MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kerwins Louis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 29, 2022

Court of Appeals Case No. 21A-CR-2546

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2003-MR-8

Tavitas, Judge.

Case Summary

[1] Kerwins Louis is one of a trio of people who committed a home robbery that resulted in the murder of two victims and the serious injury of a third. Louis was charged with two counts of murder, two counts of felony murder, one count of attempted robbery, a Level 2 felony, and a firearm enhancement. After a jury found Louis guilty on all counts, the trial court imposed an aggregate sentence of 146 years in prison. Louis now appeals, contending that the State presented insufficient evidence to sustain his convictions and that his sentence is inappropriate in light of the nature of the offenses and his character. Because we are unpersuaded by either argument, we affirm.

Issues

[2] Louis raises two issues:

I. Whether sufficient evidence was presented to sustain his convictions.

II. Whether his sentence is inappropriate in light of the nature of his offenses and his character.

Facts

[3] On the evening of February 26, 2020, Meng Kem, his friend Mon Ong, and Kem's girlfriend, Brooke Wendel, were at home watching television. Kem answered a knock at the door to discover his friend and former roommate Kyaw Hlang. Shortly thereafter, Hlang and two other men pushed into the house and ordered Kem onto the ground at gunpoint. Hlang approached

Wendel. A second intruder approached Ong, and the third stood behind Kem with his gun pointed at Kem's head. Each intruder shot one of the victims.[1] Ong died instantly, and Wendel died shortly thereafter at the hospital. Kem was temporarily paralyzed but survived the attack. The intruders absconded with a gold box containing drugs and cash. A friend of Kem arrived shortly thereafter, discovered the grisly scene, and called 911. Kem positively identified Hlang to the police as one of the three intruders.

[4] Later that night, Detective Paul Gigli was on patrol when he heard a dispatch call regarding the homicide investigation that was then underway. The call included information on an address believed to be associated with Hlang, and Detective Gigli proceeded to that address. While surveilling the house, Detective Gigli observed an SUV pull up directly in front of the house and park in the middle of the street with its headlights on. Nobody got in or out of the SUV. Detective Gigli—who was driving a fully-marked squad car—pulled out and approached the SUV. The SUV pulled away, and Detective Gigli pursued and then initiated a traffic stop. There were three men in the SUV: Eddyson Francois, Jamesley Paul, and Louis. A search of the SUV revealed drugs next to Louis. Louis admitted that the drugs were his.

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[1] We recently decided the direct appeal of another one of the intruders, Jamesley Paul. *Paul v. State*, ___N.E.3d___, 21A-CR-1704 (Ind. Ct. App. June 15, 2022). We note that there are some discrepancies between the evidence presented at the previous trial and the evidence presented in the case at bar. Those discrepancies, however, do not affect the outcome of either appeal, and we are bound to consider only the evidence that was before the jury in this case as being properly before us now.

[5] Louis was then interviewed by Detective Brian Martin of the Fort Wayne Police Department. Louis initially denied being involved in the crimes and denied that he knew Hlang. Louis subsequently changed his story, admitted that he did know Hlang, and admitted that he had travelled with Hlang to Kem's house in order to buy drugs. He claimed that only Hlang went into the house and that Louis and Paul had remained outside, where they heard gunshots. Later in the interview, however, Louis acknowledged that he was inside the house during the shootings.

[6] A few days later, Louis—already in custody—asked to speak with police a second time. During the second interview, Louis claimed he did not enter the house, but he had known about the robbery in advance. Louis told police that he had been contacted by Hlang, who knew about a place where they could commit a robbery. Louis claimed that he only went to the house in the first place to warn Ong about the robbery and that, as he arrived, he heard the shots and saw two people run out of the house.

[7] On March 3, 2020, the State charged Louis with: Count I, murder; Count II, murder; Count III, felony murder; Count IV, felony murder; and Count V, attempted robbery, a Level 2 felony. The State also alleged that Louis used a firearm in the commission of an offense, resulting in the death and/or serious bodily injury of another.

