MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Shantel Kinney,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

March 1, 2023

Court of Appeals Case No. 21A-CR-2688

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause Nos. 79D01-2102-F3-7 79D01-2106-F2-15

Memorandum Decision by Judge Weissmann
Judges May and Crone concur.

Weissmann, Judge.

[1] In this consolidated appeal, Shantel Kinney challenges: (1) her conviction for Level 2 felony robbery causing serious bodily injury in one case (the "Landrum case"); (2) her unrelated conviction for Level 3 felony conspiracy to commit armed robbery in another case (the "Surface case"); and (3) the sentence imposed for each conviction. We affirm both convictions and their corresponding sentences.

Facts

Landrum Case

[2] Seventeen-year-old Kinney and her best friend, 16-year-old A.B., were a part of a larger friend group that included their respective boyfriends, 18-year-olds James Detamore and Bradley Wise. Apart from this group, Kinney and A.B. were social acquaintances with Timothy Landrum, who was more than twice their age. A.B. described Landrum as their "sugar daddy." Tr. Vol. III, p. 6. He gave Kinney and A.B. money when needed, he occasionally took them out to eat, and fatefully, on December 1, 2020, he allowed Kinney and A.B. to celebrate their seventeenth birthdays at his house.[1] They were joined by their boyfriends and eight other friends, including Kinney's brother, Dion.

[1] Kinney's seventeenth birthday was on December 1; A.B.'s was on December 2.

[3] For weeks, Kinney, A.B., and their boyfriends had discussed stealing from Landrum, and they eventually decided to do so the night of the birthday party. Landrum was present during the party but mostly stayed in his kitchen while Kinney and A.B. socialized with their friends. At some point, however, Kinney and Landrum went into Landrum's bedroom and closed the door. Detamore witnessed this and barged into the room, shouting at Landrum and accusing him of having his hands down Kinney's pants. In response, Landrum ordered everyone at the party to leave.

[4] Kinney, who had driven all of her friends to the party, left Landrum's house and sat in her car outside. A.B. and several other friends joined Kinney while Detamore, Wise, Dion, and three other friends, remained inside Landrum's house. With Detamore's encouragement, Wise, Dion, and friend G.D. mercilessly beat Landrum into unconsciousness while another friend recorded a cellphone video of the attack. The friends then began stealing various items from Landrum's house. Wise stole Landrum's wallet. He and Detamore then joined the group of friends in Kinney's car, which Kinney drove to G.D.'s house. Meanwhile, Dion, G.D., and two other friends remained at Landrum's house, looking for more things to steal.

[5] About an hour later, Kinney, Detamore, and Wise returned to Landrum's house, where Dion and G.D. had continued to attack Landrum. When Kinney found Landrum lying unconscious on the kitchen floor, she recorded a cellphone video of a friend pouring alcohol on him. Kinney then joined her friends in looking around Landrum's house for things to steal. Eventually, the

group loaded the stolen items into Kinney's car, and Kinney drove everyone back to G.D.'s house. In addition to Landrum's wallet, the stolen items included his cellphone, a gaming system, video games, shoes, clothing, makeup, and prescription medication. From this haul, Kinney received some cash from Landrum's wallet and some makeup.

[6] The next day, Landrum's roommate came home and found Landrum on the kitchen floor, unconscious and covered in blood. Landrum's roommate called the police, whose investigation soon implicated Kinney in the incident. The State directly charged Kinney in adult court with four offenses: (1) conspiracy to commit armed robbery resulting in serious bodily injury, a Level 2 felony; (2) robbery resulting in serious bodily injury, a Level 2 felony; (3) theft, a Level 6 felony; and (4) conspiracy to commit theft, a Level 6 felony. A jury found Kinney guilty as charged, and the trial court entered judgments of conviction on all four counts. However, the court later vacated Kinney's convictions for all but Level 2 felony robbery resulting in serious bodily injury.

Surface Case

[7] In an unrelated incident on January 7, 2021, Kinney, A.B., and an individual identified as Patrick Cross, conspired to rob an individual identified as James Surface. A.B. went to Surface's apartment and, once inside, planned to let in Kinney and Cross. But Kinney and Cross went to the apartment of Surface's neighbor by mistake. When the neighbor answered the door, Cross shot him in the leg. Kinney and Cross then fled the scene, and A.B. followed shortly thereafter.

