

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Eric L. Bengé,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 15, 2024

Court of Appeals Case No.
23A-CR-2726

Appeal from the Shelby Superior Court

The Honorable R. Kent Apsley

Trial Court Cause No.
73D01-2210-F5-62

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Eric L. Bengé appeals his sentence for burglary and claims his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On October 10, 2022, Bengé broke into and entered a building with the intent to commit a felony. On October 11, 2022, the State charged Bengé with Count I, burglary as a level 5 felony; and Count II, possession of marijuana as a class B misdemeanor. In October 2022, at an initial hearing, Bengé affirmed that he was on pre-trial release or bond for a pending offense in Orange County and that the arrest for that offense occurred the previous year.
- [3] In September 2023, Bengé pled guilty to Count I, burglary as a level 5 felony, pursuant to a plea agreement which provided that the State would dismiss any remaining counts, and sentencing would be left to the trial court's discretion with a possible maximum sentence of three years.
- [4] At sentencing, Bengé testified that as a teenager he began using substances including marijuana and alcohol progressing to daily usage, at the age of sixteen he started using methamphetamine every day, his mother often worked and he had to care for his sister, he sometimes lived with his grandmother, he relapsed during the period of time that he "went to a halfway house in Jeffersonville" and did inpatient treatment, and he did not seek further treatment immediately after relapsing. Transcript Volume II at 33. He stated that he had been homeless "since [he] caught this case," has two children with

whom he either has no contact or a “rocky” relationship, and he had helped to raise his older child. *Id.* at 33-34. He testified that he preferred to participate in the program Recovery While Incarcerated while incarcerated. On cross-examination, he agreed that he had been “given the opportunity for different kinds of treatment” in cases stretching back to 2001. *Id.* at 35. Defense counsel argued that “I would also note that the property that was alleged to have been taken was returned Well, it was confiscated” *Id.* at 38.

[5] The court found the mitigating circumstances included that Bengé pled guilty and that his “crime neither threatened or caused harm to any person or property,” found the aggravating circumstances included his lengthy criminal history and prior violations of probation, that he “did violate a term of his bond, his pre-trial release in a criminal case,” and that “[h]e was on bond [for a felony] at the time that he committed this offense,” and stated that the aggravating circumstances outweighed the mitigating circumstances. *Id.* at 43. The court sentenced Bengé to three years and “recommend[ed] [Bengé] receive substance abuse treatment while incarcerated at the IDOC.” Appellant’s Appendix Volume II at 50.

Discussion

[6] Bengé asserts that his sentence is inappropriate. He argues that the item he stole was returned to the victim shortly after the burglary and there was no property damage. He argues that his criminal history “does not reflect well on his character, [but] it is not unusual for someone suffering from a substance abuse problem.” Appellant’s Brief at 10.

- [7] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years.
- [8] Our review of the nature of the offense reveals that Bengé broke into and entered another’s building with the intent to commit a felony. Our review of Bengé’s character reveals that he pled guilty to burglary as a level 5 felony pursuant to a plea agreement that capped his sentence at three years, and in exchange the State dismissed the count for possession of marijuana.
- [9] The presentence investigation report (“PSI”) indicates Bengé was born in 1982, and his criminal history includes “thirteen adult criminal cases resulting in two felony and seven misdemeanor convictions.” Appellant’s Appendix Volume II at 32. The court stated that “[t]he PSI does reflect that [Bengé] was on bond for a case, I believe out of Orange County at the time this offense was committed,” and “while he was on bond in this case he committed a new offense, was arrested for a new offense, that’s an F5, Possession of Methamphetamine.” Transcript Volume II at 26. His prior convictions include possession of marijuana/hash oil/hashish as a class C misdemeanor and “[m]inor in [p]ossession of [a]lcohol” in 2001; failure to stop after an accident as a class B

misdemeanor in 2003; visiting a common nuisance as a class B misdemeanor in 2004; operating a vehicle while intoxicated as a class A misdemeanor in 2006; residential entry as a class D felony in 2011; possession of methamphetamine as a class D felony in 2014; possession of methamphetamine as a level 6 felony, resisting law enforcement as a class A misdemeanor, and criminal mischief as a class B misdemeanor in 2017; and carrying a handgun without a license as a class A misdemeanor.¹ Appellant’s Appendix Volume II at 29. The PSI states that he has a pending case in which he was charged in March 2021 with possession of methamphetamine as a level 6 felony and operating a vehicle while intoxicated as a class C misdemeanor; and another pending case in which he was charged in August 2023 with possession of methamphetamine as a level 5 felony. He “has been placed on probation nine times with violations filed in three supervisions.” *Id.* at 32. The PSI indicates that petitions to revoke his probation were filed in 2012, 2017, and 2021.

[10] The PSI states that Bengé reported about his childhood that he was using drugs by the age of eleven. He reported that he considers himself an alcoholic and a substance abuser, his usage of marijuana progressed at one point to daily usage but has since stopped, at sixteen years old he began using his “preferred substance” methamphetamine daily and has continued to use consistently, three or four years earlier he began snorting heroin, he has used cocaine a few

¹ The PSI does not list the disposition or sentencing date for his conviction for carrying a handgun without a license as a class A misdemeanor but notes the date of filing as “12/20/2019” and states that Bengé “[p]led guilty.” Appellant’s Appendix Volume II at 31.

times, he “will use opiate pills when they are around,” “he enjoys using LSD and mushrooms, and after meth, they are his favorite substance,” and he “completed a 28 day stay at Wooded Glen Recovery Center [and] also lived at a sober living home in Jeffersonville for six months.” *Id.* at 28, 34. The PSI also indicates Benge’s overall risk assessment score using Indiana’s risk assessment tool places him in the very high risk to reoffend category. After due consideration, we conclude that Benge has not sustained his burden of establishing that his advisory sentence is inappropriate in light of the nature of the offense and his character.

[11] For the foregoing reasons, we affirm Benge’s sentence.

[12] Affirmed.

Riley, J., and Foley, J., concur.

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