

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Benjamin Loheide
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Megan M. Smith
Deputy Attorney General

Amanda Layne Martin-Nelson
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Damion Bryant,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 28, 2023

Court of Appeals Case No.
23A-CR-1363

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-2211-MR-5716

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

Altice, Chief Judge.

[1] Damion Bryant pleaded guilty to Level 5 reckless homicide for shooting and killing Wayne McGeorge, Jr. (Stepfather), and the trial court imposed a six-year sentence at the Indiana Department of Correction. Bryant appeals, asserting that his sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts & Procedural History

[3] In November 2022, twenty-year-old Bryant lived with his mother, Angela McGeorge (Angela), and Stepfather, along with their two minor children (the Children), ages nine and eleven.¹ During the evening of November 24, which was Thanksgiving Day, Angela and Stepfather argued in the garage, then each separately left the residence, with Angela going to stay at a friend’s home. Bryant decided he would confront Stepfather upon his return about arguing with Angela. Ultimately, an altercation ensued during which Bryant shot Stepfather in the abdomen with a Winchester rifle, killing him.

[4] Upon his arrest, Bryant told deputies that, after Angela and Stepfather had left, the Children came upstairs to Bryant’s room and told him about how their

¹ Angela testified at the sentencing hearing that she and McGeorge were no longer married, as of April 2017, but because they continued to live together as a family, and because Bryant referred to McGeorge as his stepfather, we identify him as such herein.

parents were arguing. Bryant said that, while waiting for Stepfather, he brought his Winchester rifle downstairs and loaded it, but then unloaded it. Because he was concerned about “how things would go” with Stepfather, who he believed had been drinking alcohol and might become aggressive, Bryant sent the Children next door to their grandparents’ home. *Appendix* at 14. Bryant told the Children that he might have to “punch [Stepfather] or shoot him.” *Id.*; *Transcript* at 43, 62.

[5] Bryant described to the officers that Stepfather “came closer and closer” to him during their “discussion,” causing Bryant to become afraid, so he re-loaded his rifle. *Appendix* at 14. Bryant claimed that Stepfather pushed and choked him, and, as Bryant tried to push him away with the barrel of the gun, it fired, striking Stepfather in the abdomen. Bryant stated that did not know whether he pulled the trigger or whether the firearm went off in the struggle. Bryant called 911, told the dispatcher that he had shot Stepfather, and attempted to render aid until emergency personnel arrived twenty to twenty-five minutes later.

[6] On November 30, 2022, the State charged Bryant with murder, a felony. In April 2023, Bryant entered into a plea agreement, agreeing to plead guilty to Level 5 felony reckless homicide in exchange for the State’s dismissal of the murder charge. The terms of Bryant’s sentence were left to the court’s discretion.

[7] At the May 2023 sentencing hearing, Bryant called as witnesses his mother, who described her volatile and deteriorating relationship with Stepfather, and

Melissa Pass, a family friend. Pass testified that one of the Children was afraid of Stepfather, as he was physically and verbally abusive to her. Bryant gave a statement in allocution, expressing remorse for taking Stepfather's life and apologizing to Stepfather's family members, Angela, and the Children. Bryant also presented documentary evidence including a toxicology report showing that Stepfather had Suboxone and marijuana in his system at the time of his death.

[8] The State called six witnesses, mostly Stepfather's family members, and submitted nine letters, all of which generally expressed anger and grief over the "senseless and tragic murder," during which Bryant "chose violence" to resolve whatever issues he had with Stepfather. *Transcript* at 42, 44. Stepfather's mother testified that the Children came running over to her home that evening saying that Bryant was going to shoot their dad, and then they "heard the shot." *Id.* at 50. The evidence showed that Bryant was not employed and was being fully supported by Angela and Stepfather.