[8] A police investigation eventually implicated Kinney in the incident. The State filed a delinquency petition against Kinney in juvenile court, alleging she committed acts that would constitute the following offenses if committed by an adult: (1) conspiracy to commit armed robbery, a Level 3 felony; (2) battery with a deadly weapon, a Level 5 felony; (3) assisting a criminal, a Level 6 felony; (4) possession of marijuana, a Class B misdemeanor; and (5) possession of paraphernalia, a Class C misdemeanor. After a hearing, the juvenile court waived Kinney's case to adult court. Kinney pleaded guilty to Level 3 felony conspiracy to commit armed robbery. The trial court accepted Kinney's plea, entered judgment of conviction, and granted the State's motion to dismiss the remaining charges without prejudice.

Consolidated Sentencing

[9] At a consolidated sentencing hearing, the trial court sentenced Kinney in the Landrum case to a total of 16 years, with 13 years executed in the Indiana Department of Correction (DOC) and 3 years suspended to supervised probation. The court sentenced Kinney in the Surface case to a total of 8 years, with 5 years executed in the DOC and 3 years suspended to supervised probation. The court further ordered Kinney to serve her sentences in the Landrum and Surface cases consecutively.

Discussion and Decision

[10] In this consolidated appeal, Kinney challenges her conviction for Level 2 felony robbery resulting serious bodily injury in the Landrum case, her conviction for

Level 3 felony conspiracy to commit armed robbery in the Surface case, and the sentence issued for each conviction. We affirm on all grounds.

I. Level 2 Felony

A. Subject Matter Jurisdiction

[11] In challenging her conviction for Level 2 felony robbery resulting in serious bodily injury, Kinney first argues that the adult court lacked subject matter jurisdiction over the Landrum case because the State never obtained a waiver of juvenile court jurisdiction.

[12] "Subject matter jurisdiction is the power to hear and determine cases of the general class to which any particular proceeding belongs." *K.S. v. State*, 849 N.E.2d 538, 540 (Ind. 2006). "[A] juvenile court has 'exclusive' subject matter jurisdiction over proceedings in which a 'child' is alleged to be delinquent." *D.P. v. State*, 151 N.E.3d 1210, 1213 (Ind. 2020) (quoting Ind. Code § 31-30-1-1(1)); *see generally* Ind. Code §§ 31-37-1-1, -1-2(1) (collectively defining "delinquent child" as a child who, "before becoming eighteen (18) years of age," commits an act "that would be an offense if committed by an adult"). However, "[a]n exception applies if an individual who is at least sixteen years old commits any of a list of certain felonies." *D.P.*, 151 N.E.3d at 1214 n.1 (citing Ind. Code § 31-30-1-4(a)). That list includes Level 2 felony robbery resulting in serious bodily injury. Ind. Code § 31-30-1-4(a)(6)(B).

[13] Specifically, Indiana Code § 31-30-1-4(a) provides:

> The juvenile court does not have jurisdiction over an individual for an alleged violation of:
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> ***
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> (6) IC 35-42-5-1 (robbery) if:
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> ***
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> (B) the robbery results in bodily injury or serious bodily injury;
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> ***
>
> (10) any offense that may be joined under IC 35-34-1-9(a)(2) with any crime listed in this subsection;
>
> if the individual was at least sixteen (16) years of age but less than eighteen (18) years of age at the time of the alleged violation.

[14] This statute "explicitly divests" a juvenile court of jurisdiction over the enumerated offenses. *Truax v. State*, 856 N.E.2d 116, 122 (Ind. Ct. App. 2006). Thus, allegations of such offenses "can be filed only in [adult] court." *State v. Neukam*, 189 N.E.3d 152, 156 (Ind. 2022); *see also* Ind. Code § 31-32-2-4 ("A child may not be charged with or convicted of a crime, *except* a crime excluded by IC 31-30-1, unless the child has been waived to a court having criminal jurisdiction" (emphasis added)); Ind. Code § 31-30-3-5 ("*Except* for those cases in which the juvenile court has no jurisdiction in accordance with IC 31-30-1-4, the court shall, upon motion of the prosecuting attorney and after full investigation and hearing, waive jurisdiction if it finds [certain enumerated conditions]" (emphasis added)).

[15] As Kinney was 17 years old and charged with a direct-file offense under Indiana Code § 31-30-1-4, a juvenile court never had subject matter jurisdiction

over the Landrum case. Thus, the State was not required to obtain a waiver of such jurisdiction before filing criminal charges against Kinney in adult court.