[8] Louis' jury trial was held in September 2021. The State presented evidence that: (1) Louis told the police that he was in the house when the shootings

occurred; (2) Louis knew about the robbery before it was executed; (3) the intruders went to the house seeking drugs and absconded with drugs after the shootings; (4) Louis was pulled over the night of the shootings along with his cousin, Jamesley Paul, who was also implicated in the crimes; (5) Louis had drugs with him in the car; (6) Hlang named Jamesley Paul and Paul's cousin, "K" as the other two intruders, Tr. Vol. III pp. 148-49; (7) police discovered a backpack at the house associated with Hlang containing paperwork belonging to Louis; and (8) Kem was present when all three intruders entered and testified that each fired a gun.

[9] Louis testified in his own defense. He testified that he had lied to the police during the first interview, that he never went inside the house, and that he was not aware of the robbery prior to it being committed. Louis also testified, however, that he did go with Paul and Hlang to the house and that their plan was to purchase marijuana. Louis testified that he stayed in the car but began to worry that it was taking too long and went up to the front door. There, he saw Hlang pointing a gun at the people inside and making demands. Louis testified that, at this point, he ran way. He further testified that the drugs found when he was pulled over were not the same as the drugs taken by the intruders.

[10] The jury found Louis guilty on all counts. On October 22, 2021, the trial court found the following aggravators: (1) Louis' criminal record; (2) Louis' failed efforts at rehabilitation; (3) Louis' contact with the juvenile justice system; (4) a prior misdemeanor conviction resulting in jail time, a referral to a substance abuse program, and home detention; (5) the extraordinary impact of the crimes

on the victim's and their families; (6) a sudden escalation to violence; and (7) the nature and circumstances of the crimes. Appellant's App. Vol. II p. 141. The trial court found no mitigating factors. The trial court reduced the robbery conviction to a Level 5 felony and declined to enter sentences on the felony murder convictions for double jeopardy reasons. The trial court then imposed the following sentence: sixty years for each of the two murder convictions; twenty years for the firearm enhancement, and six years for the attempted robbery conviction. The trial court ordered all sentences to be served consecutively for an aggregate sentence of 146 years. Louis now appeals.

Analysis

I. Sufficiency of the evidence

[11] Louis first argues that insufficient evidence was presented to sustain his convictions. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of

innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[12] It is well settled that a defendant may be convicted of a crime under an accomplice liability theory. Under this theory, accomplice defendants are equally culpable as the one who commits the actual crime. *See* Ind. Code § 35-41-2-4; *see also Watson v. State*, 999 N.E.2d 968, 970 (Ind. Ct. App. 2013) (quoting *Sanquenetti v. State*, 727 N.E.2d 437, 441 (Ind. 2000)); *Anthony v. State*, 56 N.E.3d 705, 714 (Ind. Ct. App. 2016) (citing *Lothamer v. State*, 44 N.E.3d 819, 822 (Ind. Ct. App. 2015)).

> In determining whether there was sufficient evidence for purposes of accomplice liability, we consider such factors as the defendant's presence at the scene of the crime; companionship with another at the scene of the crime; failure to oppose commission of the crime; and course of conduct before, during, and after occurrence of the crime. Accomplice liability applies to the contemplated offense and all acts that are a probable and natural consequence of the concerted action.

Anthony, 56 N.E.3d at 714 (citing *Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied*). "[T]he accomplice is 'criminally responsible for everything which follows incidentally in the execution of the common design, as one of its natural and probable consequences, even though it was not intended as part of the original design or common plan.'" *Id*. (quoting *Griffin v. State*, 16 N.E.3d 997, 1003 (Ind. Ct. App. 2014)).

[13] With respect to each of the convictions, Louis argues that the State failed to present sufficient evidence to identify Louis as the third perpetrator of the crimes. Louis contends:

> Here, Mr. Louis was not positively identified as a perpetrator by any witness at the scene of the crime. Testimony introduced by the State indicated that (1) Mr. Kem was not aware of the third person's identity [ ] and (2) that Mr. Hlang knew the third person as Mr. Paul's cousin and by the name K. [ ] These statements fail to raise an inference that Mr. Louis was the third person that entered the house with Mr. Hlang on February 26, 2020.

Appellant's Br. pp. 24-25 (internal citations omitted). Louis cites no authority for the proposition that eyewitness identification from a crime scene is required in order to convict a defendant of the crimes. To the extent that he makes this assertion, he invites us to reweigh the evidence, which we will not do.