[9] The court found as mitigating that Bryant admitted to killing Stepfather at the time it occurred, pleaded guilty, and had no criminal history. The court found seven aggravating circumstances, including that Bryant took the time to re-load a gun that he claimed to have unloaded, which indicated to the court that Bryant was "making a choice" – a "calculated" one – and was "thinking about" the situation. *Id.* at 61, 62. The court also found as aggravating that the Children heard the shot that killed their father and that when Stepfather's brother ran over, Bryant opened the door and told him that he had shot

Stepfather and then closed and locked it, taking away any possible help that family members might have been able to give and, moreover, took away their opportunity to say goodbye. The court also noted that Bryant did not have, and had never had, a stable job. Ultimately, the court determined that the aggravators “far outweigh” the mitigators and sentenced Bryant to an executed six years of incarceration. *Id.* at 64. Bryant now appeals.

Discussion & Decision

[10] Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our principal role in App. R. 7(B) review is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Turkette v. State*, 151 N.E.3d 782, 786 (Ind. Ct. App. 2020) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)), *trans. denied*. App. R. 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[11] Deference to the trial court 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). When

assessing the nature of the offense and character of the offender, we may consider “any factors appearing in the record.” *Turkette*, 151 N.E.3d at 786. Ultimately, whether a sentence should be deemed 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*, 895 N.E.2d at 1224.

[12] In determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). The sentencing range for Bryant’s Level 5 felony is between one and six years, with a three-year advisory sentence. Ind. Code § 35-50-2-6(b). Bryant asks us to revise his six-year sentence to a “three-year advisory sentence, at most, with a portion suspended to probation[.]” *Appellant’s Brief* at 19.

[13] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Bryant highlights that he sent the Children next door to keep them out of harm’s way and urges that he “made the choice that most protected them.” *Appellant’s Brief* at 15. We are unmoved by this argument. Bryant, evidently angry with Stepfather, elected to arm himself with a rifle and confront Stepfather when he returned to the home. Even if he had unloaded it by the time Stepfather came back, as he told police, he thereafter took the time to re-load it during the “discussion” with Stepfather. *Appendix* at 14. Obviously, other, safer, more reasonable options were available

to him. Instead, he chose violence, shooting Stepfather within earshot of the Children and Stepfather's family.

[14] Bryant also maintains that testimony at the sentencing hearing revealed that Angela was in an abusive relationship with Stepfather and that, while such did “not ris[e] to a complete justification or a defense,” it “showed a pattern of behavior that was consistent with” Bryant’s description of Stepfather’s actions that night. *Appellant’s Brief* at 17. Again, we are unpersuaded by this argument. Even if Stepfather was abusive to Angela or the Children, we reject this attempt to effectively shift the blame. See e.g., *Washington v. State*, 902 N.E.2d 280, 292 (Ind. Ct. App. 2009) (recognizing, while addressing nature of the dealing offense, that defendant tried to shift the blame to his nephew), *trans. denied*. Furthermore, Bryant decided to handle what he viewed as an abusive situation by confronting Stepfather well after any argument with Angela had ended and she was gone. In sum, Bryant has failed to paint the nature of his offense in a positive light as is his burden in accordance with App. R. 7(B).

[15] Turning to Bryant’s character, we have held 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). When assessing the character of an offender, one relevant factor is the offender’s criminal history. *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*. Bryant points out that he called 911 and pleaded guilty and argues that his “lack of any criminal history whatsoever” should warrant exercise of our discretion to revise his sentence. *Appellant’s Brief* at 17.

[16] 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. The record reveals that Bryant, age twenty at the time of the shooting, had never had a stable job and lived with Angela and Stepfather. Stepfather's family members testified that Bryant mostly spent time in his room playing video games. Mother purchased Bryant a car in 2020, but he still had only his learner's permit. There was no explanation for this overall lack of productivity. Rather, the evidence was that Stepfather supported him and, according to Bryant in the presentence investigation report, his relationship with Stepfather was "great." *Appendix* at 32. Although he pleaded guilty, his decision to do so was likely pragmatic given the strength of the evidence against him and the dismissal of a murder charge. Simply stated, we do not find any substantial virtuous traits or persistent examples of good character to militate in favor of sentence revision. *See Stephenson*, 29 N.E.3d at 122.

[17] Bryant's six-year sentence is not inappropriate in light of the nature of his offense or his character.

[18] Judgment affirmed.

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