B. Sufficiency of the Evidence

[16] Kinney next argues that the State presented insufficient evidence to support her conviction for the Landrum robbery. When reviewing the sufficiency of the evidence to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. *Bailey v. State*, 907 N.E.2d 1003, 1005 (Ind. 2009). We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. *Id.* We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt. *Id.*

[17] A person commits robbery, a Level 5 felony, when that person "knowingly or intentionally takes property from another person or from the presence of another person: (1) by using or threatening the use of force on any person; or (2) by putting any person in fear; commits robbery, a Level 5 felony." Ind. Code § 35-42-5-1(a). "However, the offense is . . . a Level 2 felony if it results in serious bodily injury to any person other than a defendant." *Id.*

[18] Kinney does not dispute that her friends collectively took property from Landrum by using force against him or that it resulted in Landrum's serious bodily injury. The question is whether Kinney is liable as an accomplice. Indiana's accomplice-liability statute provides:

> A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense, even if the other person: (1) has not been prosecuted for the offense; (2) has not been convicted of the offense; or (3) has been acquitted of the offense.

Ind. Code § 35-41-2-4. Under this statute, "there is no distinction between the criminal responsibility of a principal and that of an accomplice." *McQueen v. State*, 711 N.E.2d 503, 506 (Ind. 1999).

[19] Thus, to convict Kinney of Level 2 felony robbery resulting in serious bodily injury, under an accomplice liability theory, the State was required to prove beyond a reasonable doubt that Kinney knowingly or intentionally aided, induced, or caused her friends to commit the offense.

1. Principal Offense

[20] We understand Kinney's first sufficiency claim to be that the State failed to prove her friends committed a criminal "offense," per the language of the accomplice-liability statute, and not a delinquent act. Ind. Code § 35-41-2-4. The Indiana Criminal Code generally defines "offense" to mean "a crime," Ind. Code § 35-31.5-2-215(a), and our Supreme Court has held that "criminal and delinquent acts are distinct classes of conduct determined by age." *Neukam*, 189 N.E.3d at 157); *see* Ind. Code § 31-37-1-2(1) (generally defining "delinquent act" as an act "that *would be* an offense if committed by an adult" (emphasis added)). Thus, according to Kinney, the State was required to prove that "her juvenile

co-defendants had been waived from juvenile to adult criminal court at the time of the incident." Appellant's Br., p. 35.

[21] Inherently, Kinney seems to contend an adult cannot be held criminally liable for aiding, inducing, or causing a juvenile to commit a delinquent act. We need not address this issue, however, because the record reveals that at least one of Kinney's friends committed a crime rather than a delinquent act. A.B.'s boyfriend, Wise, was 18 years old—and thus, an adult—when he both participated in beating Landrum and stole Landrum's wallet. Along with Landrum's injuries, these facts are sufficient to prove that Wise, acting as a principal, committed the "offense" of Level 2 felony robbery resulting in serious bodily injury.

[22] Kinney goes on to assert that the State failed to prove "she knew the ages of any persons who were over the age of 18." *Id.* But Kinney does not cite any authority for the proposition that such proof was required, and she fails to develop an argument beyond the lone assertion. We therefore find the argument waived. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) ("Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."); Ind. Appellate Rule 46(A)(8)(a) (requiring argument section of appellant's brief to contain cogent reasoning and citations to authorities relied on).

2. Accomplice Liability

[23] Kinney next claims the State failed to prove she aided, induced, or caused her friends to rob Landrum. "There is no bright line rule in determining accomplice liability; the particular facts and circumstances of each case determine whether a person was an accomplice." *Vitek v. State*, 750 N.E.2d 346, 353 (Ind. 2001). Common considerations include a defendant's: "(1) presence at the scene of the crime; (2) companionship with another at the scene of the crime; (3) failure to oppose commission of crime; and (4) course of conduct before, during, and after occurrence of crime." *Bruno v. State*, 774 N.E.2d 880, 882 (Ind. 2002).

[24] Looking only at the evidence supporting Kinney's conviction, the record shows that Kinney, her best friend, and their boyfriends discussed stealing from Landrum for weeks and eventually decided to do so the night of Kinney's birthday party. Though Kinney was not inside Landrum's house when her friends attacked him, Kinney later videorecorded a friend pouring alcohol on Landrum as he lay unconscious on his kitchen floor. And though Kinney did not personally remove any property from Landrum's house, she looked around the house for things to steal, drove her friends home with the property they stole, and ultimately received some of the stolen property.

[25] Among other factors, Kinney's course of conduct before, during, and after Landrum's robbery supports the jury's finding that she was an accomplice to the crime. *See Byrer v. State*, 423 N.E.2d 704, 707 (Ind. Ct. App. 1981) (finding sufficient evidence of robbery defendant's accomplice liability where defendant

was present during robbery planning discussion, drove principal robbers to and from scene, waited in car during robbery, and shared in robbery proceeds).

