MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Billy Wilson, Sr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 6, 2023

Court of Appeals Case No. 22A-CR-1574

Appeal from the Wayne Superior Court

The Honorable Charles K. Todd, Jr., Judge

Trial Court Cause No. 89D01-2011-MR-1

Memorandum Decision by Judge Bailey
Judges Brown and Weissmann concur.

Bailey, Judge.

Case Summary

[1] Billy Wilson, Sr. appeals his conviction and sentence for murder, a felony,[1] following a jury trial. We affirm.

Issues

[2] Wilson raises the following two restated issues on appeal:

I. Whether the State presented sufficient evidence to rebut his self-defense claim.

II. Whether Wilson's sentence is inappropriate in light of the nature of the offense and his character.

Facts and Procedural History

[3] K. C. Simpson, his girlfriend Richael Southard, and Southard's children, were next-door neighbors to Wilson and his wife, Mabel. The relationship between the two neighbors was "complicated." Tr. v. III at 54. Simpson and the children rode four-wheelers, dirt bikes, and go carts on their own property. Simpson and Southard were very loud, often had parties on the weekends, and sometimes set off fireworks. Wilson believed that they were being disrespectful by driving their vehicles onto nearby graveyard property, and he tried to stop

[1] Ind. Code § 35-42-1-1.

them from doing so. Simpson and Southard also had pit bull dogs, and Wilson believed they had "sicced" the dogs on him at one point. Tr. v. IV at 144.

[4] In April of 2020, Southard was driving a four-wheeler in her yard, and Wilson yelled at her to park the vehicle and get off of it. Southard responded, "[M]ake me, you know, it's my yard." Tr. v. III at 59. Wilson responded that he would "take care of you kids one day." *Id*. When Southard asked what that meant, Wilson replied, "I'm going to shoot you all." *Id*.

[5] On September 17, 2020, when Simpson's father was entering Simpson's home, one of the dogs got out of the house. The dog ran into Wilson's yard, and, within seconds, Southard heard gunshots. Wilson had shot the dog twice, but the dog survived its injuries. On or around November 1, Simpson shot and killed Wilson's cat when the cat came onto Simpson's property. Two days later, Simpson "tossed" the dead cat onto Wilson's property. *Id*. at 62.

[6] Wilson hired a survey company to determine the boundaries of his property. On November 4, 2020, Keith Fielden, a survey technician, arrived at Wilson's property where he and Wilson walked and talked. Wilson and Fielden stopped at the front corner of Wilson's property, which marked the line between his and Simpson's yard. Fielden then marked and dug a hole on the edge of Wilson's gravel driveway.

[7] Simpson came outside of his house to see who was in the yard. Before doing so, Simpson had placed a .380 caliber Smith and Wesson semi-automatic handgun in the pocket of his hoodie. Simpson walked up to Fielden and

Wilson and began to argue with the latter. Fielden asked the two men to stop arguing or else Fielden would call the Sheriff. Wilson and Simpson continued to argue about the boundary line and a fence, prior instances of being in each other's yards, toys being in the yard, and Wilson shooting Simpson's dog. Both Wilson and Simpson remained on their own respective property lines during the argument, and Fielden did not feel like the argument got to the point where he needed to call the police.

[8] Simpson wanted to put a post in the hole Fielden had dug, but Fielden asked him to wait and allow Fielden to bring a piece of wood to mark the corner. As Fielden turned away and began to walk toward his vehicle to recover the wood, he did not hear any arguing but did hear the noise of a fence post driver.

[9] Southard—who had stepped outside her house by this time—heard Wilson tell Simpson that Simpson "better get [his] ass on in the house before [Wilson] shoots him." Tr. v. III at 67. Wilson also said, "I'm done with you," "you guys are too much over there," and "I'm not messing with you." *Id*. at 99-100. Simpson responded that Wilson "better choose a bigger bullet than the one he used for [Simpson's] dog." *Id*. at 68. Wilson said, "You better get to running." *Id*. at 100. Simpson did not touch or approach Wilson, but Wilson reached for the Springfield XD .45 caliber semi-automatic gun he had been carrying in a holster. Simpson turned his back to Wilson and stepped away. As Simpson did so, Wilson fired and shot Simpson twice. Wilson's wife, Mabel—who had been standing outside the Wilson's house—told police that she heard Wilson say, "You've pushed me far enough" and then saw Wilson shoot Simpson. *Id*.

at 250. Mabel also told police that Simpson had started backing up when he saw the gun in Wilson's hand.

[10] Fielden was about forty to forty-five feet away from the men, with his back to them, when he heard the first two gunshots. Fielden then turned around and saw Wilson holding a gun. Simpson was spinning backwards, staggering, and heading away from Wilson. Wilson was following Simpson as Simpson staggered away into Simpson's yard. Simpson reached toward his hoodie pocket where his gun was but never pulled out the gun. Simpson staggered a little further away, then fell down and got back up. Wilson shot at Simpson again three times until Simpson fell down again. Wilson walked "deliberately" and did not say anything while shooting at Simpson. *Id*. at 10. Simpson walked in "kind of an S path" until he fell down on his side next to a tree in his yard. *Id*. at 29. Wilson walked up to Simpson, stood directly over him, and shot him twice in the head.

