# MEMORANDUM DECISION

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IN THE
# Court of Appeals of Indiana

John Patrick Talboo,
*Appellant-Defendant*

v.

State of Indiana,
*Appellee-Plaintiff*

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April 1, 2024

Court of Appeals Case No.
23A-CR-1231

Appeal from the Hancock Circuit Court

The Honorable R. Scott Sirk, Judge

Trial Court Cause No.
30C01-2202-MR-209

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

**Weissmann, Judge.**

[1] John Talboo pleaded guilty to voluntary manslaughter for killing his neighbor, Brandon Perry. On appeal, Talboo alleges that the trial court abused its discretion in sentencing him, particularly by making biblical references and discussing the moral teachings of the judge's faith. Talboo also argues that his sentence is inappropriate under Indiana Appellate Rule 7(B). Finding Talboo failed to show either that the court abused its discretion in sentencing or that his sentence is inappropriate, we affirm.

## Facts

[2] In the Winter of 2022, Talboo and his girlfriend, Julia Byrd, lived next door to Perry, Byrd's nephew. One day, Talboo and Perry were both outside shoveling snow when Talboo began yelling at Perry about threats Perry had made to Byrd a few weeks earlier. When Talboo warned Perry there would be an issue if he threatened Byrd again, Perry replied that "he would beat [Talboo] up right now." Tr. Vol. II, p. 14.

[3] Talboo promptly went inside his home and grabbed a handgun. Although Byrd pleaded with Talboo to stay inside, he went back out and resumed arguing with Perry. Eventually, Talboo drew his gun and shot Perry twice in the head and once in the chest, killing him.

[4] The State charged Talboo with murder and sought a use-of-a-firearm sentencing enhancement. The parties later entered into a plea agreement, under which Talboo agreed to both plead guilty to Level 2 felony voluntary manslaughter

and admit that the firearm enhancement applied. In exchange, the State agreed to dismiss the murder charge and recommend a sentencing range of 25 to 35 years imprisonment. Additionally, the plea agreement contained a sentencing appeal waiver provision, purporting to bar Talboo from appealing his sentence so long as that sentence complied with the agreement's terms.

[5] The trial court approved the plea agreement and accepted Talboo's guilty plea. At sentencing, each side presented witnesses and provided arguments for how the trial court should sentence Talboo. Just before imposing sentence, the trial judge noted that it was the National Day of Prayer and reflected on a passage from the Bible that the judge had read that morning. The judge referred to his belief that "the vengeful will face the Lord's vengeance" and "how truly easy it is to be good, to be holy, to be kind." Tr. Vol. II, p. 102.

[6] The trial court sentenced Talboo to 30 years in prison for the voluntary manslaughter conviction, enhanced by 5 years due to Talboo's use of a firearm in the crime, for a total sentence of 35 years imprisonment.

## Discussion

[7] Talboo makes two substantive arguments. First, he argues the trial court abused its discretion in sentencing him. And lastly, Talboo claims his sentence is inappropriate.[1] We address each in turn.

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[1] We also note as a preliminary matter that the State and Talboo disagree over whether the appeal waiver in Talboo's plea agreement is enforceable. But any waiver aside, Talboo is still not entitled to sentencing relief.

## I. Talboo Failed to Show an Abuse of Discretion in Sentencing

[8] "Sentencing is a discretionary function of the trial court," which we review for an abuse of discretion. *Scott v. State*, 162 N.E.3d 578, 581 (Ind. Ct. App. 2021). An abuse of discretion occurs "if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" *Id.* (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007)).

[9] A trial court may abuse its sentencing discretion by: (1) failing to enter a sentencing statement; (2) relying on aggravating and mitigating factors that are unsupported by the record; (3) not relying on reasons clearly supported by the record; (4) or by basing its decision on reasons improper as a matter of law. *Anglemyer*, 868 N.E.2d at 490-91. Here, Talboo alleges that the trial court improperly considered aggravating and mitigating factors and also considered reasons improper as a matter of law when the judge referenced his personal religious beliefs.

### A. Aggravating and Mitigating Factors

[10] Talboo first argues that the trial court improperly considered an element of the offense as an aggravating factor. An aggravator may be improper if it "comprises a material element" of the defendant's crime. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016) (quoting *Manns v. State*, 637 N.E.2d 842, 844 (Ind. Ct. App. 1994)). Talboo claims the trial court considered a material element of voluntary manslaughter—an intentional killing—in determining

Talboo's sentence. *See* Ind. Code § 35-42-1-3 (involuntary manslaughter). He relies solely on the trial court's statement that "taking the account of the action that you did; I feel the only appropriate sentence that I can give you is what the State requested." Tr. Vol. II, p. 103. We see nothing improper in this statement.

[11] It is well-settled that "the trial court may properly consider the particularized circumstances of the material elements of the crime to be an aggravating factor." *Harris v. State*, 163 N.E.3d 938, 955 (Ind. Ct. App. 2021). That is what happened here. The trial court's full sentencing statement shows that the court considered the facts before it and properly considered the circumstances of Talboo's crime. This was not an abuse of discretion.

