

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Edward M. Liggins,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

December 15, 2022

Court of Appeals Case No.
22A-CR-1250

Appeal from the Elkhart Superior
Court

The Honorable Kristine A.
Osterday, Judge

Trial Court Cause No.
20D01-2004-F4-20

Robb, Judge.

Case Summary and Issues

- [1] Edward Liggins pleaded guilty to unlawful possession of a firearm by a serious violent felon, a Level 4 felony; battery by means of a deadly weapon, a Level 5 felony; and pointing a firearm at another, a Level 6 felony. Liggins also admitted to being an habitual offender. The trial court then sentenced him to an aggregate of thirty-two years to be executed in the Indiana Department of Correction (“DOC”). Liggins now appeals, raising one issue which we expand and restate as: (1) whether the trial court abused its discretion in sentencing Liggins; and (2) whether Liggins’ sentence was inappropriate given the nature of the offense and the character of the offender. Concluding that the trial court did not abuse its discretion and that Liggins’ sentence was not inappropriate, we affirm.

Facts and Procedural History

- [2] On February 5, 2020, Steven Friend Jr., and Kara Newman were at a bar when they were approached by Chad Neal. Neal offered the pair ten dollars to help him move a dresser. Friend and Newman agreed and all three of them drove to Neal’s house. However, the request for help moving furniture was a ruse. Six months earlier, Friend had stolen from Liggins. Neal had recognized Friend at the bar and approached him regarding the furniture to get Friend to come to his home where Liggins was waiting. When Friend, Newman, and Neal arrived at the home, Neal had Friend and Newman wait outside while he went in. Liggins then exited the house through a side door carrying a pistol in each hand. He

pointed one gun at Newman and pistol-whipped Friend in the head. Friend attempted to run around the side of the house, but Liggins shot him in the leg. After shooting Friend, Liggins fled the scene.

- [3] On April 8, 2020, the State charged Liggins with unlawful possession of a firearm by a serious violent felon, battery by means of a deadly weapon, and pointing a firearm at another. The State also alleged that Liggins was an habitual offender. Subsequently, Liggins pleaded guilty to all the charges and admitted to being an habitual offender. Liggins entered his guilty plea without a plea agreement.
- [4] At the sentencing hearing, the trial court found Liggins' criminal history and his failure to take advantage of programming or alternative sanctions to be aggravating circumstances. The trial court found Liggins' guilty plea to be a mitigating circumstance and gave it "significant weight[.]" Transcript of Evidence, Volume 2 at 40. However, the trial court determined that the aggravators outweighed the mitigators.
- [5] The trial court then sentenced Liggins to concurrent sentences of twelve years for possession of a firearm by a serious violent felon, six years for battery with a deadly weapon, and two years for pointing a firearm at another. Liggins' sentence was enhanced by twenty years for being an habitual offender for an aggregate sentence of thirty-two years to be executed in the DOC.
- [6] Liggins now appeals. Additional facts will be provided as necessary.

Discussion and Decision

I. Abuse of Sentencing Discretion¹

[7] Liggins argues the trial court failed to give proper consideration to mitigators he offered at his sentencing hearing. Whether to find a mitigating circumstance lies within the discretion of the trial court, and we will not reverse unless we find that the trial court has abused its discretion. *Moore v. State*, 827 N.E.2d 631, 642 (Ind. Ct. App. 2005), *trans. denied*. We will conclude the trial court abused its discretion if the defendant shows the trial court ignored a mitigating circumstance that is “both significant and clearly supported by the record.” *Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999).

[8] First, Liggins contends that “the trial court failed to give appropriate weight to the degree of his acceptance of responsibility both before and after charges were filed[.]” Appellant’s Brief at 14. The trial court found Liggins’ guilty plea to be a mitigating circumstance and gave it “significant weight[.]” Tr., Vol. 2 at 40. Thus, the mitigator was considered by the trial court. We will not remand for reconsideration of alleged mitigating circumstances that have debatable nature, weight, or significance. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*.

¹ Liggins seems to combine an abuse of discretion and Rule 7(B) argument in his brief. For the sake of completeness, we will address both separately.

[9] Next, Liggins argues the trial court did not give appropriate consideration to the impact lengthy incarceration would have on Liggins' family. Liggins has six children, and he contends that he is involved in the lives of all them "on both a financial and emotional level." Appellant's Br. at 14. However, our supreme court has explained that "[m]any persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship." *Dowdell*, 720 N.E.2d at 1154. Liggins has failed to show any special circumstances to suggest his imprisonment would result in undue hardship.