[11] When emergency personnel subsequently arrived at the scene, they found Simpson still lying under the tree. Simpson did not have a gun on his person at that time. Simpson's gun was located on the ground in between where the shooting had started and where Simpson was shot in the head. Simpson's gun had five rounds loaded in the magazine, but the safety was on and there was no round in the chamber. Thus, the firearm would not have been able to fire without further action being taken by Simpson to chamber a round and switch off the safety.

[12] Simpson was taken to a hospital where he subsequently died. Simpson had a total of six gunshot wounds and a seventh mark on his right forearm that was possibly a mark from being grazed by a bullet. Two bullets had entered Simpson's torso and lower body from behind, going from back to front. One of those bullets entered the back of Simpson's right shoulder and went from the right toward the middle. That bullet was recovered from his right armpit and could have caused him to lose feeling and motion in his hand and forearm. The other bullet had entered Simpson's right buttock and traveled from back to front and slightly left to right. It was recovered from Simpson's right hip and had perforated the connective tissues and bones of his hip and pelvis. That wound would have made it very difficult for Simpson to bear weight on his right leg.

[13] Simpson had two additional bullet wounds that were not to his head. One bullet had entered the front of his right shoulder and lodged beneath the right collarbone, travelling from right to left. That bullet fractured the bone and damaged large blood vessels, which could have resulted in "lethal hemorrhaging." Tr. v. III at 219. The other bullet entered the left elbow joint and exited the shoulder, resulting in a broken elbow.

[14] Two bullets had also been fired into Simpson's head. One of those bullets entered his left cheek and exited near his right ear, travelling left to right and slightly upward. It perforated bones and smaller blood vessels. The other bullet entered behind the left ear and was recovered from inside the skin on the left side of Simpson's forehead. The bullet traveled from back to front and slightly left to right. It fractured the skull and perforated the left hemisphere of

Simpson's brain and "would have impacted all of the functions of the brain." Tr. v. III at 215. That injury was fatal. The extreme angle of the two shots to the head, from low to high, "could have been created by an elevated shooter shooting downward." Tr. v. II at 226. Based on the position in which Simpson was found, the shot behind the left ear was possible if the shooter was standing "over top of" the victim; however, if the shooter was back further, the shot would have hit the shoulder instead of entering behind the ear. Tr. v. IV at 206.

[15] Law enforcement recovered from the scene six shell casings consistent with the ammunition found in Wilson's gun. Additionally, one mark was found in the ground that would be consistent with a bullet strike.

[16] The State charged Wilson with murder. At his jury trial, Wilson testified in his own defense. According to Wilson, Simpson "ran his hands on my ribs" and said, "I'm going to…" but did not finish the statement because Wilson shot him twice. *Id*. at 156. Wilson stated that Simpson pulled out a gun as he followed Simpson. Wilson admitted that he then shot Simpson three more times. Because he did not believe that those shots were "killing shots," Wilson then shot Simpson twice in the head. *Id*. Wilson contended that the final shots were taken from a distance of close to twenty feet away, such that he was not close to or "on top" of Simpson. *Id*. at 164.

[17] The jury found Wilson guilty of murder. The trial court held a sentencing hearing on June 6, 2022, at which the court found Wilson's lack of remorse for the loss of Simpson's life to be the sole aggravating circumstance. The court

found mitigating circumstances to be Wilson's lack of prior criminal conduct, his military service, and his "suffer[ing from] effects of serving in conflict." Appealed Order at 2. As to the latter, the court noted that Wilson had been diagnosed with Post Traumatic Stress Disorder ("PTSD") from his time in the Vietnam War, although the court "temper[ed]" the weight given to that mitigator by recognizing that Wilson had been made aware of his mental health issues for a lengthy period of time during which he could have addressed them but did not. Tr. v. V at 51. The trial court sentenced Wilson to a mitigated sentence of forty-eight years executed. This appeal ensued.

Discussion and Decision

Sufficiency of the Evidence

[18] Wilson challenges the sufficiency of the evidence to negate his claim of self-defense to murder.

> When reviewing the sufficiency of the evidence needed to support a criminal conviction, we neither reweigh evidence nor judge witness credibility. We consider only the evidence supporting the judgment and any reasonable inferences that can be drawn from such evidence. We will affirm if there is substantial evidence of probative value such that a reasonable trier of fact could have concluded the defendant was guilty beyond a reasonable doubt.

Bailey v. State, 907 N.E.2d 1003, 1005 (Ind. 2009) (internal citations omitted).

[19] To convict Wilson of murder, as charged, the State was required to prove beyond a reasonable doubt that Wilson knowingly killed Simpson. I.C. § 35-42-1-1. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2. Wilson concedes that he knowingly fired gunshots at Simpson and that those gunshots caused Simpson's death. However, Wilson asserts that he fired the gunshots in self-defense. The standard on appellate review of a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000). We neither reweigh the evidence nor judge the credibility of witnesses. *Id*. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed. *Id*.

