ATTORNEY FOR APPELLANT

Scott H. Duerring
South Bend, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Tiffany A. McCoy
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

Alphonso L. James, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 4, 2021

Court of Appeals Case No. 21A-CR-148

Appeal from the Elkhart Circuit Court

The Honorable Michael A. Christofeno, Judge

Trial Court Cause No. 20C01-1908-MR-4

Weissmann, Judge.

[1] Having lost his father to gun violence as a preschooler, Alphonso L. James, III was just 13 years old when he killed an 18-year-old friend in an X-box trade gone awry. One of the first things a shaking, frightened Alphonso did after the shooting was to try to contact his mother.

[2] Indiana law allows children as young as 12 who are accused of murder to be prosecuted as adults and to receive adult sentences. That is what happened to Alphonso, who, despite being a middle schooler, was convicted in adult court and sentenced to 63 years, just two years shy of the maximum term of imprisonment that an adult could receive for the same offense. We conclude that a six-decade sentence reserved for the worst adult offenders is not appropriate for this 13-year-old child in light of the nature of the offense and the child's character. Thus, we reverse the sentence imposed by the trial court and reduce Alphonso's sentence to 55 years imprisonment.

Facts

[3] This case began in September 2018, when 18-year-old Jaren Minies contacted Alphonso on Facebook Messenger to ask if Alphonso still had a Taurus 9 mm gun for sale. Minies revealed he knew of a potential buyer. Alphonso, who was in seventh grade, offered to sell the gun for $200, noting it was new and that no one "got hit w[ith] it." Tr. Vol. III, pp. 76-78, 105-06, 109. After more exchanges, the two eventually decided that Minies would give Alphonso an Xbox One and $40 in exchange for the gun. They agreed to meet in Elkhart,

with Alphonso acquiescing to Minies's request for "[n]o funny shit either, little bro." Tr. Vol. III, p. 113.

[4] When Minies arrived in Elkhart at the agreed time, he was in the back passenger seat of a vehicle driven by 16-year-old C.V., whose boyfriend, Tywon Love, was in the front passenger seat. Alphonso knew both C.V. and Love.

[5] Alphonso sat in the back seat with Minies, who was holding a black gun with a laser attachment. The Xbox was on the floor of the back seat. Alphonso also was armed; his sweatshirt concealed a Bersa .380-caliber handgun. But Alphonso did not bring the Taurus 9 mm that he had agreed to sell to Minies.

[6] Alphonso asked to test the Xbox, and C.V. drove everyone to Love's home to do so. Alphonso and Love went inside while C.V. and Minies remained in the car. After determining that the Xbox worked, Alphonso and Love returned to the vehicle. Love then left, while Alphonso sat in the back seat again.

[7] Inside the vehicle, Alphonso reached for Minies's gun while also drawing his own weapon. Although C.V. reported hearing no yelling or threats by either Alphonso or Minies, she did hear "tussling" in the back seat followed by gunshots. Alphonso fled, continuing to shoot Minies while backing from the car. Alphonso fired nine shots—eight from his gun and one from Minies's. Seven of the shots hit Minies, who suffered injuries to his face, neck, shoulder, and chest. Bystanders called 911 to report the shooting and drove Minies to the hospital, where he was dead upon arrival.

[8] Meanwhile, Alphonso ran to the back yard of Henri Dejesus. Alphonso appeared "really shooken (sic), scared, shaking, sweating." Tr. Vol. II, p. 107. Alphonso told Dejesus that he had been "jumped" and stated he needed to speak to his mother. *Id.*; Tr. Vol. III, p. 87. Hearing the police sirens, Dejesus requested Alphonso leave. Dejesus reentered his home and soon heard noises coming from his basement. As Dejesus was walking down the stairs to investigate, Alphonso pointed a gun at him. Dejesus told Alphonso that if he wanted help, Alphonso needed to give him the gun. Alphonso removed the clip, cleared the gun, and handed it to Dejesus, who told him to leave.

