

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Danielle Graf,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 16, 2024

Court of Appeals Case No.
23A-CR-2291

Appeal from the St. Joseph
Superior Court

The Honorable Stephanie Steele,
Judge

Trial Court Cause No.
71D01-2103-F6-212

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Danielle Graf (Graf), appeals her sentence for causing serious bodily injury when operating a vehicle with a Schedule I or II substance or its metabolite in her blood, a Level 5 felony, Ind. Code § 9-30-5-4(a)(2), and possession of cocaine, a Level 6 felony, I.C. § 35-48-4-6(a).

[2] We affirm.

ISSUE

[3] Graf presents this court with one issue: Whether her placement at the Department of Correction (DOC) is inappropriate given the nature of her offenses and her character.

FACTS AND PROCEDURAL HISTORY

[4] On October 8, 2020, Graf ingested cocaine and drove her Jeep eastbound on La Salle Street in South Bend, Indiana. As Graf attempted to make a left turn from La Salle Street onto Niles Street, she struck a motorcycle ridden by Robert Hollins (Hollins), who then struck a second motorcyclist. Hollins was unresponsive at the scene of the accident and was taken to Memorial Hospital for treatment of a traumatic brain injury as well as for orthopedic and organ injuries.

[5] On March 5, 2021, the State filed an Information, charging Graf with Level 6 felony criminal recklessness and Level 6 felony possession of cocaine. On

March 8, 2021, the State added a charge of Level 5 felony causing serious bodily injury when operating a vehicle with a Schedule I or II substance or its metabolite in her blood, and it dismissed the Level 6 felony criminal recklessness charge. On June 22, 2023, Graf pleaded guilty to both pending charges without the benefit of a plea agreement with the State. The trial court referred Graf to St. Joseph County Community Corrections and to Michiana Community Corrections for evaluation for possible placement into their programs. Graf was found to be ineligible by both the St. Joseph and the Michiana County Community Corrections.

[6] On August 30, 2023, the probation department filed Graf's presentence investigation report that revealed the following about Graf's life and the offenses. Thirty-one-year-old Graf had been arrested for marijuana possession in 2010, but that charge was dismissed. In 2014, Graf was sentenced to 360 days, with 356 days suspended to probation, for Class A misdemeanor operating a vehicle while intoxicated endangering a person. Graf had begun consuming alcohol at the age of thirteen and reported consuming alcohol heavily in her twenties. Graf had first ingested cocaine at the age of twenty-two and had admittedly become addicted by the time of the offenses. According to Graf, she last ingested cocaine on April 8, 2022, when she began substance abuse rehabilitation. Graf completed rehabilitation on April 29, 2022. Graf reported attending Narcotics Anonymous and, starting January 2023, the Recovery Café in West Lafayette, where she was involved in recovery activities, including mentoring others in recovery. Graf had been sporadically employed

working in advertising and as a habilitation instructor, and she had owned a flower store for two years that had closed during the COVID-19 pandemic. Graf was unemployed at the time of the offenses. After being charged in the instant cause, Graf completed some classes through Purdue University and became certified as a community health worker, assisting the homeless in accessing health programming. Graf reported being full-time employed in that profession as of June 2023. The probation department recommended a four-year aggregate sentence, with two years executed in the DOC and two years suspended to probation.

[7] On September 6, 2023, the trial court held Graf's sentencing hearing. Graf informed the trial court that, at the time of the offenses she had been in a "drug fueled relationship" with an abusive partner and that she had become pregnant by that partner after having committed the instant offenses. (Transcript p. 38). In May 2021, Graf's daughter was born severely premature. Although Graf attempted to remain sober, she acknowledged that she continued to relapse during the first year of her daughter's life until she sought treatment in April 2022.

[8] The trial court found Graf's "current family situation", her acceptance of responsibility for the offenses, and her remorse as mitigating circumstances. (Tr. p. 41). As aggravating circumstances, the trial court found that Graf had a criminal history of an alcohol-related driving offense and that the harm done to Hollins was greater than necessary to prove the offenses. The trial court sentenced Graf to twelve months for her cocaine possession conviction and to

three years for her operating a vehicle with a Schedule I or II drug or its metabolite in her blood conviction, to be served concurrently. The trial court ordered Graf to execute eighteen months of her sentence in the DOC and suspended the remaining eighteen months to probation. The trial court also recommended that Graf participate in Recovery While Incarcerated to address her addiction. After the trial court had imposed sentence, Graf stated on the record that “for my daughter, I have arrangements for her for her babysitter, and she can stay with her babysitter, at least, right, while I’m there[–] She agreed to.” (Tr. p. 45).

[9] Graf now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[10] Graf requests that we independently review her sentence as authorized by Indiana Appellate Rule 7(B) and pursuant to which we may “revise a sentence authorized by statute 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.” The principal role of our review under Appellate Rule 7(B) is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). In conducting our review, we “consider not only the aggravators and mitigators found by the trial court, but also any other factor appearing in the record.” *George v. State*, 141 N.E.3d 68, 73 (Ind. Ct. App. 2020), *trans. denied*. We defer to the trial court’s sentencing discretion, and that deference will “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). The defendant bears the burden to persuade the reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018).

