MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel Farris,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 28, 2021

Court of Appeals Case No. 21A-CR-795

Appeal from the Posey Circuit Court

The Honorable Craig S. Goedde, Judge

Trial Court Cause Nos.
65C01-2002-F4-78
65C01-2002-F6-79
65C01-2002-F6-80
65C01-2002-F4-81

May, Judge.

[1] Daniel Farris appeals the sixteen-year aggregate sentence imposed following his convictions of two counts of Level 4 felony burglary,[1] two counts of Level 6 felony theft,[2] one count of Level 6 felony residential entry,[3] one count of Level 6 felony attempted residential entry,[4] and one count of Class B misdemeanor unauthorized entry of a motor vehicle.[5] He raises two issues for our review, which we revise and restate as:

i. Whether the trial court abused its discretion at sentencing; and

ii. Whether Farris's sentence is inappropriate given the nature of his offenses and his character.

We affirm.

Facts and Procedural History

[2] On February 21, 2020, Farris committed three crimes in Posey County, Indiana. Farris forced open the door to Daryl Abell's garage, breaking the door frame in the process, and entered Abell's house. In a separate incident, Farris visited an AT&T store and stole a cell phone from the counter. In a third

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[1] Ind. Code § 35-43-2-1.

[2] Ind. Code § 35-43-4-2(a)(1)(C).

[3] Ind. Code § 35-43-2-1.5.

[4] Ind. Code § 35-43-2-1.5 & Ind. Code § 35-41-5-1.

[5] Ind. Code § 35-43-4-2.7.

incident that day, Farris went to Mary Cavanaugh's house and forced open the door, knocking it off the door frame. He then stole a "nanny cam," a speaker, and a personal computer. (App. Vol. II at 35.)

[3] On February 23, 2020, Farris knocked on the door of Jessica Kolb's house. When Kolb answered the door, Farris asked Kolb for a ride. She refused, and Farris stuck his foot in the doorway when Kolb attempted to close the door. Kolb was able to push Farris out of the doorway. After Kolb told Thomas Phillips, her significant other, about Farris, Kolb called 911 and Phillips ran outside with a baseball bat. Phillips found Farris inside Phillips' vehicle and started to yell. Farris fled on foot while Phillips pursued him wielding the bat. Phillips stopped chasing Farris once he saw a police patrol vehicle. Posey County Deputy Sheriffs discovered Farris nearby and arrested him.

[4] On February 24, 2020, the State charged Farris with Level 4 felony burglary and Level 6 felony residential entry under cause number 65C01-2002-F4-000078 ("F4-78") for his entry of Abell's house; Level 6 felony theft under cause number 65C01-2002-F6-000079 ("F6-79") for the theft of the phone from the AT&T store; Level 6 felony attempted residential entry and Class B misdemeanor unauthorized entry of a motor vehicle ("F6-80") for his actions at the home of Kolb and Phillips; and Level 4 felony burglary and Level 6 felony theft ("F4-81") for his actions at the home of Cavanaugh. At a pretrial conference on November 10, 2020, Farris reported to the court that the State offered him a plea deal whereby Farris would plead guilty to each of the burglary charges and one of the residential entry charges with the remaining

charges being dismissed, and in exchange, Farris would be sentenced to an aggregate term of eight years with two of those years suspended to community corrections, but Farris decided to reject the plea offer. Additional plea negotiations were unsuccessful, and on February 17, 2021, Farris pled guilty to all charges pending against him without benefit of a plea agreement.

[5] The trial court held a sentencing hearing on April 7, 2021, and Farris called Westin Leach to testify. Leach stated that he was the Executive Director of Churches Embracing Offenders ("CEO"), "a non-profit ministry dedicated to ministering to the physical, emotional, social, and spiritual needs of offenders returning to the community from incarceration." (Tr. Vol. II at 27.) Leach explained that CEO works with between fifty to seventy-five clients at any one time and that the recidivism rate among offenders who had been through CEO's program was very low. Farris wrote a letter to Leach while Farris was incarcerated in the Posey County Jail, and the two began communicating. Leach testified he believed Farris would benefit from a sentence committing him to Vanderburgh County Therapeutic Work Release ("VCTWR") because then CEO would be able to meet with Farris regularly. Leach explained CEO already worked with several offenders in VCTWR. However, Leach also testified he had contacted the director of VCTWR about Farris, and the director indicated VCTWR could not accept Farris then because Farris had outstanding warrants in Vanderburgh County and Kentucky. Nonetheless, Leach opined that, if the court were to commit Farris to the Indiana Department of

Correction ("DOC"), the court should recommend Farris for the Recovery While Incarcerated program within the DOC.

