

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michelle Key,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 8, 2023

Court of Appeals Case No.
23A-CR-1754

Appeal from the Henry Circuit
Court

The Honorable Kit C. Dean Crane,
Judge

Trial Court Cause No.
33C02-2006-MR-1

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

Weissmann, Judge.

- [1] Michelle Key pleaded guilty to neglect resulting in the death of a dependent and received the advisory sentence of 30 years imprisonment. She appeals her sentence, arguing it is inappropriate in light of her character and the nature of the offense. We affirm.

Facts

- [2] In January 2020, Key lived with her boyfriend, Jacob Davis, and five children from their previous relationships. Three of the children were Key's, and two, including four-year-old D.D., were Davis's. All five children were in Key and Davis's care, though Key often acted as the sole caregiver while Davis was at work.
- [3] On January 23, 2022, police went to Key and Davis's home following a report of an unresponsive child. Davis met the officers at the door and quickly led them to the living room where D.D. lay on his back. D.D. was not breathing and showed no signs of a pulse. His mouth had turned blue and appeared to have food or vomit inside. He also had multiple bruises and lacerations on his body, appeared emaciated, and had thin hair and multiple bald spots. Although he was warm to the touch, officers noticed he was near a heating vent and the room's thermostat had been set to its maximum temperature of 90 degrees Fahrenheit. Because D.D. was not breathing and showed no signs of a pulse, one of the officers began CPR. But the child was pronounced dead when

paramedics arrived. An autopsy later revealed D.D.'s cause of death to be neglect and complications from severe dehydration and malnutrition.

[4] The State charged Key with murder and Level 1 felony neglect of a dependent resulting in death. Key and the State then entered into a plea agreement under which Key agreed to plead guilty to the neglect charge in exchange for a sentencing cap of 30 years imprisonment and the State's dismissal of the murder charge.¹ The trial court approved the agreement, accepted Key's guilty plea, and entered judgment of conviction against her for the Level 1 felony.

[5] At Key's sentencing hearing, the State argued that Key's criminal history and failure to do anything to prevent D.D.'s death warranted imposing the maximum 30-year sentence allowed under her plea agreement. In response, Key asserted that her fear of Davis, which stemmed from alleged instances of domestic battery, and the hardship a lengthy sentence would impose on her children were mitigating facts. Key connected the alleged domestic abuse to her failure to help D.D. She also provided several letters from her children and friends attesting to her positive character. After considering this evidence, the trial court sentenced Key to 30 years imprisonment.

¹ Davis entered into a similar plea agreement.

Discussion and Decision

- [6] Key challenges her sentence under Indiana Appellate Rule 7(B). Under this rule, we may revise a sentence if “after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). Our “principal role” in reviewing sentence appropriateness is to “attempt to leaven the outliers” and “not to achieve a perceived ‘correct’ sentence.” *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). We therefore defer substantially to the trial court’s sentencing decision, which prevails unless “overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant’s character.” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).
- [7] Key pleaded guilty to Level 1 felony neglect resulting in the death of a dependent. For this, Key faced a sentence ranging from 20 to 50 years, with an advisory sentence of 30 years. Ind. Code § 35-50-2-4(c). Although Key received the maximum sentence available under her plea agreement, her 30-year sentence is only the advisory sentence for her crime. A defendant challenging an advisory sentence bears the particularly heavy burden of persuading us that sentencing revision is warranted, given that an advisory sentence is likely not inappropriate under Rule 7(B). *Mise v. State*, 142 N.E.3d 1079, 1088 (Ind. Ct. App. 2020).
- [8] The nature of Key’s offense does not support revision. Key pleaded guilty to a terrible act: neglectfully causing the death of a child in her care. Indeed, Key essentially admits this prong, conceding that a “more egregious offense is

difficult to imagine.” Appellant’s Br., p. 8. Although Key seeks to blame her actions on domestic abuse by Davis, we agree with the trial court that this does little to mitigate her offense. As the trial court put it, just “one phone call” to the authorities informing them of D.D.’s condition may have been all it took to save his life. Tr. Vol. Vol. II, p. 57.

[9] Key’s character also does not warrant relief. She has a criminal history. Key tries to downplay her criminal record, arguing that her prior misdeeds were only “minor-level offenses.” Appellant’s Br., p. 9. But her prior conviction for a similar offense—neglectfully endangering a dependent—is significant here. App. Vol. II, p. 140 (citing Ind. Code 35-46-1-4); *see also Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (“Even a minor criminal history is a poor reflection of a defendant’s character.”). Nor can we ignore the trial court’s finding that Key’s expressions of remorse were “speculative” and that it could not determine whether her remorse was “for the child’s [death] or due to her being held accountable.” Tr. Vol. II, p. 57.

[10] In sum, we conclude that Key has not carried her burden to present compelling evidence that her advisory sentence is inappropriate in light of the nature of her offense and her character.

[11] Affirmed.

Altice, C.J., and Kenworthy, J., concur.