence is not inappropriate given the nature of his crime, his escalating history of delinquency, and his failures to abide by the terms of his probation. We affirm the trial court.

[20] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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