

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Eric M. Winship,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

July 28, 2021

Court of Appeals Case No.  
21A-CR-82

Appeal from the  
Bartholomew Circuit Court

The Honorable  
Kelly S. Benjamin, Judge

Trial Court Cause No.  
03C01-1910-F3-6060

**Vaidik, Judge.**

## Case Summary

- [1] Eric M. Winship appeals his eighteen-and-a-half-year sentence for Level 3 felony leaving the scene of an accident during or after the commission of operating a motor vehicle while intoxicated causing death and Level 6 felony unlawful possession of a syringe. We affirm.

## Facts and Procedural History

- [2] In December 2016, Winship was sentenced to three-and-a-half years in prison for violating probation. Winship completed Purposeful Incarceration in prison and was released in July 2018. Seven months later, in February 2019, he was arrested for three drug-related offenses, including Level 6 felony possession of a narcotic drug. *See* Cause No. 03C01-1902-F6-783. Winship was released on bond but was arrested again on October 1, 2019, for three more drug-related offenses, including Level 5 felony possession of methamphetamine. *See* Cause No. 03C01-1910-F5-5608. He was released on bond again on October 17.
- [3] Three days later, on October 20, Winship was driving a car in Columbus while under the influence of various drugs, including methamphetamine. Winship ran a stop sign and struck twenty-one-year-old Kyla Ortlieb as she rode her bicycle. Kyla landed on the hood of Winship's car, and he braked. She then fell from the hood, and Winship ran her over as he drove away. Winship did not stop or call 911. Several people witnessed the accident, and someone called 911. When EMS arrived, Kyla had died. The next day, the police found Winship in a

bathroom at a friend's house, attempting to use a hypodermic needle to inject himself with methamphetamine.

- [4] The State charged Winship with Count 1: Level 4 felony operating a motor vehicle while intoxicated causing death; Count 2: Level 3 felony leaving the scene of an accident during or after the commission of operating a motor vehicle while intoxicated causing death; and Count 3: Level 6 felony unlawful possession of a syringe. Thereafter, Winship and the State entered into a plea agreement under which Winship would plead guilty to Counts 2 and 3 and the State would dismiss Count 1 and all counts from Cause Nos. 783 and 5608.
- [5] At the sentencing hearing, evidence was presented about Winship's criminal history. He has juvenile adjudications for possession of marijuana, illegal consumption of an alcoholic beverage, and possession of paraphernalia. In addition, he has adult convictions for Level 5 felony possession of a narcotic drug, Level 6 felony resisting law enforcement, Level 6 felony possession of a narcotic drug, and Class A misdemeanor possession of marijuana. Winship has been on probation five times and ordered to undergo substance-abuse evaluations and follow any recommendations. Winship, however, has violated his probation four times.
- [6] Winship argued the trial court should find his struggle with addiction and remorse as mitigators. Dr. Shelvy Keglär, a clinical psychologist, testified on Winship's behalf. According to Dr. Keglär, Winship has a severe addiction to alcohol and drugs as well as mental-health problems that likely stem from

losing his father at a young age. Dr. Keglär said Winship needed substance-abuse and mental-health treatment in prison and a strict follow-up program for years after release. The court acknowledged Dr. Keglär's testimony but found Winship had already been given multiple chances with substance-abuse treatment, including Purposeful Incarceration, but had not been successful. The court pointed to Winship's presentence investigation report, where Winship told the probation officer he had "completed a substance abuse treatment while in prison, but did not take it seriously" and that when he got out of prison in 2018 he started using methamphetamine again because it was "cheap." Appellant's App. Vol. II p. 98. Winship took the stand and apologized for what happened and claimed he would "spend the rest of his life trying to make up for it." Tr. Vol. II p. 35. In addition, while Winship was in jail awaiting sentencing, he wrote the trial court a letter stating he would use this experience to help himself and others struggling with addiction. The court, however, found his letter to be "manipulative" and that he was using his "gift of gab to try to lighten [his] responsibility." *Id.* at 60.

- [7] The trial court found five aggravators: (1) Winship has a prior criminal history, including three felonies and one misdemeanor, (2) he has violated probation four times, (3) he "has been offered treatment previously, including Purposeful Incarceration, which has been unsuccessful," (4) the nature and circumstances of the offenses, (5) he committed this offense while on bond, and (6) "[w]hile being in jail and held on this case, he violated a jail rule by committing battery on another person." Appellant's App. Vol. II p. 108; Tr. Vol. II p. 58. The court

found one mitigator: Winship pled guilty. The court sentenced Winship to sixteen years on Count 2 and two-and-a-half years on Count 3, to be served consecutively, for a total sentence of eighteen-and-a-half years.

[8] Winship now appeals.

## Discussion and Decision

### I. Mitigating Factors

[9] Winship contends the trial court should have considered his drug addiction and remorse as mitigators. Sentencing decisions are within the discretion of the trial court and are thus reviewed on appeal for an abuse of discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied*. A trial court may abuse its discretion by “not recognizing mitigators that are clearly supported by the record and advanced for consideration.” *Id.* The trial court, however, does not have to accept the defendant’s contentions as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000).

#### A. Addiction

[10] Winship asked the trial court to find his addiction as a mitigator. The court addressed Winship’s struggles with addiction but did not find his addiction was a mitigator. As the court pointed out, Winship has had multiple opportunities to improve his condition through treatment but has not done so. Instead, “the opportunities [he was] given were ignored.” Tr. Vol. II p. 60. As Winship admitted, he did not take his substance-abuse treatment seriously. The court

further explained that Winship’s “lack of motivation” and “follow-through” on this front led to the death of an “innocent young lady.” *Id.* at 61. The court did not abuse its discretion in not finding Winship’s addiction as a mitigator.

## **B. Remorse**

[11] Winship also asked the trial court to find his remorse as a mitigator. Trial courts are in the best position to assess the defendant’s remorse and credibility. *Hollins v. State*, 145 N.E.3d 847, 852 (Ind. Ct. App. 2020), *trans. denied*. The court can hear the apology and witness the defendant’s demeanor. *Id.* Therefore, we defer substantially to a trial court’s assessment of the defendant’s remorse and credibility. *Id.*

[12] Here, the trial court acknowledged Winship’s in-court testimony and letter he wrote to the court. However, the court found that Winship’s remorse was insincere and “manipulative.” Tr. Vol II. p. 60. The court did not abuse its discretion in not finding Winship’s alleged remorse as a mitigator.

## **II. Inappropriate Sentence**

[13] Winship also contends his sentence is inappropriate in light of the nature of the offenses and his character. An appellate court may revise a sentence 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). A court’s job under Rule 7(B) is not to reach a “correct” result in each case but to “leaven the outliers.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Whether a sentence is inappropriate

ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). We generally defer to the trial court in sentencing matters, so the defendant must persuade us that the sentence is inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[14] The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). The sentencing range for a Level 6 felony is six months to two-and-a-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). Here, the trial court sentenced Winship to maximum terms on each count, to be served consecutively.

[15] As for the nature of the offenses, while Winship’s offenses are serious, there is nothing about them that goes far beyond the statutory elements. However, Winship’s character supports his sentence. Winship has a significant criminal history, including several drug-related convictions. He has violated probation four times and served time in prison, where he completed Purposeful Incarceration. But after being released from prison, he was arrested on more drug-related charges and was released on bond three days before committing the offenses in this case. While being held in jail in this case, he committed a battery. Winship has not convinced us that the nature of the offenses and his character render his eighteen-and-a-half-year sentence an outlier.

[16] Affirmed.

Bradford, C.J., and Brown, J., concur.