[9] Alphonso asked for his gun back and then tried to grab it from Dejesus. Unsuccessful, Alphonso grabbed a cell phone out of the hands of Dejesus's fiancée while saying, "I'm gonna tell the police you got the gun." Tr. Vol. II, p. 110. Alphonso fled, and Dejesus called police, who confiscated the gun he obtained from Alphonso—the same gun that Alphonso had taken from Minies. Police also found Alphonso's gun in Dejesus's back yard.

[10] Alphonso fled first to South Bend and then to New York State, where he lived with family members. He was adjudicated a delinquent for assault and gang assault in New York in 2019 and committed to a juvenile detention center for 18 months before he was returned to Indiana to face delinquency proceedings in this case and others. The Indiana juvenile court waived jurisdiction and the State charged Alphonso with murder in criminal court.

[11] After a two-day bench trial, at which Alphonso admitted to shooting Minies but claimed self-defense, the trial court found Alphonso guilty as charged. The court denied Alphonso's request for alternative juvenile sentencing, which would have placed him in a juvenile facility rather than an adult prison. Instead, the court sentenced Alphonso, then 16 years old, to 63 years imprisonment—two years less than the maximum term of imprisonment available for an adult murderer.

Discussion and Decision

[12] Challenging only his sentence, Alphonso presents three arguments. First, he asserts the trial court abused its discretion by rejecting alternative juvenile sentencing. Second, he claims the trial court abused its discretion by considering unadjudicated juvenile matters as aggravating circumstances. And third, he contends his 63-year sentence is not appropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender.

[13] We find no abuse of discretion, as the trial court was justified in rejecting alternative juvenile sentencing and properly limited its consideration of Alphonso's juvenile history. Even so, we determine that a sentence for a 13-year-old that matches the harshest sentences imposed on hardened adult offenders is inappropriate in light of the nature of the offense and the character of the offender. Thus, we revise Alphonso's sentence to 55 years imprisonment.

I. No Abuse of Discretion in Rejecting Alternative Juvenile Sentencing

[14] Alphonso first argues that the trial court improperly denied his request for alternative juvenile sentencing under Indiana Code § 31-30-4-2. The trial court has discretion in such sentencing decisions, and we find it did not exceed those broad boundaries in this case.

[15] When sentencing a child offender in adult court, a trial court essentially has two choices. The court may sentence the child in accordance with adult sentencing statutes. *See, e.g.*, Ind. Code § 35-50-2-3. Alternatively, if the child is eligible, the court may elect to send the child to a juvenile facility instead of adult prison. I.C. § 31-30-4-2. Children eligible for the sentencing alternative include those under the age of 18 who are convicted of a felony in adult court after waiver from juvenile court. I.C. § 31-30-4-2(a)(1).

[16] If the trial court elects to sentence a child under Indiana Code § 31-30-4-2, it may suspend the criminal sentence and impose as a condition of that suspension that the offender successfully complete the juvenile facility program. I.C. § 31-30-4-2(b). Alternative sentencing is unavailable unless DOC determines a space is available. *Id.*

[17] As with all sentencing decisions, the trial court has broad discretion when determining whether to impose the alternative and will be reversed only for an abuse of that discretion. *Harris v. State*, 165 N.E.3d 91, 94-95 (Ind. 2021); *Legg v. State*, 22 N.E.3d 763, 767 (Ind. App. 2014), *trans. denied*. Our legislature has

provided no guidelines for determining when alternative sentencing should be imposed. *Legg*, 22 N.E.3d at 767. That said, we have found instructive the same factors used for determining whether to waive a child to adult court. *Id.* Those factors include: 1) the severity of the act or whether it is part of a pattern of acts; 2) whether the child is "beyond rehabilitation under the juvenile justice system"; and 3) whether it is in the "best interests" of the safety and welfare of the community to treat the child as an adult for prosecution purposes. *Id.*; Ind. Code § 31-30-3-2.

