

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

LeDarien Devontae Deshon Gregory,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 20, 2024

Court of Appeals Case No.
23A-CR-2294

Appeal from the Lake Superior Court
The Honorable Salvador Vasquez, Judge

Trial Court Cause No.
45G01-2108-F2-51

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] After attempting to steal a vehicle while on a test drive with salesman Maxwell Kurtz, LeDarien Devontae Deshon Gregory wrecked the vehicle into a semi-truck, with the front end of the vehicle becoming smashed under the back end of the semi-truck's trailer and causing serious bodily injury to Kurtz. Gregory subsequently pled guilty to Level 3 felony criminal confinement. In exchange for Gregory's guilty plea, the State agreed to dismiss various other charges and the parties agreed that Gregory's sentence would be capped at ten years. The trial court accepted Gregory's guilty plea and imposed a ten-year sentence. Gregory contends on appeal that his ten-year sentence is inappropriate in light of the nature of his offense and his character. We affirm.

Facts and Procedural History

- [2] According to the parties' stipulated factual basis, on August 11, 2021, Gregory went to Bosco Family Motors in Hobart and spoke with Kurtz. Gregory and Kurtz took a vehicle for a test drive, traveling on I-65. While on I-65, Gregory pulled the vehicle over to the side of the roadway and indicated that there was an issue with the vehicle. After Gregory and Kurtz had exited the vehicle to investigate the alleged issue, Gregory "ran back into the car in [an] attempt to steal it, and [Kurtz] ran back into the passenger seat in an attempt to keep [Gregory] from stealing the car." Appellant's App. Vol. II p. 95. Upon re-entering the vehicle, Gregory continued to drive on I-65, reaching high speeds.

Kurtz told Gregory “to stop multiple times, but [Gregory] did not do so.” Appellant’s App. Vol. II p. 95. Eventually, Gregory crashed into a semi-truck on I-80, with the entire front end of the vehicle becoming smashed under the back end of the semi-truck’s trailer. As a result of the crash, Kurtz “had to be extracted from” the vehicle and suffered “serious injuries, including internal injuries, which bound him to a wheelchair for months.” Appellant’s App. Vol. II p. 95.

[3] The State charged Gregory with Level 2 felony kidnapping, Level 2 felony criminal confinement, Level 3 felony kidnapping, Level 3 felony criminal confinement, Level 6 felony auto theft, Level 6 felony identity deception, and Class C misdemeanor operating a motor vehicle without ever receiving a license. On May 26, 2023, Gregory and the State entered into a stipulated plea agreement, by the terms of which Gregory agreed to plead guilty to Level 3 felony criminal confinement and the State agreed to dismiss the remaining charges. The parties also agreed “that there shall be a maximum cap of ten (10) years as to the sentence which [is] to be imposed by the [trial c]ourt.” Appellant’s App. Vol. II p. 93. In pleading guilty, Gregory admitted that he had “knowingly or intentionally confine[d Kurtz] without his consent” and that his actions had “resulted in serious bodily injury” to Kurtz. Appellant’s App. Vol. II p. 95.

[4] The trial court accepted Gregory’s plea and, on August 29, 2023, held a sentencing hearing. Kurtz spoke at the sentencing hearing, stating that

I can't wake up any day now without seeing the effects of what this man's done to me. I can't look down without seeing scars on my arms. I can't go throughout my day without feeling pains [*sic*] from the acts that he caused me. I have to live with this for the rest of my life as a result of the choices you made that day.

You took so much away from me, and I have to rebuild my life up from the pieces you broke it into. So I -- I just hope he gets the maximum sentence for this. It doesn't make it right, but it's what I hope for now.

Tr. Vol. II pp. 43–44. Kurtz also detailed his injuries as follows:

I broke my scapula, had a hard time moving my left arm more than this. I got my tendon in my right index finger severed, so I've had a splint on my arm for months. Still don't have full functionality of my hand. I got it as close as I can get. I had broken ... a lot of my ribs. Made it hard to breathe for a period of time. Made it hard to laugh. And the worst of it was my broken pelvis. I couldn't tell you how many cracks I saw on the x-rays or how many cracks were in the sacrum vertebrae, but they had to put two seven-inch screws from the right side of my pelvis through my sacrum vertebrae and into the left side of my pelvis to stabilize [it]. I had those pins in me for about ... nine or ten months.... Put right back on crutches, right back in physical therapy, and I was out for a little bit but the pain never went away. It got worse.... It's going to be a constant battle with physical therapy and maintaining like enough physical strength to prevent myself from feeling the pains [*sic*] that I feel now.

Tr. Vol. II pp. 44–45. Kurtz further stated “I'm lucky to still have my head. If I had been sitting straight up, I would have been dead.” Tr. Vol. II p. 45. The trial court noted the aggravating and mitigating factors argued by the parties before sentencing Gregory to a ten-year term of imprisonment, noting that

“[a]ny lesser [*sic*] sentence or suspension of sentence [would] depreciate the seriousness of the crime committed.” Appellant’s App. Vol. II p. 126.

