MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeb N. McGeorge,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 20, 2021

Court of Appeals Case No. 21A-CR-787

Appeal from the Dearborn Superior Court

The Honorable Jonathan N. Cleary, Judge

Trial Court Cause No. 15D01-2008-F4-15

Altice, Judge.

Case Summary

[1] Jeb N. McGeorge pled guilty to Level 4 felony operating a vehicle with a schedule I or II controlled substance causing death and Level 4 felony operating a vehicle with a schedule I or II controlled substance causing serious bodily injury. The trial court sentenced him to an aggregate term of twenty years, with eighteen executed in the Indiana Department of Correction (DOC). McGeorge appeals, asserting that his sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts & Procedural History

[3] At 12:17 a.m. on June 27, 2020, Dearborn County Sheriff's Department Deputy Brian Weigel was dispatched to a location on U.S. Highway 50 (US 50) in regard to a vehicle crash with entrapment. Three minutes prior, Deputy Weigel had heard on his police radio that a vehicle was traveling eastbound in the westbound lanes of US 50, a divided highway with a grassy median twenty to thirty feet wide and two lanes going each direction. When Deputy Weigel arrived, police and fire/EMT from nearby Aurora, Indiana were already on the scene.

[4] Investigation revealed that McGeorge, an Ohio resident, was the wrong-way driver and had collided head-on with a vehicle driven by Carlos Solis. Solis had one passenger with him, his fiancé, Alejandra Aguero-Vasquez. McGeorge's vehicle came to rest in the roadway, while Solis's vehicle landed in the ditch.

Solis and Aguero-Vasquez had to be extricated from their vehicle. Aguero-Vasquez was flown to a Cincinnati hospital and died shortly after arrival. Solis survived but suffered extensive injuries. McGeorge suffered minor injuries and was transferred to a local hospital, where he consented to a blood draw that revealed THC, Clonazepam, and Alprazolam in his system. An accident reconstructionist determined that, five seconds prior to the crash, McGeorge was traveling 70 mph in a 60-mph zone. According to 911 records, at least two westbound drivers on US 50 had reported, prior to the crash, that they had encountered someone driving eastbound in the westbound lanes.

[5] On August 24, 2020, the State charged McGeorge with: Count 1, Level 4 felony causing death while operating a vehicle with a schedule I or II controlled substance; Count 2, Level 4 felony causing death while operating a vehicle while intoxicated; Count 3, Level 5 felony reckless homicide; Count 4, Level 5 felony causing serious bodily injury while operating a vehicle with a schedule I or II controlled substance; Count 5, Level 5 felony causing serious bodily injury while operating a vehicle while intoxicated; Count 6, Class A misdemeanor operating a vehicle while intoxicated; and Count 7, Class C misdemeanor operating a motor vehicle with a schedule I or II controlled substance. In December 2020, the State requested and received leave to amend Counts 4 and 5 to charge them as Level 4 felonies.

[6] On February 22, 2021, McGeorge entered into a plea agreement with the State in which he agreed to plead guilty to Counts 1 and 4, with sentencing left to the discretion of the trial court. The State agreed to dismiss the remaining counts.

In March 2021, the court accepted the plea, and the matter was set for a sentencing hearing.

[7] Among others, Cathy McArthur, who was the first individual to arrive upon the accident scene, testified at the April 1, 2021 sentencing hearing. McArthur stated that, upon exiting her car, she observed McGeorge walking around "in circles" on US 50, and, initially, she did not realize there was another car in the ditch. *Transcript* at 55. Her immediate concern was getting McGeorge out of the roadway so she told him to get in her car. Before he did, McGeorge reached in his car and grabbed his phone. McArthur testified that, while in her car, he was texting on his phone. She urged him to put his phone away, and he told her he was texting his girlfriend. Then he stated, "I've got to delete this . . . I've got to delete these texts." *Id*. at 49. He continued to do so after she told him to stop. She also recalled, "He just kept asking me if the witnesses knew it wasn't his fault." *Id*. at 50. McGeorge said to her, "[T]hey know it's not my fault, right?" because "GPS took me on the wrong side." *Id*. McArthur testified that because McGeorge appeared dazed or confused, she suspected "he was high, drunk, or he had a concussion." *Id*. at 55. She asked him if he had consumed alcohol or drugs, and he told her he had not and said, "[T]hey can take my blood . . . I'm not on nothing." *Id*. at 52. McArthur said McGeorge stayed in her vehicle until she walked him to the ambulance.

[8] Sara Kaffenberger with the Dearborn County Special Crimes Unit conducted, pursuant to a search warrant, a forensic phone analysis of McGeorge's cell phone. She testified about a number of drug-related text messages to and from

McGeorge in the twelve or so hours prior to the crash that reflected that McGeorge had traveled from Ohio to Indiana to sell drugs that night and that he was on his way back to Ohio when the accident occurred.

[9] McGeorge also testified. He described that, upon seeing the oncoming headlights – which he said were the first headlights he recalled encountering – he slammed on his brakes and swerved left then right in an attempt to avoid a collision. McGeorge stated that he suffered injuries to his head, nose, and knee but crawled out the broken window and walked to the other car to check on the occupants, which he said was about the time that McArthur arrived at the scene. McGeorge testified that when he received the warrant for his arrest, he immediately drove from his home in Ohio to Dearborn County and turned himself in to authorities. He testified that he felt "absolutely awful" about what occurred, and he read aloud an apology that he had written to the victims. *Id.* at 75.

