

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Ivy D. Nunn,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

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April 24, 2024

Court of Appeals Case No.  
23A-CR-1375

Appeal from the Marion Superior Court  
The Honorable Cynthia Oetjen, Judge

Trial Court Cause No.  
49D30-2009-MR-028276

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**Memorandum Decision by Judge May**  
Judges Vaidik and Kenworthy concur.

## May, Judge.

- [1] Ivy Nunn appeals his sixty-three-year sentence for murder.<sup>1</sup> He argues his sentence is inappropriate based on the nature of his offense and his character. We affirm.

## Facts and Procedural History

- [2] At approximately 9:00 p.m. on August 20, 2020, Daniel Morris visited his friend, Nunn, at Nunn’s apartment. Nunn’s girlfriend, Quianna Lackey, was also present at the apartment. Around midnight, Morris fired Nunn’s gun inside the apartment and created a hole in the wall of the apartment. Nunn and Morris began arguing and Nunn told Morris “he should know how to handle a gun[.]” (Tr. Vol. III at 133.)
- [3] After the gunshot, Lackey decided to go to her sister’s house. Morris and Nunn followed her to the parking lot and stood in front of her car. Morris and Nunn continued arguing and Nunn told Lackey to “[j]ust run him over” referring to Morris. (*Id.* at 137.) Lackey refused and Nunn pulled her car door open, hit her, and told her to get out of the car. Lackey moved to the passenger’s seat of the car and Nunn got into the driver’s seat. Morris had moved from in front of the car. Nunn drove away but did not leave the parking lot. Nunn exited the car and Lackey returned to the driver’s seat and drove away.

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<sup>1</sup> Ind. Code § 35-42-1-1.

- [4] Around 1:20 a.m. on August 21, 2020, Morris called a friend and asked the friend to pick him up from Nunn's apartment. The friend agreed, but when he arrived at Nunn's apartment, Morris never appeared. After searching for Morris and calling Morris's phone, the friend left. Morris's wife, Brionna Richardson, also called Morris's phone and he did not answer. Richardson became worried.
- [5] Sometime thereafter, Nunn called Lackey and told her to come to the apartment. When Lackey arrived, he told her that "he fucked up." (*Id.* at 143.) Nunn and Lackey drove to another apartment complex where he met with a man and then to a gas station where he met with another man. The man from the gas station got into the car with Nunn and Lackey. They drove to Nunn's apartment.
- [6] Sometime shortly thereafter, Lackey left to go to her sister's house. Around 2:24 a.m., after Lackey left, apartment surveillance video recorded Nunn and the man from the gas station dragging Morris's body from Nunn's apartment and putting his body into Nunn's car. Nunn drove away from the apartment complex, stopped around 38th Street and Guion Road, and dumped Morris's body in the ditch.
- [7] Around 4:00 a.m., Richardson's friend, Jacquill Smith, called Nunn, looking for Morris. Nunn was aggressive toward Smith and told her that Morris "left with a female" (*id.* at 146), and "[y]a all gone be mad when he pop up or ya all gone be apologizing." (*Id.* at 141) (errors in original). Sometime thereafter,

Richardson called Morris's phone and Nunn answered. When Richardson asked Nunn why he was answering Morris's phone, he denied that the phone belonged to Morris and hung up.

[8] Later that morning, Richardson and some of her friends went to Nunn's apartment looking for Morris. They did not find Morris, so Smith filed a missing person report. Richardson called Nunn again and asked him about Morris. Nunn's "responses were pretty much as if he didn't know what [she] was talking about or that he had even been with [Morris]." (*Id.* at 185.) The same day, Nunn left Indianapolis and drove to Milwaukee, Wisconsin.

[9] On August 26, 2020, a highway cleanup crew working around 38th Street and Guion Road found Morris's body "up in the bush" next to a highway exit. (*Id.* at 95.) They called the police. Indianapolis Metropolitan Police Department Officer Kaitlynn Rhude arrived on the scene and saw a body and "the only thing [she] could see was the teeth[.]" (*Id.* at 101.) She saw that the body's "skin kinda looked like leather or burnt, very deteriorated, and it was full of maggots." (*Id.*) The body was so decomposed that police had to use fingerprints to determine who it was. Based on those fingerprints, the police discovered the deceased was Morris.

[10] John Cavanaugh, a forensic pathologist with the Marion County Coroner's Office, performed the autopsy on Morris. Cavanaugh determined Morris had been shot four times, with the fatal shot going through his heart. He ruled Morris's death a homicide.

[11] On August 30, 2020, Richardson saw that Morris's phone was "making outside calls" and "someone else was using his [bank] account[.]" (*Id.* at 218.) She reported that information to the police. On September 10, 2020, police in Milwaukee began searching for Nunn. They located him in an apartment there and arrested him. After obtaining a search warrant, officers searched Nunn's car. They found Morris's blood on the interior of the "passenger side rear doorframe area." (*Id.* at 174.) Milwaukee police transported Nunn back to Indiana.