II. Level 3 Felony

[26] In challenging her conviction for Level 3 felony conspiracy to commit armed robbery in the Surface case, Kinney argues that the trial court erred in accepting her guilty plea without a written plea agreement. When a defendant pleads guilty to a felony charge pursuant to a plea agreement with the State, Indiana Code § 35-35-3-3 requires that the plea agreement be in writing and filed with the trial court. "The purpose behind this statute is to insure that a defendant does not base [a] guilty plea upon certain promises made by the prosecutor where the judge has in fact not accepted the state's recommendation." *Gil v. State*, 988 N.E.2d 1231, 1235 n.2 (Ind. Ct. App. 2013) (quoting *Davis v. State*, 418 N.E.2d 256, 260 (Ind. Ct. App. 1981)).

[27] Kinney does not allege the existence of a plea agreement with the State. Appellant's Br., p. 34 (stating, "[the] plea agreement, *if any*, . . . is not in the record" (emphasis added)). She also does not specify any promises or recommendations by the State that were not accepted by the trial court. To the contrary, Kinney testified during her guilty plea hearing that she did not receive any promises in exchange for her guilty plea. Tr. Vol. II, p. 48. Thus, Kinney has failed to establish that the trial court erred in accepting her guilty plea or that she suffered any harm as a result. *See Reynolds v. State*, 657 N.E.2d 438, 444 (Ind. Ct. App. 1995) (holding trial court did not err in accepting felony guilty

plea without written plea agreement where defendant received exactly the terms to which he orally agreed and, thus, could show no harm).

III. Sentence

[28] Finally, Kinney challenges her sentences in the Landrum and Surface cases under Indiana Appellate Rule 7(B). That rule provides: "The 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." Ind. Appellate Rule 7(B). In reviewing the appropriateness of a sentence, our "principal role . . . is to attempt to leaven the outliers . . . not to achieve a perceived 'correct' sentence." *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014) (internal citations and quotations omitted). Accordingly, we give "substantial deference" and "due consideration" to the trial court's sentencing decision. *Id.*

A. Landrum Case

[29] Kinney was convicted in the Landrum case of Level 2 felony robbery resulting in serious bodily injury. The sentencing range for a Level 2 felony is 10 to 30 years imprisonment, with an advisory sentence of 17½ years. Ind. Code § 35-50-2-4.5. The trial court sentenced Kinney to 16 years in the DOC, with 3 years suspended to probation.

[30] With regard to the nature of the Landrum robbery, Kinney essentially asserts that she had nothing to do with it. As we have already found sufficient evidence

to support Kinney's conviction under the theory of accomplice liability, we need not address her contrary assertions here. Instead, we highlight the significant impact the robbery has had, and will continue to have, on Landrum.

[31] After waking from his three-week coma, Landrum had to undergo weeks of rehabilitation to learn how to walk, talk, and care for himself again. He required around-the-clock care from his family for months and is expected to be in therapy for years to come. As Landrum's sister testified at sentencing, Kinney and her friends took from Landrum the life he knew: "[a] life of having a good job, of being able to take care of and play with his kids, of being independent." Tr. Vol. III, p. 180.

[32] As to her character, Kinney points to her lack of prior juvenile adjudications or criminal convictions and her positive education and employment history. These attributes alone do not convince us that Kinney's 16-year sentence is inappropriate—especially considering that it is 1½ years below the advisory sentence and 3 years are suspended to probation. *See Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) ("[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed."), *clarified on reh'g*, 875 N.E.2d 218.

B. Surface Case

[33] In the Surface case, Kinney was convicted of Level 3 felony conspiracy to commit armed robbery. The sentencing range for a Level 3 felony is 3 to 16 years imprisonment, with an advisory sentence of 9 years. Ind. Code § 35-50-2-

5(b). The trial court sentenced Kinney to 8 years imprisonment, with 3 years suspended to probation.

[34] Kinney makes no argument as to the nature of her conspiracy to commit armed robbery against Surface; she simply recites the factual basis for her guilty plea. We emphasize, however, that Surface's unsuspecting neighbor was shot during the crime. Considering this, the character arguments noted above, and the fact that Kinney's 8-year sentence is 1 year below the advisory sentence, with 3 years suspended to probation, we are not convinced that Kinney's sentence is inappropriate. *See Anglemyer v*, 868 N.E.2d at 494.[2]

Conclusion

[35] In summary, we affirm Kinney's conviction and sentence for Level 2 felony robbery resulting in serious bodily injury in the Landrum case. We also affirm Kinney's conviction and sentence for Level 3 conspiracy to commit armed robbery in the Surface case.

May, J., and Crone, J., concur.

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[2] Kinney does not challenge the consecutive nature of her sentences as inappropriate.