

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian L. Weber,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 17, 2023

Court of Appeals Case No.
23A-CR-1286

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-1704-F1-368

Memorandum Decision by Chief Judge Altice
Judges Weissmann and Kenworthy concur.

Altice, Chief Judge.

Case Summary

[1] Brian L. Weber appeals the nine-year sentence that was imposed following his plea of guilty to burglary, a Level 3 felony. Specifically, Weber claims that the trial court abused its discretion in declining to recommend to the Indiana Department of Correction (DOC) that he be placed in a “Purposeful Incarceration Program”¹ (PI Program) because of his drug addiction. *Appellant’s Brief* at 6. Weber also contends that the sentence was inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts and Procedural History

[3] On August 16, 2016, Weber and another individual went to Caleb Stone’s Decatur County residence. When Stone heard a knock on his front door, he noticed Weber and the other man standing in the doorway. Weber announced that he was “an enforcer for the Hell’s Angels,” walked inside, and struck Stone in the head with a baseball bat. *Appellant’s Appendix Vol. II* at 28.

[4] A fight ensued and one of the intruders broke Stone’s flat screen television. Weber then grabbed Stone’s gun and crossbow, and both men fled the scene.

¹ The PI Program is a cooperative program between the DOC and the Indiana Court System that allows judges to consider a sentence modification if an individual successfully completes addiction recovery treatment while incarcerated. See *Hogan v. State*, 95 N.E.3d 181, 183 (Ind. Ct. App. 2018).

Stone went to a local hospital where medical personnel treated him for his injuries and placed ten staples in his head.

[5] The Decatur Police Department commenced an investigation, and Stone positively identified Weber as his attacker from a photo array. Weber was arrested and charged with Count I, burglary, a Level 1 felony, and Count II, burglary, a Level 2 felony, on April 25, 2017. The State also alleged that Weber was a habitual offender.

[6] On February 9, 2023, Weber and the State entered into a plea agreement, whereby Weber agreed to plead guilty to burglary, a Level 3 felony—a lesser offense of the burglary alleged in Count I—and to acknowledge being a habitual offender. In exchange, the State agreed to dismiss Count II. The parties further agreed that Weber would serve an executed sentence at the DOC that ranged from three to ten years for the burglary, along with a seven-year enhancement for being a habitual offender. The trial court accepted the plea agreement. At the sentencing hearing on May 30, 2023, the trial court identified the following aggravating factors: Weber’s criminal history that included felony convictions for forgery, fraud, receiving stolen property, and at least one misdemeanor conviction; several probation violations; and the impact that the crime had on Stone. The trial court also determined that there were no significant mitigating circumstances and sentenced Weber to nine years on the burglary charge, enhanced by seven years on the habitual offender Count, for an aggregate sentence of sixteen years.

- [7] At the close of the hearing, Weber’s defense counsel inquired as to whether “there [will] be a recommendation for [Weber] to participate in the [PI] Program.” *Transcript* at 47. The trial court responded that while it would “consider” a sentence modification request at some point, it would “not recommend” to the DOC that Weber should participate in the program. *Id.* The trial court noted that Weber’s offense was a crime of violence rather than a “drug dealing or possession case,” and that Weber had not been successful in past alternative placement programs. *Id.*
- [8] Weber now appeals.

Discussion and Decision

I. PI Program

Weber argues that the trial court abused its discretion in declining to recommend to the DOC that he be placed in the PI Program. At the outset, we note that the trial court’s role in relation to the PI Program is to identify those defendants who would most likely benefit from placement in the program. *See Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018). Entry into the program, however, is left to the DOC’s discretion. *Id.* Defendants do not have a right to placement in a program, and trial courts themselves have no authority to require the DOC to place a particular defendant into a program. *See Cohn v. Strawhorn*, 721 N.E.2d 342, 348-49 (Ind. Ct. App. 1999) (finding that Indiana law does not create “a statutory entitlement to educational programming for all, every, any or each person committed to the DOC”), *trans. denied*. Also, while

the location where a sentence is to be served is an appropriate focus for application of our “review and revise” authority, we will not conduct a review for an abuse of discretion. *T.A.D.W. v. State*, 51 N.E.3d 1205, 1210 (Ind. Ct. App. 2016). In short, we will not review Weber’s claim for an abuse of discretion. *Miller*, 105 N.E.3d at 197.

