

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jamari L. Dodson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 21, 2023

Court of Appeals Case No.
22A-CR-2779

Appeal from the Allen Superior
Court

The Honorable Steven O. Godfrey,
Judge

Trial Court Cause No.
02D06-2003-MR-10

Memorandum Decision by Chief Judge Altice
Judges May and Foley concur.

Altice, Chief Judge.

Case Summary

[1] Following a jury trial, Jamari Dodson was convicted of murder and Level 6 felony criminal recklessness. The jury also determined that Dodson knowingly or intentionally used a firearm in the commission of the murder, which permitted the trial court to enhance his sentence by a fixed term of between five and twenty years. *See* Ind. Code § 35-50-2-11(d) (the firearm enhancement statute). The trial court sentenced Dodson to an aggregate term of eighty-one-and-one-half years in the Indiana Department of Correction (DOC). On appeal, Dodson challenges the sufficiency of the evidence supporting his convictions and the appropriateness of his sentence.

[2] We affirm.

Facts and Procedural History

[3] During the late afternoon of April 9, 2019, Michael Lovett was cutting James Dodson's¹ hair at Lovett's barbershop that was located near a busy intersection in Fort Wayne. James was wearing a black jacket with a multi-colored yellow and orange design, a white t-shirt, yellow pants, and yellow shoes.

[4] Keioda Johnson, Lovett's partner and the mother of their two children, was also in the shop. As the three were discussing rap music and various religious

¹ James is Dodson's brother, and we refer to him as "James" in this opinion.

topics, Johnson walked outside to take a telephone call from her mother. While talking with her mother, Johnson overheard Lovett and James arguing. The argument escalated when Johnson came back inside. Lovett then began to pace back and forth and told James that he could “call [his] brother, you know, I have brothers too.” *Transcript Vol. II* at 237. Lovett walked outside to make a phone call, and Johnson ordered James to leave the shop.

- [5] At approximately 4:00 p.m., James drove away from the barbershop while talking on his phone. Johnson then left to pick up the children from daycare. At approximately 6:00 p.m., Lovett’s friend, Haroun Bangura, stopped by the barbershop. Following a brief conversation, Lovett opened the shop’s front door and began talking to someone outside. Bangura then heard a series of gunshots.
- [6] A security camera at a BP gas station across the street from the barbershop captured footage of two men—one wearing a black jacket with a multi-colored pattern and yellow pants and the other wearing a white t-shirt and khaki slacks—approach the barbershop. The man in the jacket and yellow pants, later identified as James, approached the barbershop from the BP gas station. Regina Moore—who was stopped at a nearby traffic light—subsequently identified the man wearing the white t-shirt and khaki slacks as Dodson. When Dodson and James approached the barbershop, they both drew handguns, shot Lovett multiple times, and fled the scene.

- [7] Police officers arrived at the barbershop around 6:20 p.m. and found Lovett deceased on the ground. On the left side of the barbershop, the officers found eleven shell casings that had been fired from a 10mm handgun. An additional six .40 caliber casings were discovered to the right of the shop. Two bullet holes were found in the exterior wall of the barbershop near Lovett's body, and a spent bullet was discovered in the barbershop's sink. A forensic firearms analyst tested the casings and bullet and determined that the .40 caliber casings had been fired by one gun and the 10mm shells were fired from a different handgun.
- [8] The day after the shooting, an autopsy was performed on Lovett's body where it was determined that Lovett had been shot seven times. The autopsy showed six exit wounds, and one .40 caliber bullet was removed from Lovett's body. Lovett suffered a fatal gunshot wound to the head, and another bullet had pierced his abdominal aorta that would have been fatal within three minutes. Lovett suffered additional gunshot wounds to his abdomen, left leg, left and lower back, and buttocks.
- [9] During the autopsy, fingernail clippings were taken from Lovett for DNA testing. As Dodson became a suspect in the shooting, Fort Wayne police officers went to Dodson's residence in January 2020, where they executed a warrant and collected his DNA sample. The fingernail testing revealed DNA from two individuals, and the results showed that it was eighty-four times more likely that the DNA originated from Lovett and Dodson rather than from Lovett and some other unnamed individual. The investigation also determined

that James's and Dodson's cell phones were in use near the barbershop when Lovett was shot.