[14] Regardless, the State presented evidence from which a reasonable jury could conclude that Louis was the third intruder. Louis himself admitted to police that he had been inside the house when the shootings occurred and that he was aware of the pre-planned robbery. Louis admitted that the drugs, found in the car, during the traffic stop on the night of the crimes, belonged to him; and evidence was adduced at trial that the intruders went to Kem's house—at least in part—seeking drugs and then absconded with drugs. The State presented significant evidence of Louis' companionship with the other two intruders, both at the scene of the crime and otherwise. Paul and Louis, who are cousins, were together in the SUV that was pulled over on the night of the crime. Hlang

indicated that the third intruder was Paul's cousin who went by "K." A backpack belonging to Louis was recovered from Hlang's house.[2] Finally, Kem testified that all three intruders were in the house and fired their weapons.

[15] Given the evidence presented by the State, a reasonable jury could have concluded that Louis was the third intruder and was guilty of the crimes for which he was convicted. Accordingly, we affirm Louis' convictions for two counts of murder; attempted robbery, a Level 5 felony; and the firearm enhancement.

II. Propriety of sentence

[16] Next, Louis contends that the sentence imposed was inappropriate in light of the nature of the offenses and Louis' character.[3] The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the

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[2] This contradicts Louis' claim that he did not know Hlang until the night of the crimes.

[3] At various points in his brief, Louis suggests that the trial court's imposition of the sentence was an abuse of discretion. *See*, *e.g.*, Appellant's Br. p. 27. The substance of his argument, however, is that the sentence is inappropriate under Appellate Rule 7(B), a separate inquiry. Louis' brief does not contain any arguments germane to an abuse of sentencing discretion analysis, and so, to the extent that Louis claims that the trial court abused its discretion, those arguments are waived. Ind. App. R. 46(A)(8)(a) (requiring all claims to be supported by citations to authority and cogent reasoning); *see also Anglemyer v. State,* 868 N.E.2d 482, 491 (Ind.), *as amended* (July 10, 2007), *decision clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007) (making clear that abuse of sentencing discretion and Rule 7(B) analyses are distinct, and, thus, must be undertaken separately).

character of the offender."[4] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[17] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "should 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

[4] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014).

[18] In the case at bar, Louis was sentenced on two convictions for murder, attempted robbery as a Level 5 felony, and a firearm enhancement. "A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years." Ind. Code § 35-50-2-3(a). "A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." I.C. § 35-50-2-6. For a felony resulting in death or bodily injury, Indiana Code Section 35-50-2-11(g), as written at the time of Louis' offense provided:

> If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense under subsection (d), the court may sentence the person to an additional fixed term of imprisonment of between five (5) years and twenty (20) years.

[19] The trial court imposed the following sentence: sixty years for each murder conviction, twenty years for the firearm enhancement, and six years for the attempted robbery. The trial court ordered all sentences to be served consecutively for an aggregate sentence of 146 years. Thus, the murder

sentences were slightly enhanced beyond the advisory sentence, and the trial court imposed the maximum penalties for the firearm enhancement and attempted robbery conviction.

[20] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. This was a horrific offense. Three men contrived to invade Kem's home for purposes of robbing him. During the course of the robbery, the intruders shot all three victims, killing two and grievously injuring a third. The evidence showed that the intruders absconded with $1500 in cash and a small amount of drugs. We agree with the State that the disproportionality between the extent of the crime and the paltry gains sought by the intruders demonstrates a "callous disregard for human life." Appellee's Br. p. 15. We find nothing in the record to suggest that the nature of the offenses warrants revision of Louis' sentence.

[21] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). Louis argues that he "had minor [sic] criminal history prior to these convictions, with prior juvenile history and a single prior conviction that was pled to as a misdemeanor." Appellant's Br. p. 27. Louis further asserts that he is not "among the worst offenders[,]" but offers no argument in support of that assertion. We are compelled, given the lack of cogent reasoning, to conclude

that Louis has waived his arguments with respect to the nature of his character. Ind. App. R. 46(A)(8)(a). Nevertheless, we remind Louis that: "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*). We see nothing in the record that indicates that Louis' character exhibits virtuous traits or that he has a history of good acts. We, therefore, conclude that the sentence was not inappropriate in the light of either the nature of the offenses or Louis' character.

Conclusion

[22] Sufficient evidence was presented to sustain Louis' convictions. Louis' sentence was not inappropriate in light of the nature of the offenses or his character. We affirm.

[23] Affirmed.

Riley, J., and May, J., concur.