[9] Regardless, we note that in responding to defense counsel’s inquiry about recommending Weber for placement in the PI Program, the trial court pointed out that the offense was not a “drug dealing or possession case” but was “one of violence.” *Transcript* at 46-47. It further noted that Weber had not sought substance abuse treatment despite his admission that he had been abusing methamphetamine for decades. Also, while the trial court pointed out that Weber received alternative sentencing in the past, the evidence established that he failed to demonstrate a commitment to rehabilitation. For all these reasons, Weber’s argument fails.

[10] **II. Inappropriate Sentence**

[11] Weber argues that the nine-year sentence for burglary² is inappropriate when considering the nature of the offense and his character. More particularly, Weber contends that his sentence must be revised because he is a combat veteran with mental health issues and drug addiction. As a result, Weber posits

² Weber does not challenge the habitual offender sentencing enhancement.

that his burglary sentence “without purposeful incarceration is inappropriate.”
Appellant’s Brief at 2.

[12] 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.

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

[13] Whether we regard a sentence as inappropriate turns on our sense of 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).

[14] 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). The sentencing range for burglary, a Level 3 felony, is from three to sixteen years with an advisory sentence of nine years. In this case, the trial court sentenced Weber to the advisory term of nine years. Weber bears a particularly heavy burden in proving that the advisory sentence is inappropriate. *See Golden v. State*, 862 N.E.2d 1212, 1216 (Ind. Ct. App. 2007), *trans. denied*.

[15] When examining the nature of the offense, we look to the details and circumstances of the crime and the defendant's participation therein. *Id.* 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).

[16] We note that Weber makes no argument regarding the nature of his offense, thus implicitly conceding that, standing alone, his sentence is not inappropriate relevant to his offense. *Connor v. State*, 58 N.E.3d 215, 220 (Ind. Ct. App. 2016). Even excluding that concession, the nature of Weber's offense does not render his sentence inappropriate. To be sure, Weber admitted breaking into Stone's residence with another individual and striking Stone in the head with a baseball bat. The serious injury that Weber inflicted upon Stone exceeds the elements of burglary as a Level 3 felony. Weber and his companion also fought with Stone, damaged his flat screen television, and stole weapons from the residence. This evidence demonstrates that Weber's offense was egregious, and revision of the advisory sentence is not warranted when examining the nature of the offense.

[17] Turning to Weber’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 v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021).

[18] A defendant’s criminal history is relevant when considering a defendant’s character under App. R. 7(B). *Connor*, 58 N.E.3d at 221. 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).

[19] Here, the evidence showed that in 1993, Weber was sentenced to probation in two separate fraud cases. Both probationary terms were later revoked. Weber was also sentenced to probation for receiving stolen property in 1993, and his probation in that case was also terminated unsuccessfully. In 1997, Weber was convicted and sentenced for forgery, and in 2002, he was convicted for driving while suspended. Weber’s criminal history and his multiple probation violations reflect poorly on his character and do not demonstrate that his sentence is inappropriate.

[20] Notwithstanding Weber’s criminal history, he contends that his sentence must be revised because he struggles with PTSD and is addicted to drugs. In light of

these circumstances, Weber maintains that his sentence is inappropriate because the trial court rejected his request to be placed in a PI program. Weber, however, failed to present any evidence establishing that his mental health issues or drug addiction would render his sentence inappropriate. Moreover, the trial court considered Weber's mental health issues and addiction at the sentencing hearing and determined that Weber could be treated for those disorders during his incarceration. Also, the record is devoid of evidence demonstrating that Weber is an offender who would most likely benefit from the program. Finally, as discussed above, it is the DOC's decision "to place a particular defendant into a program." *Miller*, 105 N.E.3d at 197.

[21] In sum, Weber has failed to persuade us that the nine-year advisory sentence for burglary is inappropriate.

[22] Judgment affirmed.

Weissmann, J. and Kenworthy, J., concur.