[10] On March 6, 2020, the State charged Dodson with Lovett's murder in Count I, Level 6 felony criminal recklessness for "recklessly, knowingly, or intentionally discharging a firearm, which . . . created a substantial risk of bodily injury to people in the area of Lake Avenue and Anthony Boulevard" in Count II, and the knowing or intentional use of a firearm in the commission of a felony that resulted in death or serious bodily injury in Count III. *Appellant's Appendix Vol. II* at 30.

[11] At Dodson's jury trial that commenced on September 27, 2022, Moore testified that she was stopped at a traffic light on the corner near the barbershop and heard several gunshots. Moore saw two men running away with guns in their hands and she identified Dodson, who was wearing a white t-shirt and khaki shorts, as one of the individuals. Following the presentation of the evidence that included witness testimony, the BP camera footage, cell phone data, and numerous exhibits, the jury found Dodson guilty of murder and criminal recklessness. During a second phase of the trial, the jury determined that Dodson had used a firearm when committing the offenses.

[12] At the sentencing hearing on October 28, 2022, the trial court found that twenty-three-year-old Dodson had been adjudicated a delinquent for disorderly conduct at the age of twelve and was ordered to participate in counseling and a "thinking errors program." *Appellant's Appendix Vol. III* at 5. Dodson was again

adjudicated a delinquent in 2014 for carrying a handgun without a license and was ordered to participate in “Project L.I.F.E.”, a rehabilitation program, and in substance abuse outpatient treatment. *Id.* On May 12, 2016, Dodson was referred to counseling after being adjudicated delinquent for resisting law enforcement and interfering with the reporting of a crime. Dodson was also adjudicated delinquent in January 2017 for what would have been a Level 6 felony for pointing a firearm at another, Class A misdemeanor possession of a firearm, and Class A misdemeanor resisting law enforcement, had those offenses been committed by an adult.

- [13] The trial court identified Dodson’s substantial juvenile delinquent history, prior failed attempts at rehabilitation, the nature and circumstances of the offense, and the effect of the offenses on others, as aggravating circumstances. The trial court found Dodson’s lack of adult criminal history, his age, and the low risk of reoffending, as mitigating factors. The trial court then sentenced Dodson to sixty years for murder, one year and 183 days for criminal recklessness, and to twenty years on the firearm enhancement. The trial court ordered the sentences to run consecutively for an aggregate sentence of eighty-one and one-half years in the DOC. Dodson now appeals. Additional information will be provided as necessary.

Discussion and Decision

I. Sufficiency of the Evidence

[14] Dodson challenges the sufficiency of the evidence, claiming that his convictions must be set aside because the State failed to offer any “compelling evidence that [he] committed” the offenses. *Appellant’s Brief* at 18. Dodson claims that there was a complete lack of consistency as to what happened, the DNA evidence was of limited value, and he was not identified as the shooter with any certainty.

[15] When reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor reassess the credibility of the witnesses. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). Rather, we consider the evidence most favorable to the verdict and any reasonable inferences that can be drawn therefrom. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We will affirm the conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *New v. State*, 135 N.E.3d 619, 624 (Ind. Ct. App. 2019). We further note that the evidence need not exclude every reasonable hypothesis of innocence, but instead, “the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.” *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007).

[16] To convict Dodson of murder, the State was required to prove that he knowingly or intentionally killed Lovett. *See* Ind. Code § 35-42-1-1. As for criminal recklessness, the State had to prove that Dodson recklessly, knowingly, or intentionally discharged a firearm, creating a substantial risk of bodily injury to the people near the area of Lake Avenue and Anthony Boulevard. I.C. § 35-42-2-2. Finally, to support the firearm enhancement, the State was required to

prove that Dodson knowingly used a firearm when killing Lovett. I.C. § 35-50-2-11.

[17] While Dodson claims that the State failed to present sufficient evidence establishing that he committed the offenses, Moore identified him at trial as one of the shooters. Additionally, the cell phone data and camera footage from the BP gas station near the barbershop supported the identification of Dodson as one of the shooters. More particularly, the cell phone data indicated that Dodson and James were in contact with each other from the time that James was arguing with Lovett until the shooting occurred. Both cell phones were tracked to the vicinity of the barbershop around 6:15 p.m., which coincided with the time of Lovett's murder. The surveillance video from the BP gas station captured Dodson and James approaching Lovett at the barbershop and shooting him. Finally, the DNA evidence provided support for Dodson's presence at the scene.

