MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kyron McKnight,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 18, 2022

Court of Appeals Case No. 22A-CR-1085

Appeal from the Howard Superior Court

The Honorable Hans Pate, Judge

Trial Court Cause No. 34D04-2102-F1-581

Robb, Judge.

Case Summary and Issues

[1] Kyron McKnight pleaded guilty to assisting a criminal, a Level 5 felony. The trial court then sentenced McKnight to six years. McKnight now appeals, raising multiple issues for our review which we restate as: (1) whether the trial court abused its discretion in identifying aggravating circumstances; and (2) whether McKnight's sentence was inappropriate in light of the nature of the offense and the character of the offender. Concluding that the trial court did not abuse its discretion and that McKnight's sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] In an unrelated cause, Katlyn Ramer provided information to the police that resulted in the arrest of Kevonte Taylor. Taylor then formed a plan with his half-brothers, Terrence Ben and Amari Anderson, to murder Ramer so that she would be unable to testify against Taylor. As part of the plan, McKnight, who had a prior romantic relationship with Ramer, agreed to gather information to assist them.

[3] On December 14, 2020, McKnight asked Ramer for "[o]ne more night" with her and she agreed. Appellant's Appendix, Volume 2 at 18. That night while at Ramer's home, McKnight took videos of the inside of the home and asked about the security cameras in the home. McKnight then provided information

about the home's location and layout to Anderson. McKnight was aware that an attempt was going to be made on Ramer's life.

[4] On December 23, 2020, Ramer was home with her boyfriend, Sharman Pearson, when Ben broke into the home, shot Pearson multiple times, and then fled. Ramer hid under the bed while the shooting occurred. Pearson died of his injures. The State charged McKnight with conspiracy to commit murder, a Level 1 felony, and assisting a criminal, a Level 5 felony. McKnight pleaded guilty to assisting a criminal and the State filed a motion to dismiss the conspiracy to commit murder charge which the trial court granted.

[5] At the sentencing hearing, the trial court found that the "statutory aggravating factors are the nature of the crime" and "that [McKnight] sought [Ramer] out and apparently slept with her as a means of getting information that he basically knew was going to be used against her to try and end her life[.]" Transcript, Volume 2 at 37. The trial court believed this showed "an extreme indifference for life, and [was] a serious aggravating factor." *Id.* As mitigating circumstances, the trial court found McKnight's guilty plea, his lack of criminal history, his mental health condition, close family ties, and that McKnight had been a peaceful person who helped others for most of his life. However, the trial court found that the aggravating circumstances outweighed the mitigating circumstances.

[6] The trial court then sentenced McKnight to six years, with four years executed in the Indiana Department of Correction ("DOC"), one year executed on in-

home detention, and one year suspended to probation. McKnight now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Abuse of Discretion in Sentencing

A. Standard of Review

[7] Sentencing determinations are within the trial court's discretion and will be reversed for an abuse of discretion. *Harris v. State*, 964 N.E.2d 920, 926 (Ind. Ct. App. 2012), *trans. denied.* 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." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied.* The trial court can abuse its discretion by: (1) issuing an inadequate sentencing statement, (2) finding aggravating or mitigating circumstances that are not supported by the record, (3) omitting circumstances that are clearly supported by the record and advanced for consideration, or (4) by finding circumstances that are improper as a matter of law. *Anglemyer v. State,* 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007).

B. Aggravating Circumstances

[8] McKnight argues the trial court abused its discretion by finding aggravating circumstances that were improper as a matter of law. Here, the trial court found that "the statutory aggravating factors are the nature of the crime, we have an

extreme result which is a deceased person who was murdered[.]" Tr., Vol. 2 at 37. Therefore, McKnight claims that the only aggravating circumstance present is pursuant to Indiana Code section 35-38-1-7.1(a)(1), which permits the trial court to consider the following as an aggravating circumstance:

> The 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.

[9] However, the trial court also found:

> [I]t [is] an aggravating factor that [McKnight] sought [Ramer] out and apparently slept with her as a means of getting information that he basically knew was going to be used against her to try and end her life in a violent way[.] . . . It just shows sort of an extreme indifference for life, and it is a serious aggravating factor.

Tr., Vol. 2 at 37. McKnight contends that these are not separate aggravating circumstances and that the trial court "used one aggravating factor and restated it multiple times, in different terms" which constitutes an abuse of discretion.[1] Appellant's Brief at 8. We disagree.

[1] McKnight presents no case law to support his contention that this is improper as a matter of law.

[10] The record is clear that the trial court differentiated between an extreme result, Pearson's death, and an extreme indifference for life. The trial court's finding that McKnight had an extreme indifference for life was in reference to Ramer's life not Pearson's and stemmed from the nature and circumstances by which he obtained information that could have led to Ramer's murder. *McCann v. State*, 749 N.E.2d 1116, 1120 (Ind. 2001) (stating that the nature and circumstances of a crime is a proper aggravating circumstance). Accordingly, we conclude that the trial court did not abuse its discretion in its finding of aggravating circumstances.