[18] The trial court applied the three factors and determined that Alphonso did not qualify for alternative sentencing. Tr. Vol. III, pp. 242-43; App. Vol. II, pp. 149-50. The court found that Alphonso's offense was "heinous and aggravated" and the "most serious of [his] pattern of delinquent acts." *Id.* at 149. The court also found that Alphonso was beyond rehabilitation under the juvenile justice system and that the community's safety and welfare are served by sentencing Alphonso as an adult. *Id.*

[19] Alphonso focuses on the trial court's rehabilitation finding, noting that he had only a few months to engage in rehabilitative programs after his initial delinquent acts and that his mother impeded, rather than spurred, such efforts. Alphonso offers little evidence or argument to refute the trial court's other findings, which alone justify its sentencing decision. Thus, we find no abuse of discretion in the trial court's refusal to impose alternative sentencing.

II. No Abuse of Discretion in Aggravating Circumstances

[20] Alphonso next contends that the trial court erroneously considered unadjudicated or unadmitted allegations of juvenile offenses as aggravating circumstances. We find no error because the trial court carefully segmented the evidence and did not consider the evidence to which Alphonso objected when imposing sentence.

[21] The subject allegations were detailed in the presentence investigation report (PSI), to which Alphonso objected. The PSI showed that during the six months before the shooting, Alphonso accumulated a troubling array of juvenile allegations, both in Indiana and New York. Those allegations included distribution of a video depicting an unconscious woman being raped at a party, possession of marijuana, twice removing his ankle monitor and once absconding while on home detention, identifying himself to police as his brother, and, while he was in New York, assault and gang assault. By the time he was sentenced in this case, Alphonso had been adjudicated only on the New York allegations—for which he was committed to a juvenile facility for 18 months—and one set of allegations in Indiana (dangerous possession of a firearm, resisting law enforcement, and theft of a firearm).

[22] Alphonso sought exclusion of the PSI's narrative as to all of his unadjudicated juvenile allegations. Tr. Vol. III, pp. 197-98. As to the adjudicated allegations, Alphonso sought exclusion of any statement of facts in the PSI that he had not already admitted as true. *Id.*

[23] The trial court agreed that much of the PSI relating to Alphonso's juvenile history was irrelevant. *Id.* at 205. But the court declined to strike any of the information about Alphonso's juvenile history. *Id.* at 204. Instead, the court ruled that it would not consider juvenile referrals alone as an aggravating circumstance but would consider them only on the rehabilitation issue if they demonstrated a pattern of conduct. *Id.*

[24] Alphonso faults only the trial court's application of its ruling, not the ruling itself. He argues that the court's sentencing order blurred the line between adjudicated and unadjudicated juvenile allegations. We disagree.

[25] Alphonso challenges the trial court's finding as an aggravating circumstance that, in the alleged New York incident, he "stabbed the victim seriously injuring the victim and the victim faced near death." *Id.* at 245; App. Vol. II, p. 151. Although Alphonso now proclaims his innocence in the New York matter, the PSI shows he admitted those allegations and was adjudicated a delinquent based on his admissions. App. Vol. II, pp. 103, 106. Nor did Alphonso object when the State argued at sentencing that he participated in the alleged New York stabbing and kicking, either as perpetrator or accessory, and that the victim nearly died. Tr. Vol. III, pp. 236-37.

[26] The trial court also noted in its written sentencing order that "[o]ne of the un-adjudicated referrals involved the rape of an intoxicated minor" and a video of that rape was "circulated on Facebook Messenger." App. Vol. II, p. 151. Alphonso contends the trial court improperly considered that unadjudicated

allegation, but the court specifically stated that allegation was "not considered by the Court as an aggravator in and of itself." *Id.* The trial court made no other mention of the pending allegation, and Alphonso offers no reason why we should not take the trial court at its word.

