

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kristi Marie Dye,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 9, 2022

Court of Appeals Case No.
22A-CR-1058

Appeal from the
Noble Circuit Court

The Honorable
Michael J. Kramer, Judge

Trial Court Cause No.
57D01-2011-F4-20

Vaidik, Judge.

Case Summary

- [1] Kristi Marie Dye was convicted of Level 4 felony burglary of a dwelling and found to be a habitual offender. The trial court sentenced her to twenty-four years, with twenty-two years executed in the Indiana Department of Correction (DOC) and two years suspended to probation. She now appeals, arguing that sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] In October 2019, Dye’s biological daughter, Kyra Kester,¹ and Kester’s boyfriend, Dustin Sprague, moved into a home in Noble County. After a few days, Kester agreed to let Dye and her husband stay in the home for three days. Two months later, Dye and her husband were still staying rent-free in Kester’s home. In mid-December, Kester informed Dye that that she and her husband had thirty days to leave. Dye and her husband moved out on January 3, 2020, but left some of their stuff in Kester’s detached garage.
- [3] On January 17, Kester returned home from work to find the guest-bedroom window open and the back door unlocked, despite securing both before she left. When she entered the home, she found it “had been ransacked.” Tr. Vol. II p. 71. Many of her and Sprague’s personal items were taken, including food, clothing, and sentimental items. A glass coin jar in Kester’s room had been

¹ Kester was adopted by her stepmother, so Dye is not her legal mother.

emptied. The door to the garage had been “kicked” or “bashed in,” and items had been removed from the garage, including all of Dye’s belongings and sporting equipment belonging to Sprague. *Id.* at 73.

[4] Over the next few months, some of Kester’s and Sprague’s missing items were turned in to police by Kester’s sister, Kelly Bauer, and Kester’s brother’s girlfriend, Madison Camp. Both women told police that Dye had brought those items into their homes recently and left them there. Police also analyzed fingerprints found on Kester’s glass coin jar and found those prints matched Dye’s.

[5] In November 2020, the State charged Dye with Level 4 felony burglary of a dwelling and alleged she is a habitual offender. A bench trial was held in December 2021. At the trial, Dye admitted she entered Kester’s home on January 17 but stated she did so to retrieve her mail, which she believed Kester had opened. Bauer testified that after the break-in Dye asked her to leave a box of things at Bauer’s home. Later, Bauer went through the box and recognized some of the items as belonging to Kester, which led Bauer to inform the police. Bauer also testified Dye contacted her and asked her to falsely testify that Dye had been with her on the day of the break-in. Camp testified Dye contacted her and asked her to “write a letter to [the prosecutor]” stating Dye did not commit the break-in. Tr. Vol. III p. 19.

[6] The court found Dye guilty of Level 4 felony burglary. Dye then stipulated that she had previously been convicted of three unrelated felonies, and the trial court

found that she is a habitual offender. The sentencing hearing occurred in April 2022. The trial court found three aggravators: (1) many of the items stolen were “irreplaceable” and of “great sentimental value,” (2) Dye had a criminal history, including several probation violations, and (3) the crime was committed against a family member. *Id.* at 110. The court also found three mitigators: (1) Dye had previously served as a confidential informant for law enforcement, (2) she had experienced abuse as a child, and (3) she had substance-abuse issues. Determining that the “aggravating factors do outweigh the mitigating factors,” the court sentenced Dye to ten years for the Level 4 felony, with eight years executed in the DOC and two suspended to probation. *Id.* at 111. Due to the finding that Dye is a habitual offender, the sentence was enhanced by fourteen years, for an aggregate sentence of twenty-four years, with twenty-two years executed and two suspended to probation.

[7] Dye now appeals.

Discussion and Decision

[8] Dye contends that her sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate 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.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a

sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[9] The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. The sentencing range for the habitual-offender enhancement is six to twenty years. I.C. § 35-50-2-8(i)(1). For the Level 4 felony, the trial court sentenced Dye to an above-advisory sentence of ten years, eight of those years to be served in the DOC and two years suspended to probation. This sentence was enhanced by fourteen years due to the habitual-offender finding, for an aggregate sentence of twenty-four years, with twenty-two years executed and two years suspended to probation.

[10] Dye argues the nature of the offense does not warrant an above-advisory sentence because while she admittedly entered Kester’s home without permission, she contends she did so because Kester was opening her mail, and thus she is actually “the victim of a [crime] perpetrated by her daughter.” Appellant’s Br. p. 12. We disagree. Regardless of any actions by Kester, the record here shows Dye entered her own daughter’s home without permission and stole items, including those with sentimental value. She then damaged the

door to the garage and stole items belonging to Sprague. She did this notwithstanding the fact that Kester and Sprague had allowed her and her husband to stay in their new home, rent free, for several months.

[11] And while the nature of the offense alone may not warrant such a sentence, Dye's character does. She has an extensive criminal history. At the time of the sentencing hearing, forty-six-year-old Dye had six prior felony convictions (a 2021 conviction for possession of methamphetamine, a 2019 conviction for theft, a 2017 conviction for forgery, and three other theft convictions from 2004 and 2005), as well as eight misdemeanor convictions (possession of marijuana, criminal mischief, and multiple instances of check deception and driving while suspended) and two juvenile adjudications. She has violated probation several times. And two witnesses testified that in the months leading up to trial Dye approached them and asked them to either lie about her whereabouts on January 17 or contact the prosecutor in an attempt to have the charges dropped. These actions do not reflect well on Dye's character.

[12] Dye has failed to persuade us her sentence is inappropriate.

[13] Affirmed.

Riley, J., and Bailey, J., concur.