[6] Farris also produced evidence of his participation in a Bible correspondence course while in jail, and he argued that an aggregate six-year sentence was appropriate. Farris asked that he be allowed to answer his outstanding warrants and then serve his sentence in the VCTWR. Farris argued his crimes were the result of circumstances unlikely to re-occur and he would respond affirmatively to short-term incarceration because of his newfound commitment to addressing his addiction.

[7] The State argued for an aggregate sentence of twenty-four years. The State contended Farris's lengthy criminal history constituted an aggravating circumstance as well as Farris's commission of the instant offenses while criminal charges in Kentucky were pending against him. The State also noted it could have filed additional charges against Farris based on his conduct while incarcerated in the Posey County Jail and it could have sought a habitual offender sentencing enhancement,[6] but the State chose not to pursue either avenue. While the State recognized Farris pled guilty, the State asked the trial court to afford that mitigating circumstance little weight. Mary Cavanaugh chose not to testify at Farris's sentencing hearing, but she did submit a victim impact statement. She explained: "When you burglarize a home, you steal

[6] Ind. Code § 35-50-2-8.

property but also the feeling of being safe in your own home. I felt violated by you going through our things. Touching everything. I will never forget that day." (App. Vol. II at 89.)

[8] In its sentencing orders, the trial court credited Farris for his decision to plead guilty as a mitigating circumstance. The trial court also found as aggravating circumstances: (1) Farris's "harm and injury to the community;" (2) Farris's commission of the instant crimes while on pretrial release; and (3) Farris's criminal history. (App. Vol. II at 97, 100, & 103.) In F4-78, the trial court sentenced Farris to seven years for his Level 4 felony burglary conviction and one year for his Level 6 felony residential entry conviction. The trial court ordered these sentences to run concurrently. In F6-79, the trial court sentenced Farris to one year for his Level 6 felony theft conviction. The trial court ordered that sentence be served consecutive to Farris's sentence in F4-78. In F6-80, the trial court sentenced Farris to one year for his Level 6 felony residential entry conviction and 180 days for his Class B misdemeanor unauthorized entry of a motor vehicle conviction. The trial court ordered the sentences for the two counts in F6-80 to run concurrently, but the court also ordered the sentence in F6-80 be served consecutive to the sentences in F4-78 and F6-79. In F4-81, the trial court ordered Farris to serve seven years for his conviction of Level 4 felony burglary and one year for his conviction of Level 6 felony theft. The court ordered the sentences for the two counts in F4-81 to be served concurrent to one another but consecutive to Farris's sentences in F4-78,

F6-79, and F6-80. Thus, the trial court imposed an aggregate sentence of sixteen years.

Discussion and Decision

I. Abuse of Discretion

[9] Our standard for reviewing a trial court's sentencing decision is well-settled:

> Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. 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. A trial court abuses its discretion by: (1) issuing an inadequate sentencing statement, (2) finding aggravating or mitigating factors that are not supported by the record, (3) omitting factors that are clearly supported by the record and advanced for consideration, or (4) finding factors that are improper as a matter of law.

Crouse v. State, 158 N.E.3d 388, 393 (Ind. Ct. App. 2020) (internal citations and quotation marks omitted).

[10] Farris argues that the trial court improperly used the impact of his crimes on his victims to justify imposing "an aggravated and consecutive sentence." (Appellant's Br. at 14.) Indiana Code section 35-38-1-7.1 lists certain aggravating circumstances the court may consider when imposing sentence, including whether "[t]he harm, injury, loss, or damage suffered by the victim of an offense was: (A) significant; and (B) greater than the elements necessary to

prove the commission of the offense." Ind. Code § 35-38-1-7.1(a)(1). Here, the trial court specifically addressed subsection (a)(1) at the sentencing hearing:

> I do find with regards to your aggravating factors there are certainly harm, injury, or loss that is part of the statutory factor under subsection 1. It talks about where the victim of the offense and the harm of that damage, sir, the significant (in audible) the elements necessary to prove the conviction of the offense. You know, I don't know if you, you (in audible) fit that, but the harm, the injury, the loss, the damage to these victims, sir, I certainly think is great.