[27] Even if error had occurred, it would be harmless. The trial court found many other aggravating circumstances that Alphonso does not challenge: the nature and circumstances of the offense, including premeditation; Alphonso's commission of several uncharged or unalleged offenses; the likelihood that Alphonso would reoffend; his prior drug use; and his poor record of school attendance and school expulsion. *Id.* at 115-21; Tr. Vol. III, pp. 242-49. We can say with confidence that the trial court would have imposed the same sentence even if the challenged considerations had been excluded. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007) (ruling even if sentencing error occurs, appellate court will affirm unless "we cannot say with confidence that the trial court would have imposed the same sentence" without the error).

III. Near Maximum Sentence for 13-Year-Old Was Inappropriate

[28] Alphonso's final claim is that his sentence is inappropriate under Indiana Appellate Rule 7(B). Under that rule, even if the trial court did not abuse its discretion in imposing a sentence, this Court "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." App. R. 7(B). This review, which requires substantial deference to the trial court, is designed "to leaven the outliers, and not to achieve the perceived correct sentence." *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021) (internal citations omitted). Alphonso's 63-year sentence is an outlier needing leavening.

[29] The sentence imposed by the trial court is two years less than the maximum term of imprisonment for an adult murderer where a sentence of life without parole or death is not authorized or is not sought. I.C. § 35-50-2-3 (authorizing sentence between 45- and 65-years imprisonment, with an advisory sentence of 55 years imprisonment, for perpetrator under 16 years at the time of the murder, as well as for adult offenders where life or death sentence not available). Alphonso's sentence also is just two years below the maximum term of imprisonment for an adult murderer where a sentence of life without parole or death is not authorized or is not sought. *Id.*

[30] As to the nature of the offense, Alphonso, a middle schooler, killed an 18-year-old when trading a gun for an Xbox gaming system and $40 in cash. Both Alphonso and the adult victim were armed, and Alphonso fatally shot the victim with both guns before fleeing. The murder was the worst in a series of juvenile offenses of which Alphonso was accused or adjudicated during the months surrounding that offense. Although tragic, this killing lacks the type of malice present in other cases in which we have found the worst offenses and offenders. *See*, *e.g.*, *Culver v. State*, 727 N.E.2d 1062, 1065, 1071-2 (Ind. 2000) (affirming defendant's 65-year sentence for stabbing girlfriend's brother 28 times

with an ice pick, with the final stab through the victim's eye into his brain); *Wert v. State*, 121 N.E.3d 1079, 1081 (Ind. Ct. App. 2019), *trans. denied* (65-year sentence for caregiver who murdered 2-year-old child by inflicting what medical personnel described as "everything under the sun," including "significant anal injury," "significant vaginal injury," abrasions, lacerations, bruising, and multiple blunt-force traumatic injuries).

[31] Neither does the character of the offender support a near maximum sentence. Alphonso was barely a teenager when he committed the offense. His father's violent death had left him bereft and without a strong male figure in his life. Tr. Vol. III, p. 218. As a "follower," Alphonso later associated himself with older boys and men in search of a father figure, according to his mother. *Id.* at 219. Alphonso, in fact, was rarely alone at the commission of the other offenses for which he either was adjudicated or accused. App. Vol. II, p. 105. Peer influence and juvenile crime are significantly linked. Elizabeth S. Scott, Natasha Duell & Lawrence Steinberg, *Brain Development, Social Context and Justice Policy*, 57 Wash. U. J.L. & Pol'y 13, 25 (2008) ("It is well established that adolescents take more risks in the presence of peers than when they are alone or with an adult . . . [and] are more likely to endorse the benefits of risky activities relative to costs in the presence of peers than when they are alone."); *see also Roper v. Simmons*, 543 U.S. 551, 578, 125 S. Ct. 1183, 161 L.Ed.2d 1 (2005) (acknowledging brain studies reflecting this link); *Graham v. Florida*, 560 U.S. 48, 82, 130 S. Ct. 2011, 2034, 176 L.Ed.2d 825 (2010) (same).