[10] Upon cross-examination, McGeorge admitted that he had been texting with friends during the daytime hours prior to the accident about getting high and that he had driven from his home in Ohio to a residence in Indiana that night to deliver a bag of marijuana to a buyer. McGeorge maintained that his GPS directed him to go the wrong way on US 50, but he admitted that he did not see the "do not enter" sign or any oncoming headlights prior to those of Solis's vehicle.

[11] The State argued "this wasn't an accident" but, rather, was a horrific crash caused by McGeorge's choices and actions. *Id*. at 110. The State challenged McGeorge's testimony that he had checked on the other vehicle's occupants before McArthur arrived, highlighting that there was only a twenty-two-second gap between the last 911 call reporting a wrong-way driver and McArthur's arrival on the scene. The State urged that the only person McGeorge was worried about at the scene was himself and asked the court to impose the maximum sentence of twenty-four years. McGeorge's counsel argued that McGeorge had cooperated with law enforcement from the beginning, admitted that he had ingested illegal substances before driving, and was very remorseful. He emphasized that McGeorge was twenty-one years old with very little criminal record and asked the court to impose concurrent sentences.

[12] Before imposing the sentence, the court observed that McGeorge chose to use drugs from the age of fifteen, and that "the only reason [McGeorge] came to this community was to deal drugs." *Id*. at 117. It further noted that McGeorge stated to the probation officer who prepared his PSI that "he guesses he was on the wrong side of the road but that he was following his GPS[,]" which indicated to the court that McGeorge "is not taking full accountability for his decisions." *Appellant's Confid. Appendix Vol. 3* at 7; *Transcript* at 119. The trial court sentenced McGeorge on Count 1 to eleven years executed and on Count 2 to nine years with two suspended, to be served consecutive to Count 1, resulting in an aggregate twenty-year sentence with two years suspended. McGeorge now appeals.

Discussion & Decision

[13] McGeorge argues that his sentence is inappropriate and asks us to revise it to an aggregate sentence of nine years. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. When reviewing the appropriateness of a sentence under App. R. 7(B), we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). That is, Indiana's flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). The principal role of appellate review should be to attempt to leaven the outliers, "not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). McGeorge bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[14] The advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Id*. at 1081. McGeorge was convicted of two Level 4 felonies. The sentencing range for a Level 4 felony is

two to twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. Here, the court sentenced McGeorge to eleven years on one count and a consecutive sentence of nine years with two suspended on the other. McGeorge maintains that this sentence was "excessive," noting that his conduct did not exceed that proscribed by the legislature for his offenses and that his eighteen-year executed sentence was three times the advisory. *Appellant's Brief* at 11.

[15] We have recognized, "[t]he nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). The evidence at the sentencing hearing showed that McGeorge had been getting high that day and, after consuming multiple substances, he chose to drive to Indiana to sell marijuana to someone. On his way back to Ohio, he entered US 50 and drove the wrong way for over two minutes and did not notice the headlights of other oncoming vehicles whose passengers had made calls to 911. McGeorge was speeding, going seventy miles per hour in a sixty miles per hour zone. His actions resulted in the death of one person and serious injury to another. The nature of the offense does not warrant reduction of McGeorge's sentence.

[16] "The character of the offender is found in what we learn of the offender's life and conduct." *Croy*, 952 N.E.2d at 664. It is well settled that, when considering the character of the offender, "'one relevant fact is the defendant's criminal history,' and '[t]he significance of criminal history varies based on the

gravity, nature, and number of prior offenses in relation to the current offense.'" *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017) (quoting *Garcia v. State*, 47 N.E.3d 1249, 1251 (Ind. Ct. App. 2015), *trans. denied*), *trans. denied*. In urging us to reduce his sentence, McGeorge highlights that he was "a very young man with no serious criminal history" and that he graduated from high school, quit all substance use after the wreck, was remorseful, and was assessed as a low risk to reoffend. *Appellant's Brief* at 11.

[17] With regard to his criminal history, McGeorge had previously been cited twice in Ohio for misdemeanor possession of marijuana, for which he was fined. He reported in the PSI that he began using marijuana at age fifteen, Xanax at age eighteen, cocaine at age sixteen, and acid at age eighteen, with his use of the different substances ranging from "every few weeks" to "twice a year." *Appellant's Appendix* at 8. He was expelled from high school his senior year stemming from marijuana use. At no time did McGeorge seek or receive drug abuse treatment. We find that, although his criminal history was not necessarily significant in terms of level of offenses, the type of substances he used increased in number and in seriousness and, at some point, McGeorge began selling drugs as well.

[18] Furthermore, at the scene, McGeorge deleted text messages from his phone. Forensic examination revealed that at 11:28 p.m. he sent a text with the message, "Yo, I'm running a bag to Indiana, then come over in an hour." *Transcript* at 111. At 11:29, he texted another number, "I'm making money, shorty." *Id*. The last message processed off his phone was at 11:54 p.m. and

was from the Indiana buyer, giving McGeorge instructions of where to pick him up to make the exchange. McGeorge's history of drug use and dealing reflects poorly on his character, as do his actions of deleting messages from his phone and continuing to blame his GPS for his wrong-way driving. We are unpersuaded that McGeorge's character warrants a lesser sentence.

[19] The question under App. R. 7(B) is not "whether another sentence is more appropriate" but rather "whether the sentence imposed is inappropriate." *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018); *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. McGeorge has failed to carry his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[20] Judgment affirmed.

Bradford, C.J. and Robb, J., concur.