[11] Further, even if just one aggravating circumstance was restated as argued by McKnight, a valid aggravating circumstance still exists pursuant to Indiana Code section 35-38-1-7.1(a)(1). *See Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002) (holding that "[e]ven when a trial court improperly applies an aggravator, a sentence enhancement may be upheld if other valid aggravators exist"); *see also Garrett v. State*, 714 N.E.2d 618, 623 (Ind. 1999) (holding that a single aggravating circumstance may be sufficient to support an enhanced sentence). When an improper aggravator is used, we 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*, 749 N.E.2d at 1121 (citation omitted). Thus, given the valid aggravating circumstance identified by the trial court, we are confident remand would be unnecessary.

II. Inappropriate Sentence

[12] McKnight argues that his sentence was inappropriate in light of the nature of the offense and his character. Indiana Appellate Rule 7(B) permits us to revise a sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail 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). An evaluation of the nature of the offense and character of the offender are separate inquiries that are ultimately balanced to determine whether a sentence is inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017).

[13] The defendant carries the burden of persuading us the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may consider any factors appearing in the record in making such a determination, *Reis*, 88 N.E.3d at 1102. The question under Rule 7(B) is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). "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*, 895 N.E.2d at 1225.

[14] Our analysis of the nature of the offense starts with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point selected by the legislature as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, McKnight pleaded guilty to assisting a criminal as a Level 5 felony and was sentenced to six years, with four years to be executed in the DOC, one year executed on in-home detention, and one year suspended to probation. Pursuant to Indiana Code section 35-50-2-6, a person who commits a Level 5 felony shall be imprisoned for a fixed term of between one and six years, with an advisory sentence of three years. Therefore, McKnight was sentenced to above the advisory but below the maximum for a Level 5 felony.[2]

[15] The nature of the offense is found in the details and circumstances of the offense and the defendant's participation therein. *Lindhorst v. State*, 90 N.E.3d 695, 703 (Ind. Ct. App. 2017). When evaluating a defendant's sentence that

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[2] Generally, maximum sentences are reserved for the very worst offenders. *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002). However, we have previously stated:

> [F]or purposes of Rule 7(B) review, a maximum sentence is not just a sentence of maximum length, but a fully executed sentence of maximum length and . . . [a]nything less harsh, be it placement in community corrections, probation, or any other available alternative to prison, is simply not a maximum sentence.

Bratcher v. State, 999 N.E.2d 864, 870-71 (Ind. Ct. App. 2013) (quotations, citations, and emphasis omitted), *trans. denied.* Therefore, McKnight was not given a maximum sentence for the purposes of Appellate Rule 7(B).

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. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied.*

[16] Generally, to be convicted of assisting a criminal all that is required is a showing that a person "harbors, conceals, or otherwise assists" a person who has committed a crime with the "intent to hinder the apprehension or punishment of" that person. Ind. Code § 35-44.1-2-5. We conclude that McKnight's actions were significantly more egregious and distinguish it from a typical assisting a criminal offense. Here, McKnight used a past romantic relationship with Ramer to secure information that could result in her death. McKnight went to her home, slept with her, took videos of the inside of her home, and asked questions about security cameras inside the home. McKnight then gave this information regarding the home's location and layout to Anderson, who McKnight knew was planning on killing her. These actions resulted in the murder of Pearson.

[17] Further, given that there was over a week between when McKnight gave Anderson the information and Ben committed the murder, McKnight had plenty of time to reconsider his actions and contact either Ramer or the police regarding the plot. Thus, given the nature of the offense, we find that McKnight's sentence is not inappropriate.

[18] McKnight also argues that his sentence is inappropriate given his character. We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A defendant's life and conduct are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied.* And the trial court's recognition or nonrecognition of aggravators and mitigators serves as an initial guide in determining whether the sentence imposed was inappropriate. *Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016).

[19] A review of McKnight's character reveals that he has no criminal history and pleaded guilty in this case. Further, as a mitigating circumstance, the trial court found that McKnight had been a peaceful person who helped others for most of his life. However, given the nature of the offense, we cannot say that McKnight's evidence of prior good character persuades us that his sentence is inappropriate. *See Sipple v. State*, 788 N.E.2d 473, 484 (Ind. Ct. App. 2003) (holding that defendant's maximum sentence for involuntary manslaughter was not inappropriate even though defendant had no criminal history and had pleaded guilty), *trans. denied.*

[20] Therefore, given the nature of the offense and the character of the offender, we cannot say McKnight's sentence is inappropriate.

Conclusion

[21] We conclude that the trial court did not abuse its discretion in sentencing McKnight and that McKnight's sentence is not inappropriate. Accordingly, we affirm.

[22] Affirmed.

Mathias, J., and Tavitas, J., concur.