MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew Houchin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 25, 2022

Court of Appeals Case No. 22A-CR-272

Appeal from the Vanderburgh Superior Court

The Honorable Kristina H. Weiberg, Magistrate

Trial Court Cause Nos. 82D03-2011-F3-6237 82D03-2010-F5-5446

Bradford, Chief Judge.

Case Summary

[1] After pleading guilty to and being convicted of multiple crimes under two different cause numbers, Andrew Houchin appeals a three-year portion of his sentence, which the trial court ordered him to serve in the Department of Correction ("DOC"). Specifically, Houchin challenges his placement in the DOC, arguing that it was inappropriate given the nature of his offense as well as his character. We affirm.

Facts and Procedural History

[2] On October 9, 2020, officers with the Evansville Police Department initiated a traffic stop after observing a vehicle "fail to stop at a stop sign." Appellant's App. Vol. II p. 20. Houchin, who was driving the vehicle in question, admitted that he "did not have a license" and informed the officers that he "had a gun in his waistband." Appellant's App. Vol. II p. 20. After recovering a .22 caliber Heritage Rough Rider revolver from Houchin's waistband, the officers learned that Houchin did not have a license for the handgun and was a convicted felon. At the conclusion of the traffic stop, Houchin was placed under arrest and was transported to the county jail.

[3] On October 12, 2020, the State charged Houchin under cause number 82D03-2010-F5-5446 ("Cause No. 5446") with Level 5 felony carrying a handgun without a license, Class C infraction driving with no operator's license in his

possession, and Class C infraction disregarding a stop sign. On October 14, 2020, Houchin posted bond and was released from pre-trial incarceration.

[4] On November 1, 2020, officers responded to a report of a battery. Upon arriving at the scene, they located Kevin Harris inside an apartment. Harris was "covered in his own blood, his face was disfigured and swollen, and there appeared to be contusions and small cuts or lacerations on various parts of his body." Appellant's App. Vol. II p. 80. Harris "was also found to be bound with what appeared to be TV cable wire around his neck and wrists" and his apartment "appeared to have been ransacked." Appellant's App. Vol. II p. 80. Harris reported to police that Houchin had confined him to the chair and "struck him repeatedly with his fists, feet, and knees." Appellant's App. Vol. II p. 80.

[5] On November 24, 2020, the State filed a petition to revoke Houchin's bail in Cause No. 5446, alleging that he had failed to appear for a scheduled hearing and that he had committed additional criminal offenses. The next day, the State charged Houchin under cause number 82D03-2011-F3-6237 ("Cause No. 6237") with Level 3 felony criminal confinement, Level 5 felony battery resulting in serious bodily injury, and Level 6 felony failure to appear. The State also alleged that Houchin was a habitual offender.

[6] Houchin pled guilty as charged under Cause No. 5446 and guilty to the criminal confinement and battery charges under Cause No. 6237. He also admitted to being a habitual offender. In exchange for Houchin's guilty pleas

and admission, the State dismissed the remaining charge of Level 6 felony failure to appear.

[7] The trial court conducted a joint sentencing hearing for Cause Nos. 5446 and 6237 on January 10, 2022. At the conclusion of this hearing, the trial court sentenced Houchin as follows: three years for the Level 5 felony possession of a handgun charge under Cause No. 5446, all of which would be served in the DOC; nine years for the Level 3 felony criminal confinement charge under Cause No. 6237, with four years executed in community corrections and five years suspended; and three years for the Level 5 felony battery charge under Cause No. 6237, all of which would be served in community corrections and would run concurrent to term imposed in relation to the criminal confinement charge. The trial court also, by virtue of Houchin's status as a habitual offender, enhanced Houchin's sentence under Cause No. 6237 by six years, all of which would be served in the DOC and would run consecutive to his other sentences.

Discussion and Decision

[8] On appeal, Houchin contends that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that "[t]he 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." 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). 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).

[9] The Indiana Supreme Court has held that "[t]he place that a sentence is to be served is an appropriate focus for application of our review and revise authority." *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007).

> Nonetheless, we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his or her sentence is inappropriate. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a trial court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale. Additionally, the question under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate.

Fonner v. State, 876 N.E.2d 340, 343–44 (Ind. Ct. App. 2007) (emphasis in original).

[10] Houchin "does not now challenge his 6-year sentence in the [DOC] for his status as a habitual offender, his 4-year term on work release, or his 5-year sentence suspended to probation. Instead, Houchin challenges only the 3-year

sentence imposed in the [DOC] on the handgun conviction under [Cause No.] 5446."[1] Appellant's Br. p. 9. Furthermore, in challenging his three-year sentence imposed under Cause No. 5446, Houchin does not challenge the length of the sentence, only the trial court's order that the sentence be served in the DOC rather than in community corrections. Specifically, Houchin claims that "[g]iven the innocuous nature of the offense and the amount of time [he] will already be serving in the [DOC] under [Cause No.] 6237, requiring [him] to serve 3 more years in the [DOC] before entering a therapeutic work release facility is inappropriate." Appellant's Br. p. 11. We disagree.

[11] As for the nature of his offense, Houchin asserts that placement in the DOC was inappropriate because his "entire encounter [with police] was very brief and peaceful, and [he] was completely cooperative with police during the incident." Appellant's Br. p. 10. While Houchin may have cooperated with police during the traffic stop, it does not alter the fact that he knowingly possessed a handgun without a license. Houchin indicated that he had the handgun "for protection" and stated that he was "pretty well versed in guns, even though he is not allowed to have them." Appellant's App. Vol. II p. 20.

[12] Further, while acknowledging that he had a criminal history and had "spent some time in the [DOC] before," Houchin claimed that placement in the DOC

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[1] We note that in sentencing Houchin to a three-year term, the trial court imposed the advisory sentence. *See* Ind. Code § 35-50-2-6(b) ("A person who commits a Level 5 felony … shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.").

was inappropriate because he "had never participated in treatment, which he thought would be beneficial to him." Appellant's Br. p. 11. While it is possible that Houchin may have responded well to therapeutic treatment, it does not mean that placement in the DOC was inappropriate. As we stated above, "the question under Appellate Rule 7(B) is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *Fonner*, 876 N.E.2d at 344 (emphasis in original).

[13] Houchin's criminal history consists of numerous felony and misdemeanor convictions. He has also failed to take advantage of prior probation and therapeutic work release opportunities and committed a violent act while out on bond for Cause No. 5446. Houchin's criminal history, ongoing criminal behavior, and failure to take advantage of prior lesser-restrictive attempts for rehabilitation demonstrate a disregard for the laws of this state and reflect poorly on his character. Houchin was also found to be a "high" risk to re-offend. Appellant's App. Vol. II p. 37. Houchin has failed to convince us that the trial court's order regarding placement is inappropriate. *See Fonner*, 876 N.E.2d at 344 ("A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate.").

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

Najam, J., and Bailey, J., concur.