MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rachel M. Alvarez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No. 22A-CR-212

Appeal from the Elkhart Superior Court

The Honorable Gretchen S. Lund, Judge

The Honorable Eric S. Ditton, Magistrate

Trial Court Cause Nos. 20D04-1909-F6-11276 20D04-2004-F6-500

Tavitas, Judge.

Case Summary

[1] Rachel Alvarez pleaded guilty to possession of methamphetamine, a Level 6 felony, and was sentenced to two years in community corrections. While in community corrections, Alvarez removed her ankle monitor. Consequently, the State charged Alvarez with escape, a Level 6 felony, and alleged that she violated the terms of her placement. Alvarez subsequently admitted to violating the terms of her community corrections placement and pleaded guilty to escape. The trial court revoked Alvarez's placement in community corrections and ordered her to serve her two-year sentence in the Department of Correction ("DOC"). The trial court also sentenced Alvarez to two years in the DOC for the escape conviction. Alvarez appeals and claims that: (1) the trial court abused its discretion by ordering her to serve two years in the DOC for the community corrections violation; and (2) her sentence for the escape conviction is inappropriate in light of the nature of her offense and her character. Finding no error, we affirm.

Issues

I. Whether the trial court abused its discretion by ordering Alvarez to serve two years in the DOC as a result of her violation of the terms of her community corrections placement.

II. Whether Alvarez's sentence for her escape conviction is inappropriate in light of the nature of Alvarez's offense and her character.

Facts

[2] On September 18, 2019, while she was already on probation in another case, Alvarez was charged in Cause No. 20D04-1909-F6-1276 ("Cause No. F6-1276") with possession of methamphetamine, a Level 6 felony, and refusing to identify herself, a Class C misdemeanor. Alvarez eventually entered into a plea agreement with the State in which she agreed to plead guilty to the felony in exchange for the State dismissing the misdemeanor charge. On November 13, 2019, the trial court accepted the plea agreement and sentenced Alvarez to two years to be served in a community corrections placement. As part of her community corrections placement, Alvarez was required to wear an ankle monitor.

[3] On March 27, 2020, Alvarez let the battery on her ankle monitor to drain without replacing or recharging it. She then removed the monitor. Both of these actions were contrary to the terms of her community corrections placement. Alvarez's case manager attempted to call Alvarez but was unable to reach her. The case manager then called Alvarez's mother, who did not know where Alvarez was. As a result of Alvarez's removal of her monitor, the State filed a petition to revoke Alvarez's placement in community corrections and also charged Alvarez in Cause No. 20D04-2004-F6-500 ("Cause No. F6-500") with escape, a Level 6 felony.

[4] On January 5, 2022, Alvarez pleaded guilty in Cause No. F6-500 and admitted to violating the terms of her community corrections placement in Cause No. F6-1276. At that time, Alvarez did not have a plea agreement with the State

but was represented by counsel. The trial court revoked Alvarez's community corrections placement in Cause No. F6-1276 and ordered her to serve her two-year sentence in the DOC. In Cause No. F6-500, the trial court sentenced Alvarez to a consecutive term of two years in the DOC. Alvarez now appeals.

Analysis

I. Community Corrections Violation Sanction

[5] Alvarez first contends that the trial court abused its discretion by ordering her to serve two years in the DOC for violating the terms of her community corrections placement. The sanction for a defendant who is placed in a community corrections program and violates the terms of this placement is controlled by Indiana Code Section 35-38-2.6-5, which provides:

> (a) If a person who is placed under this chapter violates the terms of the placement, the community corrections director may do any of the following:
>
> (1) Change the terms of the placement.
>
> (2) Continue the placement.
>
> (3) Reassign a person assigned to a specific community corrections program to a different community corrections program.
>
> (4) Request that the court revoke the placement and commit the person to the county jail or department of correction for the remainder of the person's sentence.
>
> The community corrections director shall notify the court if the director changes the terms of the placement, continues the placement, or reassigns the person to a different program.

> (b) If a person who is placed under this chapter violates the terms of the placement, the prosecuting attorney may request that the court revoke the placement and commit the person to the county jail or department of correction for the remainder of the person's sentence.

[6] Here, the community corrections director filed a petition with the trial court requesting that the trial court revoke Alvarez's community corrections placement, and Alvarez subsequently admitted to the violation. Thus, the only issue before the trial court was what sanction to impose for this violation. *See Sullivan v. State*, 56 N.E.3d 1157, 1160 (Ind. Ct. App. 2016) (noting that revocation of community-corrections placement is a two-step process: first, the trial court must make a factual determination that a violation occurred; then, if a violation is proven, the trial court must determine if the violation warrants revocation).

[7] A trial court's action in a probation revocation proceeding, or a community corrections placement revocation proceeding,[1] differs significantly from that taken in the original sentencing hearing after a criminal conviction. *Wooten v. State*, 946 N.E.2d 616, 622 (Ind. Ct. App. 2011). As our Supreme Court has explained:

> [T]he action taken by a trial court in a probation revocation proceeding is not a "sentencing." The court is merely

[1] The standard of review for revocation of a community corrections placement is the same standard as for a probation revocation. *Bennett v. State*, 119 N.E.3d 1057, 1058 (Ind. 2019) (citing *Cox v. State*, 706 N.E.2d 547, 549 (Ind. 1999)).