(Tr. Vol. II at 63 (errors in original).) The trial court also listed "harm and injury to the community" from Farris's crimes as an aggravating circumstance in its sentencing order. (App. Vol. II at 97, 100, & 103.)

[11] Farris asserts the trial court considered subsection (a)(1) as an aggravating circumstance, and that this was error because "[t]he trial court gave no explanation for why the mental anguish it identified exceeded any impact that is normally associated with the crime of burglary." (Appellant's Br. at 15.) The legislature considers the typical harm caused by a particular crime when enacting a statutory penalty, and therefore, the impact of a crime on the victim is usually not an aggravating circumstance at sentencing. *See Bacher v. State*, 686 N.E.2d 791, 801 (Ind. 1997) (holding impact of murder on the victim's family is normally not an aggravating circumstance "because such impact on family members accompanies almost every murder," and therefore, it is encompassed within the statutory penalties for murder).

[12] However, the trial court's equivocal language makes it unclear to us whether the trial court actually considered victim impact under subsection (a)(1) as an aggravating circumstance. (Tr. Vol. II at 63 ("You know, I don't know if you, you (in audible) fit that").) Nonetheless, assuming arguendo the trial court improperly considered victim impact as an aggravating circumstance, a "single aggravating circumstance may be sufficient to enhance a sentence." *Buford v. State*, 139 N.E.3d 1074, 1081 (Ind. Ct. App. 2019). Therefore, "[w]hen a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld." *Id*. (holding that "even if the court considered an improper aggravator, other valid aggravating circumstances, which [the defendant] does not challenge, justify the sentence enhancement"). Besides significant impact to the victim, Indiana Code section 35-38-1-7.1 lists as potential aggravating circumstances, whether "[t]he person has a history of criminal or delinquent behavior" and whether "[t]he person has recently violated the conditions of any probation, parole, pardon, community corrections placement, or pretrial release granted to the person." Ind. Code § 35-38-1-7.1(a)(2) & Ind. Code § 35-38-1-7.1(a)(6). The trial court was justified in considering Farris's extensive criminal history, which included over a dozen previous felony convictions, and his decision to commit the instant crimes while facing criminal charges in Kentucky as aggravating circumstances. Given these valid aggravating circumstances, we cannot say the trial court abused its discretion in imposing an aggravated sentence. *See McCain v. State*, 148 N.E.3d 977, 984 (Ind. 2020) (holding even if trial court considered

an improper aggravating circumstance, other aggravating circumstances supported defendant's above-advisory sentence).

[13] Farris contends that, if the trial court would not have considered the impact of the crime on the victim as an aggravating circumstance, then the aggravating and mitigating circumstances would have essentially offset each other, and the trial court would have ordered Farris to serve his sentences in all four cases concurrently. *See Rhoiney v. State*, 940 N.E.2d 841, 847 (Ind. Ct. App. 2011) ("When a trial court finds that aggravating and mitigating circumstances are in equipoise, Indiana law provides that a defendant's sentences must run concurrently."), *reh'g denied*, *trans. denied*. However, we reject this argument. First, we do not know that the aggravating and mitigating circumstances were in equipoise before the trial court considered the impact of Farris's crimes on his victims. The trial court does not have an obligation to explicitly weigh aggravating and mitigating circumstances against each other. *See Anglemyer v. State*, 68 N.E.2d 482, 491 (Ind. 2007) (holding trial court cannot be considered to have abused its discretion by failing to "properly weigh" aggravating and mitigating factors), *clarified on reh'g* 875 N.E.2d 218 (2007). "Additionally, a trial court is not obligated to accept the defendant's argument as to what constitutes a mitigating factor, and the court is not required to give the same weight to proffered mitigating factors as does a defendant." *Smoots v. State*, 179 N.E.3d 1279, 1288 (Ind. Ct. App. 2021). Second, Farris perpetuated his series of offenses against a plethora of victims, and multiple crimes against multiple victims justifies imposing consecutive sentences. *Serino v. State*, 798 N.E.2d

852, 857 (Ind. 2003) ("when the perpetrator commits the same offense against two victims, enhanced and consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person"). Farris has not demonstrated an abuse of discretion.