[12] Talboo next briefly alleges that the trial court did not properly consider the mitigating factors surrounding his crime. The record reflects otherwise. During sentencing, the trial court repeatedly referenced Talboo's positive character and its belief that this was "a situation not likely to occur" again. Tr. Vol. II, pp. 101-02. Indeed, Talboo points to no specific mitigating factor that the trial court missed. His complaint here instead seems to be that the trial court did not weigh these mitigating factors more strongly. As this is an improper argument, Talboo has shown no abuse of discretion with the trial court's handling of the aggravating and mitigating factors. *See Anglemyer*, 868 N.E.2d at 491 (noting trial courts have no obligation to "properly weigh" aggravating and mitigating factors).

## B. Religious Comments

[1] In sentencing Talboo, the trial court stated:

> I have to have mercy for you and for the victim and the community as well when these types of acts happen. You know I wasn't going to say this but I guess I will. I'll say a couple things on this. One, today is the national day of prayer, so I hope all take time on that and be thoughtful in that regard. When I start my day, I start with readings. It's not in the Protestant Bible but it's in the Catholic. It's the first thing I read this morning. The vengeful will face the Lord's vengeance. Indeed, he remembers their sins in detail. But then I read, and everybody talking about mercy, the Saint of the Divine, Mercy Faustina, I read her quote for today and her quote was how truly easy it is to be good, to be holy, to be kind. How truly easy that is. And thinking of the tragedy of February 5th of 2022, I know you had concerns for the love of your life, but how easy it would have been to make the right decision that day.

Tr. Vol. II, p. 102 (cleaned up).[2]

[2] Though religious references during sentencing may raise obvious problems,[3] Talboo has not shown how the statements here entitled him to sentencing relief. His argument consists of a single sentence: the "trial court's use of its personal religious beliefs regarding mercy and vengeance as taken from biblical scripture

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[2] The State identifies the trial court's quoted language as being from the Book of Sirach, Chapter 28, Verse 1. Appellee's Br., p. 9 n.1.

[3] Sentencing courts should be mindful that such comments may, at the least, bring appellate scrutiny. *See generally State v. Arnett*, 724 N.E.2d 793 (Ohio 2000) (discussing the propriety of Biblical reference during *sentencing); Arnett v. Jackson*, 393 F.3d 681 (6th Cir. 2005) (same); *United States v. Bakker*, 925 F.2d 728, 740 (4th Cir. 1991) (finding religious reference made during sentencing improper).

and applied to Talboo's sentence was a clear abuse of the trial court's sentencing of Talboo." Appellant's Br., pp. 15-16. There is no explanation offered of *how* the trial court abused its discretion and Talboo failed to provide even a single citation in support. Even after the State offered relevant arguments and citations to case law in its appellee's brief, Talboo's reply brief repeated these errors.[4]

[3] Thus, Talboo has waived this issue for lack of a cogent argument. Ind. Appellate Rule 46(8)(a) (requiring arguments to be "supported by cogent reasoning" and "supported by citations" to relevant authority); *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (discussing and explaining the rationales underpinning Appellate Rule 46).

## II. Talboo's Sentence Is Not Inappropriate

[4] Talboo also asks us to revise his 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 aim 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

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[4] We thank the State for its helpful arguments on this issue. The propriety of religious references made by the trial judge during sentencing appears to be an issue of first impression in this state. This fact weighs heavily in favor of waiver. To do otherwise risks setting precedent not "properly tested through the adversarial process" through "adequate and cogent briefing." *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023). And the importance of adequate and cogent arguments is only more important given the "highly fact specific inquiry" required here. *McCain v. State*, 148 N.E.3d 977, 983 (Ind. 2020).

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).

[5] As a starting point, we note that Talboo's crime, Level 2 felony voluntary manslaughter, combined with the firearm enhancement yields a sentencing range of 15 to 50 years imprisonment. Ind. Code § 35-50-2-4.5 (Level 2 felony); Ind. Code § 35-50-2-11(g) (firearm enhancement). But Talboo did receive the maximum sentence allowed by the plea agreement, which provided for a 35-year sentencing cap.

[6] The nature of the crime does not support revision. As the State put it, this was a "senseless, unnecessary killing." Appellee's Br., p. 24. In one moment, two neighbors were shoveling snow from their driveways. The next, one of the neighbors had shot and killed the other. Talboo offers no justification for his actions beyond their sudden nature. That aside, the record shows that Talboo escalated the situation at nearly every turn—especially the fateful decision to grab his gun. Overall, Talboo has not shown how the nature of his offense renders his essentially advisory sentence inappropriate.

[7] Nor does Talboo's character render his sentence inappropriate. We note Talboo's history of largely being a law-abiding citizen.[5] We similarly recognize

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[5] Talboo's misdemeanor conviction for driving while suspended and admitted marijuana use are minor considerations in the context of a voluntary manslaughter conviction.

the testimony at the sentencing hearing speaking to his general good character. But these facts alone do not render the sentence an outlier. *See Eversole v. State*, 873 N.E.2d 1111, 113-14 (Ind. Ct. App. 2007) (upholding 30-year sentence for voluntary manslaughter under 7(B) for defendant with no criminal record and "good character"). Talboo fails to show persuasive evidence showing his character supports revision.

## Conclusion

[8] Talboo did not prove that the trial court abused its discretion in sentencing him nor did he show that his sentence was inappropriate.

[9] Affirmed.

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

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