[18] As the record shows that the jury watched the surveillance video, heard the witness testimony, and considered all the other evidence presented at trial, we decline Dodson's invitation to reweigh the evidence. *See, e.g., Drane*, 867 N.E.2d at 146 (holding that it is the jury's province to assess a witness's credibility and weigh the evidence). In short, the evidence is more than sufficient to support Dodson's convictions.

II. Inappropriate Sentence

[19] Dodson argues that the eighty-one and one-half year sentence that was imposed is inappropriate when considering the nature of the offenses and his character in accordance with Ind. Appellate Rule 7(B). Our standard of review regarding inappropriate sentence claims is well-settled:

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.

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

[20] Whether a sentence is inappropriate 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. *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The defendant has the burden of persuading us that the sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). More particularly, the defendant must show that the sentence is inappropriate with “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).

- [21] The advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). 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).
- [22] I.C. § 35-50-2-3 sets forth a minimum sentence of forty-five years, a maximum of sixty-five years, and an advisory sentence of fifty-five years for the offense of murder. Here, the trial court sentenced Dodson to sixty years for that offense. As for criminal recklessness, a Level 6 felony, I.C. § 35-50-2-7 provides for a minimum sentence of six months, a maximum sentence of two and one-half years, and an advisory sentence of one year. The trial court ordered Dodson to serve approximately one and one-half years for that offense. As for the firearm enhancement, I.C. § 35-50-2-11 authorized the trial court to sentence Dodson to an additional fixed term of imprisonment of between five and twenty years, and the trial court imposed twenty years.
- [23] When examining the nature of the offense, we look to the details and circumstances of the crime and the defendant’s participation therein. *Madden*, 162 N.E.3d at 564. Our consideration of the nature of the offense recognizes the range of conduct that can support a given charge and the fact that the particulars of a given case may render one defendant more culpable than

another charged with the same offense. *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011).

[24] In this case, the evidence established that James and Dodson fired at least seventeen shots at Lovett. Lovett was wounded seven times by gunshots that clearly exceeded the single fatal shot to his head. The excessive nature of the shooting distinguishes the nature of Dodson's offense from other murders. *See, e.g., Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (holding that the defendant's decision to shoot the victim "numerous times instead of driving away from the altercation" was harm that exceeded what was necessary to prove the offense), *trans. denied*.

[25] The evidence also showed that Dodson opened fire near a busy intersection where there were moving vehicles, pedestrian traffic, and customers at the nearby BP. Dodson's actions endangered others, as each of the bullets fired posed not just a threat to Lovett, but to the bystanders and motorists in the vicinity. All these factors indicate the particularly egregious nature of Dodson's offenses. In short, Dodson has failed to present compelling evidence portraying the nature of his offenses in a positive light necessary to show that his sentence is inappropriate.

[26] Turning to Dodson's character, we note that "character is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant's character by engaging

in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. A defendant's life and conduct are illustrative of character. *Id.*

[27] A defendant's criminal history, including prior contact with the criminal justice system, is relevant when considering character under Appellate Rule 7(B).

Connor v. State, 58 N.E.3d 215, 221 (Ind. Ct. App. 2016) (finding that the defendant's juvenile adjudication reflected poorly on his character). The significance of a defendant's contacts with the justice system "is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Bryant v. State*, 841 N.E.2d 1154, 1157 (Ind. 2006).

[28] Dodson was nineteen when he committed the instant offenses. He had been previously adjudicated delinquent on four occasions for seven different offenses, including disorderly conduct, carrying a handgun without a license, resisting arrest, and pointing a firearm at another. Dodson's juvenile history indicates an escalation in his unlawful conduct. Further, Dodson received rehabilitative services including administrative supervision, counseling, and substance abuse treatment. Notwithstanding these opportunities, Dodson continued to commit serious criminal offenses. His failure to take advantage of the offered rehabilitative treatment indicates poor character. *See, e.g., Turkette v. State*, 151 N.E.3d 782, 789 (Ind. Ct. App. 2020) (holding that the defendant's sentence was not inappropriate when he was afforded a chance for rehabilitative treatment and "did not or could not take advantage of it"), *trans. denied*.

[29] Dodson has proven himself unwilling to take advantage of prior opportunities for rehabilitative treatment and instead escalated the severity of his conduct that resulted in Lovett's senseless death and the endangerment of numerous bystanders. Accordingly, we conclude that Dodson failed to establish that the nature of the crimes and his character provide a reason to revise his sentence.

[30] Judgment affirmed.

May, J. and Foley, J., concur.