

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jonathan Anthony Vasquez Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 30, 2021

Court of Appeals Case No.
21A-CR-965

Appeal from the
Lake Superior Court

The Honorable
Diane Ross Boswell, Judge

Trial Court Cause No.
45G03-2005-F3-74

Vaidik, Judge.

Case Summary

- [1] Jonathan Anthony Vasquez Jr. appeals his four-year sentence for Level 5 felony robbery, arguing it is inappropriate. We affirm.

Facts and Procedural History

- [2] In December 2019, Vasquez pled guilty to Class A misdemeanor theft for stealing from a Speedway gas station on Joliet Street in Dyer. *See* Cause No. 45D08-1912-CM-5387. He was sentenced to one year in jail, all suspended to probation.
- [3] Three months later, on March 23, 2020, Vasquez and Alexandra Becich went to a Speedway gas station on Sheffield Avenue in Dyer. Becich walked to the beverage aisle and spilled a drink on the floor. She asked Donna Williams, the store clerk, for help. While Williams cleaned the floor, Vasquez took several cartons of cigarettes. Williams saw Vasquez take the cigarettes, confronted him, and ordered him to return the property. In response, Vasquez displayed a pistol and pointed it at Williams. Vasquez then pushed past Williams and left the store with the stolen cigarettes.
- [4] The State charged Vasquez with Level 3 felony robbery (armed with a deadly weapon) and Level 5 felony robbery. Vasquez and the State entered into a plea agreement under which Vasquez would plead guilty to Level 5 felony robbery and the State would dismiss the Level 3 felony count. In addition, the State agreed to dismiss two counts of Level 6 felony theft in two other cases. *See*

Cause Nos. 45G03-2007-F6-1570 (February 27, 2020 theft at Smokes Mini Mart on Joliet Street in Dyer) and 45G03-2009-F6-1927 (February 19, 2020 theft at Walt's Foods on Sheffield Avenue in Dyer). Sentencing was left to the discretion of the trial court.

- [5] At the April 2021 sentencing hearing, evidence was presented that twenty-four-year-old Vasquez (1) had been addicted to drugs since he was sixteen, (2) stole to feed his addiction, (3) had never received drug treatment, and (4) had two misdemeanor convictions, the theft he was on probation for when he committed the robbery and possession of a controlled substance. The State asked the trial court to sentence Vasquez to four to five years in the Department of Correction while defense counsel asked for a sentence of two to three years. The court found no mitigators and two aggravators: (1) Vasquez has a serious drug problem that can be addressed only in a Therapeutic Community and (2) Vasquez has a criminal history, including “significant contacts” with law enforcement.¹ Tr. p. 25. The court sentenced Vasquez to four years in the DOC, ordered him to participate in a Therapeutic Community, and said it would consider a sentence modification if he successfully completed the program.²

¹ According to the Presentence Investigation Report (PSI), Vasquez has been arrested and charged numerous times in Cook County, Illinois; however, these charges have not been prosecuted.

² In February 2021, the State filed an amended petition to revoke Vasquez's probation in CM-5387 based on, among other things, the commission of a new offense. In May 2021, the trial court ordered him to serve his entire suspended sentence of one year, concurrent to the sentence in this case.

Vasquez also has a pending charge for Class A misdemeanor theft in Cause No. 45H05-2007-CM-436.

[6] Vasquez now appeals his sentence.

Discussion and Decision

[7] Vasquez contends his four-year sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate court “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 appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate.” *Id.* at 160 (quotation omitted).

[8] The sentencing range for a Level 5 felony is one to six years with an advisory term of three years. Ind. Code § 35-50-2-6(b). Here, the trial court sentenced Vasquez to an above-advisory term of four years. He asks us to reduce his sentence to the advisory term of three years.

[9] As for the nature of the offense, as the State points out, Vasquez’s conduct “exceeded what was necessary to prove the offense for which he pleaded guilty.” Appellee’s Br. p. 10. While robbery is generally a Level 5 felony, it is a Level 3 felony “if it is committed while armed with a deadly weapon.” I.C. § 35-42-5-1. And here, it is undisputed Vasquez stole the cigarettes by pointing a

pistol at the store clerk. Vasquez could have easily been convicted of Level 3 felony robbery and faced a maximum sentence of sixteen years and an advisory sentence of nine years. *See* I.C. § 35-50-2-5(b).

[10] As for Vasquez’s character, while it is true he had only two misdemeanor convictions when he committed the robbery at Speedway, he was on probation at the time for stealing from a different Speedway, and he has had significant contacts with law enforcement. And though he pled guilty, he received a significant benefit in the dismissal of a Level 3 felony robbery charge in this case and felony theft charges in two separate cases. In addition, during the interview for his PSI, Vasquez admitted being “an active member” of the street gang Latin Counts. Appellant’s App. Vol. II p. 49. There is nothing about Vasquez’s character that supports a downward revision of his sentence.

[11] Vasquez has failed to persuade us his four-year sentence is an outlier needing revision.

[12] Affirmed.

Kirsch, J., and May, J., concur.