[10] Last, Liggins argues that "the trial court failed to give appropriate consideration to the fact that the events were unlikely to reoccur again." Appellant's Br. at 15. Liggins fails to support this contention. As noted by Liggins, he was under the influence of methamphetamine at the time of the incident and used methamphetamine daily for twelve months prior to his incarceration. Liggins' drug problem has been an ongoing problem that he has failed to address. *See Rose v. State*, 810 N.E.2d 361, 366-67 (Ind. Ct. App. 2004) (noting that defendant failed to address drug abuse in finding the trial court did not err in failing to consider his addictions a mitigating circumstance). Further, we disagree with Liggins' argument that use of drugs during the commission of the offense suggests he is unlikely to re-offend. *See Burgess v. State*, 854 N.E.2d 35, 40 (Ind. Ct. App. 2006) (finding that trial court properly considered defendant's risk to re-offend in light of evidence of the defendant's addiction).

[11] Accordingly, we conclude the trial court did not abuse its discretion by failing to find mitigating circumstances proffered by Liggins.

II. Inappropriate Sentence

A. Standard of Review

[12] Indiana Appellate Rule 7(B) provides this court with authority to revise a defendant's 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).

[13] The defendant bears the burden of persuading this court his or her sentence is inappropriate under the standard. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). On review, the question is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). We may consider any factors appearing in the record in making this determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*. Whether a defendant's sentence is inappropriate turns on

our “sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Cardwell*, 895 N.E.2d at 1224. The trial court’s recognition and non-recognition of aggravators and mitigators serves as an initial guide in our determination. *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017), *trans. denied*.

B. Nature of the Offense

- [14] Our analysis of the “nature of the offense” portion of Rule 7(B) review begins with the advisory sentence. *Clara v. State*, 899 N.E.2d 733, 736 (Ind. Ct. App. 2009). 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.
- [15] Liggins pleaded guilty to unlawful possession of a firearm by a serious violent felon, a Level 4 felony; battery by means of a deadly weapon, a Level 5 felony; and pointing a firearm at another, a Level 6 felony. Liggins also admitted to being an habitual offender. A person who commits a Level 4 felony shall be imprisoned for a fixed term between two and twelve years with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Further, a person convicted of a Level 4 felony and found to be a habitual offender shall be sentenced to an additional term between six and twenty years. Ind. Code § 35-50-2-8(i)(1). A person who commits a Level 5 felony shall be imprisoned for a fixed term between one and six years with a three-year advisory sentence. Ind. Code § 35-50-2-6(b). A person who commits a Level 6 felony shall be imprisoned for a

fixed term between six months and two and one-half years with an advisory sentence of one year. Ind. Code § 35-50-2-7(b).

[16] Here, Liggins was sentenced to twelve years for his Level 4 felony conviction, six years for his Level 5 felony conviction, and two years for his Level 6 felony conviction. All three of his felony sentences run concurrently but the trial court imposed an additional twenty years for Liggins' habitual offender enhancement. Therefore, Liggins was sentenced above the advisory sentence for all his convictions.

[17] The nature of the offense is found in the details and circumstances surrounding the offense and the defendant's participation therein. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When evaluating a defendant's sentence that 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*.

[18] The circumstances of Liggins' offenses were more egregious than the typical offense accounted for by our legislature. Liggins conspired with Neal to lure Friend to Neal's home so that he could get revenge on him. He involved an innocent third party, Newman, when he pointed his gun at her. Liggins also pistol-whipped Friend in the head and then shot him in the leg while he was fleeing. Therefore, the nature of Liggins' offense permits an enhanced sentence.

C. Character of the Offender

- [19] The “character of the offender” portion of the Rule 7(B) standard refers to general sentencing considerations and relevant aggravating and mitigating factors, *Williams v. State*, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), *trans. denied*, and permits a broader consideration of the defendant’s character, *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. “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*.
- [20] In examining a defendant’s character, one relevant factor is his or her criminal history, the significance of which “varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). However, “[e]ven a minor criminal record reflects poorly on a defendant’s character[.]” *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017).
- [21] Here, Liggins has an extensive criminal history including, in part, convictions for: burglary, robbery, vehicle theft, driving without a valid license, possession of cocaine, possession of marijuana, and nonsupport of a dependent child. Therefore, given Liggins’ character, his sentence is not inappropriate.
- [22] In sum, Liggins has failed to carry his burden of proving that his sentence is inappropriate in light of the nature of the offenses and his character.

Conclusion

[23] We conclude that the trial court did not abuse its discretion in sentencing Liggins and that Liggins' sentence was not inappropriate. Accordingly, we affirm.

[24] Affirmed.

Mathias, J., and Foley, J., concur.