[12] On September 10, 2020, the State charged Nunn with murder. After a three-day trial from April 24 - 26, 2023, the jury entered a guilty verdict. The trial court entered a conviction of murder accordingly. On May 25, 2023, the trial court held a sentencing hearing. As part of the pre-sentence report, Richardson provided a victim impact statement in which she indicated Morris's death

has caused me great depression and PTSD, I now live in constant fear and often isolate myself due to the incident, I have lost jobs and homes because I can no longer perform simple everyday tasks without having panic attacks or crying uncontrollably thinking that [Nunn] will come after me.

(Ex. Vol. III at 131.)

[13] When sentencing Nunn, the trial court found one aggravator regarding the state of Morris's body and said, "it really was disturbing the way the body was treated after death; carried out, dropped several times, and then dumped on the side of the road, hoping that no one would find him." (Tr. Vol. IV at 219.) It

also found Nunn’s criminal record as an aggravator. As a mitigator, the trial court noted Nunn’s completion of “some programs while at the Adult Detention Center.” (*Id.* at 220.) The trial court then sentenced Nunn to sixty-three years incarcerated.

## Discussion and Decision

[14] Nunn contends his sixty-three-year sentence for murder is inappropriate based on the nature of the crime and his character. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence “if, after due consideration of the trial court’s decision, [we] find that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Our determination “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Madden v. State*, 162 N.E.3d 549, 563 (Ind. Ct. App. 2021) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)).

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. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

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

[15] “Our analysis of the nature of the offense requires us to look at the nature, extent, heinousness, and brutality of the offense.” *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). As our Indiana Supreme Court has explained, “compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality)” may lead to a downward revision of the defendant’s sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). 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*, 162 N.E.3d at 564.

[16] The sentencing range for murder is between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. The trial court sentenced Nunn to sixty-three years incarcerated. Nunn argues his sentence is inappropriate based on the nature of his offense because “Morris’s murder does not appear to be a planned attack” and instead was “the grim consequence of an alcohol fueled argument between friends and the presence of a gun.” (Br. of Appellant at 25.) While Nunn acknowledges his disposal of Morris’s body “deprived Morris of dignity,” the ultimate discovery of Morris’s body gave Morris’s family “some small measure of closure in knowing the fate of their missing loved one.” (*Id.* at 25-6.)

[17] Nunn shot Morris four times. Shortly thereafter, he drove with Lackey to two locations to find someone to help him dispose of the body. The first man did not go with Nunn. The second man, who was at the gas station, went with Nunn to help him dispose of the body. He and the man from the gas station dragged Morris's body from the apartment to Nunn's car, dropping the body once. Nunn drove to approximately 38th Street and Guion Road and then dumped Morris's body in a ditch.

[18] Sometime after he dumped Morris's body, Nunn told Morris's wife and her friends that he did not know where Morris was. He left Indianapolis shortly after Morris's death. When Morris's body was found about a week later, it was so badly decomposed that fingerprints were the only way police could identify him. The trial court noted the way Morris's body was treated was "really disturbing." (Tr. Vol. IV at 219.) We cannot say Nunn's murder of Morris was "typical" – he shot his friend, he disposed of the body on the side of a road, and told Morris's family and friends that he did not know where Morris was. Therefore, we cannot find Nunn's sentence inappropriate based on the nature of his offense. *See, e.g., Messel v. State*, 80 N.E.3d 230, 233 (Ind. Ct. App. 2017) (concluding aggravated sentence was not inappropriate where defendant "brutally bludgeoned" victim to death before "dump[ing] her body as if it were a piece of trash" and attempting to dispose of evidence), *trans. denied*.

[19] Next, we consider Nunn's character. "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Nunn's criminal history spans over



twenty years. He has been convicted of nine crimes - four felonies and five misdemeanors. Nunn notes none of his earlier crimes involved violence; however, four of them were based on his unlawful possession of a firearm.

[20] Additionally, an offender's continued criminal behavior after judicial intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019). When Nunn committed the murder discussed herein, he was on probation for Class A misdemeanor carrying a handgun without a license.<sup>2</sup>

[21] Finally, Nunn asserts his sentence is inappropriate based on his character because he had completed several programs in jail. However, in this argument, Nunn omits the fact that he also had four conduct violations while incarcerated pending trial. Based on all these facts, we cannot say Nunn's sentence is inappropriate based on his character. *See Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (Robinson's criminal history outweighed any mitigators and therefore his sentence above the advisory was not inappropriate).

## Conclusion

[22] We conclude Nunn's sixty-three-year sentence for murder is not inappropriate based on the nature of his offense and his character. Accordingly, we affirm.

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<sup>2</sup> Ind. Code § 35-47-2-1(e) (2017).

[23] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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