> determining whether there has been a violation of probation and, if so, the extent to which the court's conditional suspension of the original sentence should be modified and/or whether additional conditions or terms of probation are appropriate.

Jones v. State, 885 N.E.2d 1286, 1289 (Ind. 2008). Thus, rather than the independent review afforded sentences under Appellate Rule 7(B), a trial court's sentencing decisions for probation violations are reviewable using the abuse of discretion standard. *Milliner v. State*, 890 N.E.2d 789, 793 (Ind. Ct. App. 2008) (citing *Jones*, 885 N.E.2d at 1289). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[8] Here, Alvarez claims that the trial court abused its discretion by choosing the most severe option by revoking her placement and ordering her to serve her sentence in the DOC. In support of her argument, Alvarez notes that: (1) she admitted to the violation, (2) had a difficult childhood; (3) suffers from mental health issues; and (4) has a substance abuse problem.

[9] Assuming all of these facts are true, we cannot overlook that Alvarez has violated the terms of her probation and community corrections placements multiple times in the past. As a juvenile, Alvarez violated her probation three times in one case. Alvarez also violated her probation in her prior adult criminal cases. Alvarez was on probation when she committed the offense of possession of methamphetamine, a Level 6 felony, in Cause No. F6-1276. When shown the grace of community corrections placement in that cause,

Alvarez again violated the terms of her placement, which left the trial court with few options other than to order her sentence be served in the DOC. Moreover, Alvarez's violation was not a minor one. She removed her ankle monitor, thereby committing another felony. Under these circumstances, we cannot say that the trial court's decision to order Alvarez to serve her two-year sentence in the DOC was an abuse of the trial court's considerable discretion in such matters.

II. Appropriateness of Alvarez's Sentence

[10] Alvarez also argues that her two-year sentence in Cause No. F6-500 is inappropriate. 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 character of the offender."[2] 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

[2] 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).

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)).

[11] "'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 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).

[12] In the case at bar, Alvarez committed escape, a Level 6 felony. The sentencing range for a Level 6 felony is six months to two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Here, the trial court imposed a sentence of two years, which is above the advisory sentence but six months shy of the maximum sentence.

[13] 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*. Alvarez argues that the nature of her offense does not support her two-year sentence. Alvarez claims that her actions were the bare minimum required to commit the offense.

[14] To convict Alvarez of escape, a Level 6 felony, the State was required to prove that she "knowingly or intentionally violate[d] a home detention order or intentionally remove[d] an electronic monitoring device or GPS tracking device[.]" I.C. § 35-44.1-3-4(b).[3] Although it appears that there was nothing particularly egregious about Alvarez's offense, she refers us to no compelling evidence portraying the nature of the offense in a positive light, such as restraint or regard. *See Stephenson*, 29 N.E.3d at 122. The fact remains that, while placed in community corrections, Alvarez let her monitoring device run out of power, she removed it, and she failed to contact her case manager. Moreover, as discussed below, Alvarez's sentence is not inappropriate based on her character alone.

[15] 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). "The

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[3] This statute was amended effective July 1, 2022. We refer to the prior version that was in effect at the time Alvarez committed the offense.

significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "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*).

[16] Here, Alvarez's poor character is reflected by her criminal history and her failure to respond to less-severe attempts to correct her behavior. At the relatively young age of thirty, Alvarez has accumulated convictions for four felonies and one misdemeanor. She also had two juvenile adjudications. Alvarez's juvenile and adult criminal history stems from her abuse of drugs and alcohol. Her juvenile adjudications were for possession of alcohol and visiting a common nuisance. As an adult, Alvarez has been convicted of: unlawful possession of a syringe, a Level 6 felony, and possession of a synthetic drug, a Class A misdemeanor; possession of a narcotic drug, a Level 6 felony; possession of methamphetamine, a Level 6 felony; and the two crimes at issue here, possession of methamphetamine, a Level 6 felony, and escape, a Level 6 felony.

[17] Furthermore, as noted above, Alvarez has been placed on probation several times in the past but has violated her probation numerous times. When placed on community corrections in the present case, Alvarez committed the new

offense of escape. Thus, prior showings of leniency and attempts at rehabilitation have failed. *See Brock v. State*, 983 N.E.2d 636, 643 (Ind. Ct. App. 2013) (noting that prior showings of leniency and attempts at rehabilitation had failed when addressing the character of the offender).

[18] In short, Alvarez has not met her burden of showing that her two-year executed sentence for escape, committed while she was on community corrections, is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

[19] The trial court did not abuse its discretion by ordering Alvarez to serve her two-year sentence in the DOC as a result of Alvarez's admitted violation of the terms of her community corrections placement. Nor can we say that Alvarez's two-year sentence for escape, a Level 6 felony, is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

[20] Affirmed.

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