[11] Graf requests that we review the portion of the trial court’s sentencing order requiring her to execute the first eighteen months of her sentence in the DOC. In other words, she does not challenge the appropriateness of the overall length of her sentence but merely the location where that sentence is to be served. “The place where a sentence is to be served is subject to review under Rule 7(B).” *Moon v. State*, 110 N.E.3d 1156, 1162 (Ind. Ct. App. 2018) (citing *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007)). Even though the issue is within the scope of our review, we have recognized that it is quite difficult for a defendant to prevail on such a claim. *Id.* This is because a trial court knows of the feasibility of alternate placements and because our review is focused on whether the given sentence is inappropriate, not whether another sentence might be more appropriate. *Id.*

[12] The nature of Graf’s offenses entailed ingesting cocaine, operating her vehicle, and striking motorcyclist Hollins, who was gravely injured as a result. Graf’s actions also impacted a second victim, as she caused Hollins to crash into another motorcyclist. Although the record is silent as to the harm caused to the second motorcyclist, we observe that the harm caused to Hollins, who was unresponsive at the scene and who was treated for a traumatic brain injury, as

well as orthopedic and organ injuries, was in excess of that required to prove the offense. *See* I.C. § 35-31.5-2-292 (defining “serious bodily injury” in part as injury that creates a substantial risk of death or causes unconsciousness or extreme pain). In addition, Graf possessed cocaine at the time she operated her vehicle, which indicates that her decision to ingest cocaine and drive was not a momentary lapse of judgment on her part but was, rather, part of a larger pattern of cocaine use.

[13] Given the multiple victims involved, the significant harm to Hollins, and the fact that there are two offenses at issue, we decline to revise Graf’s placement in light of the nature of her offenses. On appeal, Graf offers no argument that her placement at the DOC is inappropriate in light of the nature of her offenses. As pointed out by the State, we have concluded that a defendant who fails to make any such argument has essentially conceded that, if we were considering the nature of the offense alone, his sentence would not be inappropriate. *See Conner v. State*, 58 N.E.3d 215, 220 (Ind. Ct. App. 2016) (rejecting the State’s argument that Conner had waived his Rule 7(B) review by failing to make an argument pertaining to the nature of his offense but observing that Conner’s burden of persuasion “may be heightened by the need to prove the nature of his character should overcome the admittedly serious nature of his offense”).

[14] Thus, we turn now to Graf’s argument that her character alone merits a fully suspended sentence. Graf’s argument centers on her efforts to improve herself after the offenses, her employment, and the hardship her imprisonment at the DOC would cause her daughter. Graf committed the offenses on October 8,

2020, conceived her daughter in December 2020 after she had been criminally charged in this matter, and gave birth in May 2021. Although she knew she was addicted to cocaine and was trying to be sober, Graf continued to relapse during her pregnancy and the first year of her daughter's life. Graf did not seek any formal substance abuse treatment until April 2022, approximately two and one-half years after the offenses. Graf began attending the Recovery Café in January 2023, nine months after she left rehab, and she only became certified as a community health worker in March 2023, approximately six months prior to her sentencing. Graf had a positive character reference from her employer, but she had only been working there for approximately two months. Thus, although Graf is to be commended for her efforts to improve her sobriety, her education, and her employment, these improvements are not so overwhelming that they persuade us that Graf's placement at the DOC is inappropriate, especially in light of the serious nature of Graf's offenses and the fact that Graf had previously been given a suspended sentence after being convicted of operating her vehicle while intoxicated endangering a person. *See Stephenson*, 29 N.E.3d at 122 (holding that the trial court's sentencing order will stand unless overcome by compelling evidence of the defendant's character); *Conner*, 58 N.E.3d at 220.

[15] Neither are we persuaded that the hardship to Graf's daughter militates for a fully suspended sentence. Graf contends that her daughter, who was two years old at the time of Graf's sentencing, was "medically fragile[.]" (Appellant's Br. p. 9). Although the record reflects that Graf's daughter was born severely

premature, there is scant evidence in the record before us regarding the child's ongoing care needs or that Graf was the only person available and qualified to care for the child. Indeed, Graf had already spent her time in rehab in April 2022 apart from her daughter, and her comments after sentence had been rendered in this matter indicate that Graf was comfortable leaving her daughter in the care of someone who had agreed to provide care. In addition, while Graf was the only parent supporting her daughter at the time of sentencing, the daughter is the beneficiary of a \$900 monthly disability benefit, and there is no evidence in the record that Graf was eligible for work release or any other alternate placement that would make it possible for her to support her daughter while serving her sentence.

[16] Graf also draws our attention to her open plea, her remorse, and her trauma resulting from the abusive relationship that produced her daughter. However, these circumstances were all before the trial court, who already took her acceptance of responsibility, her remorse, and her "current family situation" into account when suspending half of her aggregate sentence to probation. (Tr. p. 41). Graf has not provided us with any cases wherein this court has revised the sentence of a similarly situated defendant based solely on her character. In short, we conclude that Graf has failed to demonstrate that her character alone renders her placement at the DOC inappropriate.

CONCLUSION

[17] Based on the foregoing, we hold that the trial court's order that Graf execute half of her aggregate sentence at the DOC is not inappropriate in light of the nature of her offenses and her character.

[18] *Affirmed.*

[19] Brown, J. and Foley, J. concur