[32] As with so many child offenders, Alphonso's home life has been inconstant. He has seven siblings, and his mother lacked stable housing, leading to his living with his grandfather and with his uncle at various times. Tr. Vol. II, pp. 220-21. Alphonso's mother faced contempt citations in at least two of his juvenile proceedings for allegedly flouting court orders. App. Vol. II, pp. 101-02. Alphonso suffers from anxiety and post-traumatic stress disorder for which he is prescribed medication. App. Vol. II, p. 106.

[33] Though the murder followed six months of alleged misconduct by Alphonso, only the New York case and one of the Indiana juvenile proceedings had been adjudicated at the time of his sentence in this case. App. Vol. II, pp. 101-03. Thus, before the murder, Alphonso had had little exposure to the rehabilitative functions at the core of the juvenile justice system's mission. *See C.B. v. State*, 988 N.E.2d 379, 383 (Ind. Ct. App. 2013) (ruling that purpose of juvenile court system is to rehabilitate children so they do not become adult criminals). The trial court was dubious about Alphonso's ability to reform, but Alphonso showed redemptive qualities by earning 35 credits toward his high school diploma while he was detained. App. Vol. II, p. 105.

[34] Alphonso committed an adult offense with an adult penalty, but he did so with a child's brain. A 13-year-old has less than 15% of the mean cognitive capacity and less than 25% of the mean psychosocial maturity of an adult about twice as old. Laurence Steinberg, et al., *Are Adolescents Less Mature Than Adults?*, 64.7 Am. Psych. 583, 591 fig.2 (2009). Brain studies show that juveniles, as compared to adults, display transient rashness, proclivity for risk, and inability

to assess consequences. *Graham,* 560 U.S. at 68. These differences in brain development both lessen a child's "moral culpability" and enhance the prospect that such "deficiencies will be reformed" as the child ages. *Id.* (quoting *Roper,* 543 U.S. at 569-70, 573).

[35] For these reasons, treating Alphonso the same as an adult offender for sentencing purposes not only is illogical but also contravenes the basic notion in our law "that juveniles are different from adults when it comes to sentencing and are generally less deserving of the harshest punishments." *State v. Stidham*, 157 N.E.3d 1185, 1188 (Ind. 2020). We conclude that Alphonso's sentence was inappropriate in light of the nature of the offense and the character of the offender.

[36] But if a near maximum sentence was inappropriate, what sentence is appropriate? At 13, Alphonso was one of the youngest children to murder in Indiana. *See, e.g.*, *Sanford v. State*, 51 N.E.3d 1182 (Ind. 2016) (13-year-old child pleaded guilty to two murders); *State v. Kedrowitz*, case number 69C01-1909-MR-1 (13-year-old convicted of murdering his two younger siblings awaiting sentencing in Ripley Circuit Court in November 2021).

[37] In 2010, 12-year-old Paul Gingerich faced murder charges for helping a 15-year-old friend to kill the friend's allegedly abusive stepfather. Gingerich ultimately pleaded guilty to conspiracy to commit murder and was sentenced to 30 years imprisonment, with five years suspended to probation *Gingerich v. State*, 979 N.E.2d 694, 701 (Ind. Ct. App. 2012). Outcry over Gingerich's prosecution in

adult court led to enactment of "Paul's Law"—the alternative juvenile sentencing provisions found in Indiana Code § 31-30-4-2. Dwight Adams, *Paul Gingerich committed a murder at 12 years old. Here's what happened in his case.* (Feb. 5, 2019, 7:40 a.m., updated Feb. 6, 1:07 p.m.), https://www.indystar.com/story/news/crime/2019/02/05/paul-gingerich-colt-lundy-12-year-old-murderer-phil-danner-what-happened/2766871002/. When Gingerich was resentenced after reversal of his conviction, the trial court, relying on the new legislation, imposed alternative juvenile sentencing based on evidence more mitigating than that in Alphonso's case. *Id.*; *State v. Gingerich*, case number 43C01-1312-MR-2 (order dated Feb. 3, 2014).