Discussion and Decision

[5] Gregory contends that his ten-year sentence is inappropriate. Indiana Appellate Rule 7(B) provides that 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.” In analyzing such claims, we “concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant’s character.” *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. “The defendant bears the burden of persuading us [that his] sentence is inappropriate.” *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[6] “A person who commits a Level 3 felony ... shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years.” Ind. Code § 35-50-2-5. Thus, in sentencing Gregory to a ten-year term of imprisonment, the trial court imposed a slightly aggravated sentence, the maximum allowed pursuant to the terms of Gregory’s plea agreement.

[7] The nature of Gregory’s offense is undoubtedly serious. Gregory acknowledges that Kurtz “was seriously injured in the accident which occurred during the commission of the offense,” but argues that “[t]he gravity of the injury is one element of the offense.” Appellant’s Br. p. 10. At the sentencing hearing, Kurtz described the immediate and lasting pain he suffered as a result of Gregory’s actions, stating that

[i]n those moments [immediately following impact], I had to come to terms with death. I didn’t pass out. I didn’t go unconscious. I felt every second of it. I closed my eyes. I felt the impact. I felt the pain all over my body. I felt my pelvis being crushed. I thought I was being crushed by the semi. It kept getting tighter and tighter. I thought I was going to die. I thought I was going to pop. I was waiting for my life to expire.... Until everything came to a stop and I felt him push my legs off him because I guess I got thrown with my legs over him, my back against the wall. I felt him push my legs off, made me feel like a corpse as he got out of the vehicle. I finally opened my eyes and I just -- I could barely see. There was dirt, debris.... I can’t move my arm up. I can’t move my legs, and I’m just looking at the gap between where the semi and the top of the car and I just see light coming in and I’m trying to reach for the light, trying to get out of the situation.... [T]he car caught on fire. There was smoke pouring into the cabin. So I’m laying in this condition, just smelling the burning oil, the burning coolant. Just thinking great. I survived this, but I’m going to die of asphyxiation. It felt like an eternity stuck in that car even though it was only like five, ten minutes. That moment’s going to haunt me the rest of my life.

Tr. Vol. II pp. 47–48. Kurtz further indicated that he would bear scars and pain from his injuries “for the rest of [his] life.” Tr. Vol. II p. 49. Kurtz’s testimony establishes that the injuries he suffered as a result of Gregory’s actions were not

merely serious bodily injuries, but, rather, life-altering injuries. Given the life-altering impact that Gregory's actions had on Kurtz's life, we cannot agree with Gregory's assertion that "[t]he nature of [his] offense does not justify an aggravated sentence." Appellant's Br. p. 10.

[8] Gregory also argues that his "character does not justify the sentence which the trial court imposed." Appellant's Br. p. 8. While Gregory admits that he has a criminal history, he asserts that it is relatively minor and that his prior convictions "were not close in time or character" to the instant offense. Appellant's Br. p. 8. While Gregory's prior juvenile adjudications and criminal convictions may have been remote in time and unrelated to the instant offense, review of Gregory's criminal history reveals that Gregory has repeatedly operated a motor vehicle without having a license. As for Gregory's history of arrests, the Indiana Supreme Court has held "[a] record of arrest, without more, does not establish the historical fact that a defendant committed a criminal offense and may not be properly considered as evidence of criminal history." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005). However,

a record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime.

Id. (internal citations omitted). Gregory has been charged with three prior acts of operating a vehicle without a valid driver's license. We agree with the State that it does not reflect well on Gregory's character that he has "repeatedly

driv[en] when he was not supposed to drive, a history that he repeated with tragic results in this case.” Appellee’s Br. pp. 10–11. Moreover, while Gregory correctly asserts that he had, on occasion, previously “successfully completed probation,” Appellant’s Br. p. 8, his criminal history also indicates that he has, on at least one occasion, been found to have violated the terms of his probation. Gregory’s criminal history demonstrates that prior attempts at rehabilitation have failed and reflects poorly on his character. *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.”).

[9] Gregory also asserts that it reflects well on his character that he had been “employed as a full-time laborer.” Appellant’s Br. p. 8. The State claims that this assertion is “misleading” because while Gregory “worked full time when he worked, ... he did not always work” as his employment “was seasonal.” Appellee’s Br. p. 11. In addition, to the extent that Gregory claims it reflects positively on his character that he had been paying child support for four of his six children, Gregory admitted that at the time the pre-sentence investigation report was completed, he was “behind \$5,000.00 in payments.” Appellant’s App. Vol. II p. 106. Further, while Gregory pled guilty, the significance of his guilty plea is diminished by the fact that he had received a significant benefit by pleading guilty, *i.e.*, having multiple felony charges dismissed and having his sentence capped at ten years. Finally, while Gregory expressed remorse for his actions, the trial court was in the best position to evaluate the sincerity of his claimed remorse, and we will not second-guess it. *See id.* Gregory has failed to

persuade us that his ten-year sentence is inappropriate. *See Sanchez*, 891 N.E.2d at 176.

[10] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

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