## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Darren R. Amick ,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

January 18, 2023

Court of Appeals Case No. 22A-CR-628

Appeal from the White Superior Court

The Honorable Brad A. Woolley, Judge

Trial Court Cause No. 91D01-2011-F2-208

**Riley, Judge.**

## STATEMENT OF THE CASE

[1] Appellant-Defendant, Darren R. Amick (Amick), appeals the trial court's imposition of a twenty-five-year sentence following his guilty plea to placing a destructive device or explosive to kill, injure, or intimidate, or to destroy property, a Level 2 felony, Ind. Code § 35-47.5-5-8(4).

[2] We affirm.

## ISSUE

[3] Amick presents this court with one issue on appeal, which we restate as: Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

## FACTS AND PROCEDURAL HISTORY[1]

[4] On November 17, 2020, officers with the White County Sheriff's Department arrived at Dustin Johnson's (Johnson) residence in Chalmers, Indiana, after they received a report of shots fired. While speaking with Johnson, the officers located a possible explosive device under Johnson's vehicle. The improvised device had already detonated and had caused damage to the vehicle. The

[1] We note that the State filed a motion to dismiss Amick's appeal with this court, alleging that Amick made a knowing and voluntary waiver of his right to appeal his sentence in his plea agreement. Amick responded to the State's motion, relying on *Merriweather v. State*, 151 N.E.3d 1281 (Ind. App. 2020) and maintaining that the trial court had advised him at the guilty plea hearing and at the sentencing hearing, without any objection by the State, that he had a right to appeal his sentence. Upon review, the motions panel denied the State's motion to dismiss the appeal, and the parties now do not request this court to revisit the motion's panel decision.

Indiana State Police Explosive Ordinance Disposal team was dispatched to the scene to investigate the device, which was confirmed to be "some kind of homemade explosive device," and to secure the area. (Appellant's App. Vol. II, p. 28). Crime scene investigators canvassing the area located another explosive device, constructed from similar materials, on Amick's property. A search warrant was issued for Amick's home where multiple chemicals were found, which "in the right mixture were extremely volatile." (Transcript Vol. II, p. 13). Amick admitted that he had planted the device under Johnson's vehicle and had left the scene after it exploded. Amick stated that Johnson had been "bothering him the day before and that made him mad." (Appellant's App. Vol. II, p. 29). Amick also believed that Johnson had "slashed the tires on his truck," and he had planted the explosive to "scare Johnson." (Appellant's App. Vol. II, p. 29).

[5] On September 8, 2020, in a separate cause and prior to the events in the current cause, the State had charged Amick with two Counts of dealing in methamphetamine, Level 4 felonies, and one Count of dealing in methamphetamine, as a Level 3 felony. On November 19, 2020, the State filed an Information in the current cause, charging Amick with placing a destructive device or explosive to kill, injure, or intimidate, or to destroy property, as a Level 2 felony. Thereafter, on May 14, 2021, in a third cause, the State charged Amick with theft, as a Level 6 felony. On September 28, 2021, Amick entered into a plea agreement with the State, in which he agreed to plead guilty to placing a destructive device or explosive to kill, injure, or intimidate, or to

destroy property as a Level 2 felony, in exchange for the State dismissing the remaining charges in all three causes and agreeing to a sentence with the executed time capped at twenty-five years.

[6] On March 9, 2022, the trial court conducted a sentencing hearing, at which the trial court identified aggravating and mitigating sentencing factors. As aggravators, the trial court mentioned Amick's criminal history, lack of cooperation, and history of drug and alcohol abuse. As mitigators, the trial court found that Amick was self-employed, and that he pleaded guilty and accepted responsibility. The trial court sentenced Amick to an executed sentence of twenty-five years, the maximum sentence allowed under the terms of the plea agreement.

[7] Amick now appeals. Additional facts will be provided if necessary.

## DISCUSSION AND DECISION

[8] Amick now contends that the trial court abused its decision by sentencing him to the maximum term allowed by the plea agreement and maintains that considering the nature of the offense and his character a mitigated sentence is warranted. Sentencing is primarily "a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Nevertheless, although a trial court may have acted within its lawful discretion in fashioning a sentence, our court may revise the sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is inappropriate in light of the nature of the offense and the

character of the offender." Ind. Appellate Rule 7(B). "The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225. Ultimately, "whether we regard a sentence as appropriate at the end of the day 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*. at 1224. We focus on "the length of the aggregate sentence and how it is to be served." *Id*. Our court does "not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is 'inappropriate.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Amick bears the burden of persuading our court that his sentence is inappropriate. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 111-12 (Ind. 2015).