[38] But even before Paul Gingerich's case illuminated inequities of prosecuting children as adults, the Indiana appellate courts had used their independent constitutional authority to rectify specific injustices. *See* Ind. Const. art. VII, § 4 (authorizing Indiana Supreme Court to "review and revise the sentence imposed" in all criminal case appeals); Ind. Const. art. VII, § 6 (authorizing Indiana Court of Appeals "to the extent provided by rule," to review and revise sentences for defendants in all criminal cases). For instance, wielding such constitutional authority, our Supreme Court reduced by 10 years a 14-year-old's 60-year sentence for murder in *Carter v. State*, 711 N.E.2d 835 (Ind. 1999). Applying a previous version of Indiana Appellate Rule 7(B), the Court found the 60-year sentence manifestly unreasonable in light of the defendant's youth. *Id.* at 843.

[39] By comparison, this Court approved on other grounds a 35-year sentence—28 years less than Alphonso received—for a 14-year-old convicted of murder in *Thomas v. State*, 562 N.E.2d 43 (Ind. Ct. App. 1990). In *Brooks v. State*, 934 N.E.2d 1234 (Ind. Ct. App. 2010), *reh. denied*, *trans. denied*, we declined to revise a 55-year sentence for murder committed by a 14-year-old who executed a robbery victim and then committed another armed robbery two days later.

[40] We find *Legg*—on which we relied in affirming the trial court's refusal to apply alternative juvenile sentencing—particularly instructive here in determining an appropriate sentence for Alphonso. In *Legg*, a 16-year-old murdered his 19-year-old friend in front of the victim's younger siblings. 22 N.E.3d at 764. The trial court found as aggravating factors the child's history as a juvenile offender, his failure to complete probation and a suspended commitment in a prior proceeding, his marijuana abuse, the nature and circumstances of the offense, and the fact that he committed the offense in the presence of children. The trial court found as mitigating circumstances Legg's age, upbringing, and issues with schooling. *Id.* The trial court imposed the presumptive term of 55-years imprisonment, and we affirmed, concluding:

> We acknowledge that Legg is a young offender. We also acknowledge that Legg has been faced with many obstacles in his short life. But we must also consider the nature of the crime he committed here. He took the life of another person—a friend—in the presence of that person's family. He has already shown a propensity for skipping school and breaking the law. Under these circumstances, we do not think that the advisory term of fifty-five years is inappropriate in light of the nature of the offenses and Legg's character.

Id. at 767.

[41] Similar circumstances exist here. Alphonso is a young offender with a juvenile history, troubled past, and poor school attendance before expulsion. He killed a friend in front of at least one child and then committed more violence after fleeing to another state. Alphonso smoked marijuana daily and committed other juvenile offenses.

[42] Alphonso's sentence should reflect his extreme youth and the other mitigating circumstances which laid the groundwork for his commission of this offense at such a tender age. It also should reflect the nature and circumstances of his offense, which involved eight shots and the senseless loss of a young life, and Alphonso's continuance of violent behavior in New York. The trial court was justified in rejecting the most lenient approach available when sentencing Alphonso: alternative juvenile sentencing under Indiana Code §31-30-4-2. But as Alphonso deserved some forbearance at sentencing to reflect the necessary distinctions between child and adult offenders (*see Graham,* 560 U.S. at 68; *Roper,* 543 U.S. at 569-70, 573), we revise his sentence to the advisory level of 55 years imprisonment.. *See* I.C. 35-50-2-3.

[43] The judgment of the trial court is affirmed in part and reversed in part, and this case is remanded to the trial court for entry of a sentence of 55 years imprisonment.

[44] Mathias, J., and Tavitas, J., concur.