[20] A valid claim of self-defense is legal justification for an otherwise criminal act. *Birdsong v. State*, 685 N.E.2d 42, 45 (Ind. 1997). The defense is defined in Indiana Code Section 35-41-3-2(c):

> A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to be the imminent use of unlawful force. However, a person:
>
> (1) is justified in using deadly force; and
>
> (2) does not have a duty to retreat;
>
> if the person reasonably believes that that force is necessary to prevent serious bodily injury to the person or a third person or

> the commission of a forcible felony. No person, employer, or estate of a person in this state shall be placed in legal jeopardy of any kind whatsoever for protecting the person or a third person by reasonable means necessary.

[21] A claim of self-defense is established by showing three facts: (1) the defendant was in a place where he had a right to be; (2) he did not provoke, instigate, or participate willingly in the violence; and (3) he had a reasonable fear of death or serious bodily harm. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). However,

> a person is not justified in using force if: ... the person has entered into combat with another person or is the initial aggressor, unless the person withdraws from the encounter and communicates to the other person the intent to do so and the other person nevertheless continues or threatens to continue unlawful action.

I.C. § 35-41-3-2(e)(3); *see also Wilson*, 770 N.E.2d at 801 (noting a mutual combatant—whether or not the initial aggressor—must declare "an armistice" before he or she may claim self-defense).

[22] Once a defendant claims self-defense, the State bears the burden of disproving at least one of the three elements beyond a reasonable doubt to rebut the defendant's claim. *Id*. The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief. *Quinn v. State*, 126 N.E.3d 924, 927 (Ind. Ct. App. 2019). Whether the State has met its burden is a question of fact for the factfinder. *Id*.

[23] Here, the evidence establishes that Wilson was on his own property—i.e., where he had a right to be—at the beginning of the confrontation but soon moved onto Simpson's property, where he had no right to be. In addition, the State presented evidence that Wilson instigated the violence by shooting Simpson after Simpson turned and walked away from Wilson. Moreover, the evidence established that Wilson at no point withdrew from the encounter and communicated an intent to do so, as required for statutory self-defense; rather, by his own admission, Wilson continued to shoot Simpson as Simpson walked away. The evidence also established that, at the time Wilson stood over Simpson's body and twice shot Simpson in the head at point blank range, Simpson no longer had a weapon or otherwise "continued" to threaten "unlawful action." I.C. § 35-41-3-2(e)(3). Similarly, the State presented sufficient evidence that Wilson did not have a reasonable fear of death or serious bodily harm from Simpson at any time. Simpson did not threaten Wilson with a weapon or even make a weapon visible to Wilson before Simpson shot him, and Simpson did not approach Wilson but, in fact, had turned and was either walking away from Wilson or actually lying on the ground unarmed at the time Wilson continued to shoot him.

[24] The State presented sufficient evidence to rebut a claim of self-defense. Wilson's contentions to the contrary are simply requests that we reweigh the evidence and judge witness credibility, which we may not do. *See Wallace*, 725 N.E.2d at 840.

Appellate Rule 7(B)

[25] Wilson contends that his sentence is inappropriate in light of his character. Article 7, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[26] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate 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. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] 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).

[27] We begin by noting that the sentencing range for murder is imprisonment for a term of between forty-five to sixty-five years, with an advisory sentence of fifty-five years. I.C. § 35-50-2-3. The advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007). Wilson was sentenced to forty-eight years, which is only three years above the minimum sentence and well below the advisory sentence. Thus, the trial court imposed a mitigated sentence. Yet, Wilson asserts he should have received the minimum sentence.

[28] Wilson failed to raise a claim that the nature of the offense would warrant revision of his sentence, and our review of the record discloses nothing about the nature of the offense that would warrant such a revision. "The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. Here, the record discloses that Wilson shot a person who had not displayed a weapon and who had turned around and walked away from Wilson. Wilson continued to shoot Simpson repeatedly, even as Simpson continued to stagger away from Wilson. And, while Simpson was prone, wounded, and unarmed, Wilson stood over Simpson and shot him in the head. We cannot say Wilson's offense was accompanied by any apparent restraint or regard for others. *See Stephenson*, 29 N.E.3d at 122.

[29] Nor does Wilson's character warrant a sentence revision. Wilson has no criminal history, which is some evidence of good character. However, Wilson also showed no remorse for the fact that Simpson is dead. And, while the evidence shows that Wilson suffered from PTSD as a result of his service in the Vietnam War, the evidence also establishes that Wilson was aware of that diagnosis for a lengthy period of time and had many years to seek treatment for his condition. Yet, there is no evidence that Wilson did seek such treatment. Thus, Wilson's character is not such that a fully mitigated sentence is warranted.

[30] There is no compelling evidence portraying in a positive light the murder Wilson committed or his character. Therefore, we cannot say that Wilson's already-mitigated sentence of forty-eight years of imprisonment for murder is inappropriate in light of the nature of the offense and his character.

Conclusion

[31] The State presented sufficient evidence to support Wilson's conviction of murder and to rebut his claim of self-defense. And neither the nature of the offense Wilson committed nor his character warrant a revision of his already-mitigated sentence.

[32] Affirmed.

Brown, J., and Weissmann, J., concur.