

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Amanda M. Fennell,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 23, 2024

Court of Appeals Case No.
23A-CR-2020

Appeal from the Morgan Superior Court
The Honorable Brian H. Williams, Judge

Trial Court Cause No.
55D02-2110-F4-1385

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

Altice, Chief Judge.

[1] Following a jury trial, Amanda M. Fennell was convicted of Level 4 felony burglary, Level 6 felony auto theft, and a Class A misdemeanor theft. The sole issue on appeal is whether Fennell’s fifteen-year aggregate sentence is inappropriate considering the character of the offender and nature of the offense.

[2] We affirm.

Facts and Procedural History

[3] On March 2, 2020, Fennell arrived, uninvited, at her parents’ home in Mooresville, Indiana, after moving out six years prior because her parents did not agree with her lifestyle. The last time Fennell saw her parents was roughly a year earlier.

[4] Upon arrival, Fennell told her mother that she did not have any clothes. Fennell’s mother gave her clothes and then told her that she was not welcome and had to leave. After Fennell departed, her parents left the house to run errands. Her father returned to the house around one hour later and discovered that his vehicle, a 2015 Buick Lacrosse, was missing from the driveway and the back door of the house had been broken in. The Buick was later found abandoned, containing DNA that matched Fennell’s.

[5] In addition to the Buick, multiple items were missing from the house. These items included: a .22 caliber handgun, a .38 caliber revolver, a nine-millimeter

handgun, two firearm magazines, a can of ammunition, birth certificates, social security cards, Army discharge paperwork, jewelry, two laptops, three Kindle tablets, medication, sunglasses, and a hat.

[6] The State charged Fennell with Level 4 felony burglary, Level 6 felony auto theft, and Level 6 felony theft, though the latter charge was later reduced to a Class A misdemeanor. After a two-day jury trial, Fennell was found guilty on all counts. At sentencing, the trial court found the aggravators to include Fennell's betrayal of family trust and her prior criminal history. Alongside five misdemeanor convictions, Fennell's criminal history included three felony convictions for theft, one felony conviction for auto theft, and two felony convictions for possession of methamphetamine, the last of which included a habitual offender enhancement. Further, the court found she had consistently violated parole and pretrial release conditions and had probation revoked five times.

[7] Finding no mitigating circumstances, the trial court sentenced Fennell to twelve years for the Level 4 felony burglary, two years for the Level 6 felony auto theft, and one year for the Class A misdemeanor theft. The trial court ordered the sentences be served consecutively, for a fifteen-year aggregate sentence. Fennell now appeals.

Discussion and Decision

[8] 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 principal role in 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*. Our goal is to determine whether the sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). The burden of persuasion lies with the defendant. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[9] 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). We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. *George v. State*, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020), *trans. denied*. Whether a sentence is inappropriate turns on the culpability of the defendant, the severity of the crime, the damage done, and various other factors that come to light in a given case. *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[10] The advisory sentence is the starting point in determining the appropriateness of a sentence. *Lindhorst v. State*, 90 N.E.3d 695, 703 (Ind. Ct. App. 2017). The sentencing range for a Level 4 felony is between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-4. The sentencing range

for a Level 6 felony is between six months and two and one-half years, with the advisory sentence being one year. I.C. § 35-50-2-7. Finally, a Class A misdemeanor sentence limit is no more than one year. Ind. Code § 35-50-3-2. Thus, Fennell’s aggregate sentence of fifteen years is just six months shy of the maximum sentence the court could have imposed. She argues that this is inappropriate.

[11] 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).¹ Fennell betrayed the trust of her parents – the same trust that compelled her mother to provide Fennell clothes in a moment of need, just hours before the offense took place. *See Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) (“A harsher sentence is also more appropriate when the defendant has violated a position of trust that arises from a particularly close relationship between the defendant and the victim, such as a parent-child or stepparent-child relationship.”). To support her drug habit, Fennell took a significant amount of valuable personal property from her parents, in addition to legal documents and medication. The stolen property also included three firearms, which the trial court observed likely made their

¹ Embedded in Fennell’s inappropriateness argument appears to be an argument that the trial court failed to properly apply statutory limitations on consecutive sentences. This is not so. The Ind. Code identifies Level 4 burglary as a crime of violence and excludes such from the “single episode” limitation in Ind. Code § 35-50-1-2(c). Regardless, the trial court would be within its discretion even if the single episode limitation did apply in this case: “If the most serious crime for which the defendant is sentenced is a Level 4 Felony, the total of the consecutive terms of imprisonment may not exceed fifteen (15) years.” I.C. 35-50-1-2(d)(1).

way to the criminal underground with one already being recovered during the execution of a search warrant in Indianapolis.

[12] Turning to Fennell's character, we conduct our review of her character by engaging in a broad consideration of her qualities. *Madden*, 162 N.E.3d at 564. 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).

[13] Fennell urges that her character did not warrant the fifteen-year sentence. She notes "efforts made . . . to better herself during her incarceration and the calls for leniency from her mother during the victim impact statement." *Appellant's Brief* at 9. The trial court considered Fennell's mother's victim impact statement but found that her criminal history supported an enhanced sentence. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).

[14] Fennell's criminal history is extensive, and she has been undeterred in reforming her behavior. In addition to the five misdemeanor and six felony convictions, the presentence investigation report shows that Fennell has had an additional six charges dismissed. *See Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) ("A record of arrests reflects on the defendant's character in part because such record reveals that subsequent antisocial behavior by the defendant has not been deterred even having been subject to police authority

and having been made aware of its oversight.”), *trans. denied*. Further, Fennell’s repeated violations of adult probation, community corrections, and pre-trial release programs demonstrate an ongoing pattern of criminal behavior with little regard for the leniency that she has been given. In fact, the offense at hand was committed just a week after being released from custody for another case involving drugs, auto theft, and theft. The record before us does not reflect substantial virtuous traits or persistent examples of good character to warrant sentence revision. *See Stephenson*, 29 N.E.3d at 122.

[15] Accordingly, we find that Fennell has failed to establish that the fifteen-year sentence imposed by the trial court was inappropriate given the nature of the offense or her character.

[16] Judgment affirmed.

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

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