

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Catherine E. Brizzi
Deputy Attorney General
Joseph Ross
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Nicholas A. Gregory,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 17, 2022

Court of Appeals Case No.
22A-CR-1284

Appeal from the Dearborn
Superior Court

The Honorable Jonathan N.
Cleary, Judge

Trial Court Cause No.
15D01-1907-F2-6

Brown, Judge.

- [1] Nicholas A. Gregory appeals his sentence for burglary as a level 4 felony and asserts his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

- [2] On the night of July 28, 2019, Gregory and his girlfriend, Jerrica Watson, argued and used drugs. On July 29, 2019, Gregory became upset upon learning that Watson and her son planned to leave with her mother. Gregory discharged a firearm in the presence of Watson, her son, her niece, and her mother, and she left for her parents' house with her son. Gregory became upset, used narcotics, and traveled to the house of Watson's parents, the Biermans. Watson, her son, her parents, her sister Jessica Pilcher, and Pilcher's five children were all present in the home. Pilcher's oldest daughter saw a man's hand reaching through the window of her basement bedroom, she screamed, and the family retreated to the upstairs of the house. While Pilcher dialed 911, Gregory screamed that he wanted to fight Watson's father, William Bierman, and to speak with Watson. Bierman retrieved a 9-millimeter firearm. Gregory carried a firearm while kicking the front door, eventually broke down the door, entered the house, went to the gun safe in the garage, and removed a rifle. Police arrived, an officer instructed Gregory to put down the weapon and show his hands, and Gregory threw down the weapon and reentered the residence. Gregory locked himself in an upstairs bathroom and tore a hole in the wall while the police helped the family leave the residence. Gregory remained locked inside the residence for multiple hours until eventually surrendering.

- [3] On July 31, 2019, the State charged Gregory with burglary while armed with a deadly weapon as a level 2 felony. On January 26, 2022, the court held a hearing at which, pursuant to a plea agreement, Gregory pled guilty but mentally ill to burglary as a level 4 felony.
- [4] On March 6, 2022, the court held a sentencing hearing. Watson testified that her son participated in counseling and therapy and that “[h]e’s got anxiety and stuff like that and, . . . issues from this, but he’s working on that and . . . I think he’s doing okay.” Transcript Volume II at 114. She agreed with the statement that “[i]t was an incident in which [Gregory] was not himself.” *Id.* at 123. Pilcher testified about the impact on her children and stated that her younger boys are “okay. [But] [t]hey don’t like really sleeping without a light at all,” her youngest daughter does not enjoy sleeping in her room anymore because she is reminded of the incident, and her oldest daughter “has some PTSD because of it, because she was there with the previous argument and at the house . . . when everything happened.” *Id.* at 131.
- [5] Gregory testified that he nasally ingested a mixture of heroin and fentanyl on the night of July 28, 2019, and he next remembered waking up in the attic of the Bierman house. He stated that he climbed down from the attic, found a phone in a bedroom, and surrendered by climbing out of the nearest window after talking to the police. He indicated that, while in jail, he participated in a Jail Chemical Addiction Program (“JCAP”) for nine months prior to the COVID-19 pandemic and for which he is now a mentor, and he began the faith-

based Recoveries Anonymous program. He apologized for his actions and their negative impact.

- [6] The court found the aggravating circumstances included Gregory’s criminal history, pending criminal proceedings, and violation of protective and no-contact orders, the impact on the victims, and the heinous nature of the crime. It found the mitigating circumstances included his remorse, guilty plea, completion of JCAP and bible study, PTSD, depression, and other mental health concerns including his drug addiction. The court sentenced Gregory to eleven years with one year suspended to probation.

Discussion

- [7] The issue is whether Gregory’s sentence is inappropriate in light of the nature of the offense and his character. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).
- [8] Ind. Code § 35-50-2-5.5 provides that a person who commits a level 4 felony shall be imprisoned for a fixed term of between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-36-2-5(a) provides that when a defendant enters a plea of guilty but mentally ill, the trial court “shall sentence the defendant in the same manner as a defendant found guilty of the offense.”

When a court enters a verdict of guilty but mentally ill, the defendant must be psychiatrically evaluated before sentencing. Ind. Code § 35-36-2-5(b). A defendant who is found guilty but mentally ill and is committed to the Department of Correction “shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant’s mental illness.” Ind. Code § 35-36-2-5(c). This treatment may be done by the Department of Correction or the Division of Mental Health and Addiction, either during imprisonment or during defendant’s probation. Ind. Code § 35-36-2-5(c) and (d).

[9] Our review of the nature of the offense reveals that Gregory discharged a firearm in the presence of four people. Gregory later went to the Biermans’ home and attempted to enter the house while holding a weapon and shouting. After kicking down the door, he retrieved another firearm from a gun safe in the garage before being ordered by police to drop the weapon, at which point he fled to an upstairs room and locked himself inside. He tore a hole in the wall and locked himself inside the house for multiple hours before being taken into custody. Gregory remained locked inside the house for sixteen or seventeen hours and his actions occurred over a prolonged period, led to the involvement of thirty to forty officers, were very dangerous for officers and the family, and had a lasting impact on the victims. Watson’s son required counseling and therapy due to resulting conditions such as anxiety, and four of Pilcher’s children continued to experience ongoing negative effects.

[10] Our review of the character of the offender reveals that Gregory was charged with burglary as a level 2 felony and pled guilty but mentally ill to burglary as a level 4 felony approximately two years and five months after the filing of the first charging information. According to the presentence investigation report (“PSI”), Gregory’s criminal history includes convictions for possession of marijuana and battery as class B misdemeanors in 2019, and at the time of sentencing he faced charges for possession of methamphetamine as a level 6 felony, possession of a narcotic drug as a level 6 felony, and unlawful possession of a legend drug as a level 6 felony.¹ The PSI indicates that Gregory has been diagnosed with anxiety, PTSD, and depression. With respect to substance abuse, the PSI states that he started drinking alcohol at the age of thirteen, began using marijuana and cocaine at age eighteen, began using OxyContin and Percocet at age twenty-two, used hallucinogens from age nineteen until age twenty-one, and started using heroin and fentanyl at nineteen.

[11] After due consideration, we conclude that Gregory has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[12] For the foregoing reasons, we affirm Gregory’s sentence.

¹ The Odyssey Case Management System indicates that the pending charges at the time of sentencing resulted in Gregory pleading guilty pursuant to a plea agreement to maintaining a common nuisance as a level 6 felony in June 2022.

[13] Affirmed.

Altice, J., and Tavitas, J., concur.