II. Appropriateness of Sentence

[14] Farris also argues his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). We evaluate inappropriate sentence claims using a well-settled standard of review:

> 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. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[15] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). Indiana Code section 35-50-2-5.5 states: "A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years." Indiana Code

section 35-50-2-7 states: "A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Thus, the trial court imposed slightly longer terms than the advisory sentences with regard to Farris's two Level 4 felony convictions, and the trial court imposed the advisory sentence for each of Farris's four Level 6 felony convictions. The trial court also sentenced Farris to the maximum term of imprisonment for a Class B misdemeanor. *See* Ind. Code § 35-50-3-3 (defining 180 days as the maximum sentence for a Class B misdemeanor).

[16] When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, we do not believe any of Farris's offenses are any more or less egregious than the "typical" versions of each offense.

[17] However, we must still consider Farris's character in determining if the trial court's upward deviation from the advisory sentence on each of Farris's Level 4 felony burglary convictions make his sentence inappropriate. *See Holloway v. State*, 950 N.E.2d 803, 806-07 (Ind. Ct. App. 2011) (analyzing defendant's character after determining his offense was not less egregious than a "typical" burglary). "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender's continued criminal behavior after judicial

intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019).

[18] Leach testified at the sentencing hearing that he believes Farris sincerely wants to address his substance abuse issues and change his lifestyle, and Farris chose to accept responsibility for his crimes and plead guilty. However, as the trial court explained during the sentencing hearing, "[a]ctions speak louder than words[.]" (Tr. Vol. II at 65.) Farris's criminal record is lengthy, consisting of thirteen prior felony convictions and six prior misdemeanor convictions. Many of these prior convictions are for burglary and theft, like the charges in the instant case, and one of Farris's prior convictions is for failing to return to lawful detention.[7] Farris was first committed to the DOC when he was twenty-seven years old, and he has been in and out of the DOC ever since. Attempts at probation and work release have been unsuccessful. Following a prior burglary conviction, the court sentenced Farris to probation, but Farris's probation was subsequently revoked, and he served the remainder of his sentence in the DOC. Farris was also allowed to simultaneously serve his sentences in four cases on work release, but the trial court revoked this placement and committed Farris to the DOC when he failed to comply with the terms of the work release program. It also reflects poorly on Farris's character that he committed the present offenses while criminal charges were pending against him in Kentucky. *See Valle v. State*, 989 N.E.2d 1268, 1274 (Ind. Ct. App. 2013) (holding defendant's

[7] Ind. Code § 35-44-3-5 (2009).

commission of crime while incarcerated awaiting trial reflected negatively on his character). Thus, Farris's criminal history justifies an above-advisory sentence, and therefore, we cannot say that his aggregate sentence of sixteen years was inappropriate for convictions of two Level 4 felonies, four Level 6 felonies, and a Class B misdemeanor.[8] *See Rich v. State*, 890 N.E.2d 44, 55 (Ind. Ct. App. 2008) (holding sentence above the advisory term for burglary was appropriate given defendant's criminal history), *trans. denied*.

Conclusion

[19] The trial court did not abuse its discretion in fashioning Farris's sentence. Farris victimized multiple individuals, and therefore, the trial court was justified in ordering Farris to serve his sentences consecutively. The trial court also properly considered Farris's criminal history and his commission of the instant offenses while on pre-trial release as aggravating circumstances justifying an enhanced sentence. While Farris's offenses were not particularly egregious, his extensive criminal history renders his aggregate sixteen-year sentence not inappropriate.

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[8] Farris includes in his argument related to Appellate Rule 7(B) an assertion that the prosecutor acted vindictively in arguing at Farris's sentencing hearing for a sentence substantially above the sentence the State proffered as part of a potential plea deal. However, a plea agreement is not binding on the State or the defendant until the judge accepts it. *See St. Clair v. State*, 901 N.E.2d 490, 492 (Ind. 2009) ("A plea agreement is contractual in nature, binding the defendant, the state, and the trial court, once the judge accepts it."). Therefore, the State was not barred from advocating for a more severe sentence after Farris rejected the prospective plea deal.

[20] Affirmed.

Vaidik, J., and Molter, J., concur.