[9] The advisory sentence is the starting point selected by the General Assembly as a reasonable sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The sentencing range for a Level 2 felony is between ten and thirty years, with an advisory sentence of seventeen and one-half years. I.C. § 35-50-2-4.5. Here, the parties agreed to cap the executed sentence at

twenty-five years, and the trial court, pursuant to the terms of the plea agreement, imposed the maximum agreed upon sentence.

[10] Turning to the nature of the offense, we find that Amick failed to provide compelling evidence that portrays the nature of his offense in a positive light. He snuck over to Johnson's residence in the early morning, placed a homemade explosive device underneath his vehicle, and walked away after the device exploded, resulting in damage to Johnson's car. Another similar explosive device was located on Amick's property during a subsequent search. Amick's argument that he showed restraint because he "committed the crime in such a way that there would only be property damage" is unpersuasive. (Appellant's Br. p. 11). Pursuant to I.C. 35-47.5-5-8(4), in order to be convicted of the offense of placing a destructive device or explosive to kill, injure, or intimidate or to destroy property, it was sufficient that Amick only intended to intimidate another person or to destroy property. Therefore, the allegation that the explosion did not injure Johnson does not render Amick's sentence inappropriate. Regardless of Amick's intent, his actions reflect a reckless disregard for the safety of the community. Placing an explosive device on a fuel carrying vehicle in a residential neighborhood is particularly dangerous and could easily have resulted in more serious consequences than the mere property damage to Johnson's vehicle.

[11] Focusing on Amick's character, we note that as an adult, Amick has been convicted of six felonies and five misdemeanors, and has been adjudicated an habitual substance-abuse offender and an habitual traffic violator. *See*

*Rutherford v State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (a defendant's criminal history is relevant in assessing his character). Amick's prior convictions, commencing in 1986, include operating a vehicle after forfeiture of a license, operating a vehicle after being adjudged an habitual offender, operating a vehicle while intoxicated, operating a vehicle with a Schedule I or II controlled substance or its metabolite, escape, theft, domestic battery, and battery. In 2020, the State filed three felony cases against Amick in an eight-month period. At the time of sentencing in the current cause, Amick had charges pending for dealing in methamphetamine and theft. While out on bond in this cause, he was arrested for resisting law enforcement. When shown leniency in the past, Amick failed to comply with the conditions of alternative placements or probation, and his probation was terminated unsuccessfully on several occasions.

[12] Amick attempts to persuade this court that his sentence is inappropriate because he pleaded guilty and accepted responsibility for his crimes. While the trial court already took these arguments into account by identifying them as mitigators, we also note that Amick received a substantial benefit from his plea agreement where charges in two other cause numbers were dismissed. Amick's contention that the sentence is inappropriate because he has a history of struggling with substance abuse is equally unpersuasive. Although he claims that his conviction "would not have happened except for the drug use," the record indicates that Amick was court-ordered to receive treatment in the past, which was unsuccessful. (Appellant's Br. p. 11). In 1992 and 1996, Amick was

ordered to participate in substance abuse programs. In 2002, he was ordered to complete intensive outpatient counseling, and in 2014, he was ordered to complete an alcohol education program. His failure to address his documented substance abuse issues, despite multiple opportunities to do so, does not demonstrate that placement in the Department of Correction, a structured environment where he can receive the substance abuse treatment he needs, is inappropriate.

[13] In light of the evidence before us, we find no "compelling evidence," placing Amick's character or his offense in a "positive light" and therefore conclude that the trial court's imposition of the maximum sentence allowed within the parameters of the plea agreement is not inappropriate in light of Amick's character and the nature of the offense. *Stephenson*, 29 N.E.3d at 122.

## CONCLUSION

[14] Based on the foregoing, we hold that Amick's sentence is not inappropriate in light of the nature of the offense and the character of the offender and we affirm the trial court's imposition of his sentence.

[15] Affirmed.

[16] Bradford, J. and Pyle, J. concur