

## 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.



---

### ATTORNEY FOR APPELLANT

Gregory L. Fumarolo  
Fort Wayne, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Tyler G. Banks  
Supervising Deputy Attorney  
General  
Indianapolis, Indiana

---

## IN THE COURT OF APPEALS OF INDIANA

---

Ryan Gravit,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 25, 2021  
Court of Appeals Case No.  
20A-CR-1578  
  
Appeal from the  
Noble Circuit Court  
  
The Honorable  
Michael J. Kramer, Judge  
  
Trial Court Cause No.  
57C01-1908-F3-12

**Kirsch, Judge.**

- [1] Ryan Gravit (“Gravit”) pleaded guilty to leaving the scene of an accident during or after committing operating a motor vehicle while intoxicated causing

death,<sup>1</sup> a Level 3 felony, operating a motor vehicle while intoxicated causing death,<sup>2</sup> a Level 4 felony, and admitted to being an habitual offender.<sup>3</sup> He was sentenced to sixteen years for his Level 3 felony conviction, enhanced by twenty years for being an habitual offender, and twelve years for his Level 4 felony conviction, with the sentences to run consecutively for an aggregate sentence of forty-eight years. Gravit appeals and raises the following restated issues for our review:

- I. Whether he may challenge his convictions on direct appeal after pleading guilty without a plea agreement; and
- II. Whether his sentence is inappropriate in light of the nature of his offenses and the character of the offender.

[2] We affirm.

## **Facts and Procedural History**

[3] On August 16, 2019 at approximately 5:00 p.m., Sandra and Steven Williams (“the Williamses”) were driving in Noble County, Indiana when they observed a U-Haul truck being driven “recklessly” by a man later identified as Gravit. *Appellant’s App. Vol. II* at 9; *Tr. Vol. 2* at 53. Gravit was driving the truck “all over the road to the point [the Williamses] thought it was going to crash.”

---

<sup>1</sup> See Ind. Code § 9-26-1-1.1.

<sup>2</sup> See Ind. Code § 9-30-5-5.

<sup>3</sup> See Ind. Code § 35-50-2-8.

*Appellant's App. Vol. II* at 9. The Williamses had to stop at a railroad crossing while a train passed by, and the U-Haul Gravit was driving stopped behind the Williamses' vehicle. *Id.* After the train had passed and as the railroad gates began to raise, Gravit drove his U-Haul truck around the Williamses' vehicle "at a high rate of speed" and crossed the railroad tracks, "almost hitting the railroad gates." *Id.*

[4] Gravit traveled approximately 3,000 feet further down the road and then turned onto River Road. *Id.* The Williamses followed the U-Haul truck onto River Road, and they observed a man's body -- later identified as high school teacher and coach Charles Schlemmer ("Schlemmer") -- laying on the side of the road. *Id.* at 9, 50-68. Gravit had hit Schlemmer with the U-Haul truck while Schlemmer was riding his bicycle, and when the impact occurred, Schlemmer hit the U-Haul's windshield, which caused the windshield to severely splinter and left a large dent. *Id.* at 9; *State's Exs. 4-6*. When the Williamses discovered Schlemmer, they observed that no one else had stopped at the scene, including the U-Haul truck, so they stopped and called 911. *Appellant's App. Vol. II* at 9.

[5] The police arrived, and after examining the scene, the officers determined that Gravit crossed the middle of the road and hit Schlemmer "head-on" as he was traveling in the opposite direction. *Id.* at 10. Schlemmer ultimately died from the injuries he sustained as a result of the collision. *Id.* at 21-23. The U-Haul truck was later examined and searched, and officers found alcohol containers inside of the truck's cabin. *Tr. Vol. 2* at 28. On the exterior of the truck, officers

observed a “damaged front end, broken windshield, and then fatty or skin tissue on the windshield.” *Id.* at 27-28.

- [6] Shortly after hitting Schlemmer, Gravit drove the U-Haul truck to a nearby liquor store and crashed into a parked vehicle in the store’s parking lot. *Id.* at 34. After hitting this parked car, Gravit then drove to the nearby apartment complex where he lived and parked the U-Haul truck. *Id.* at 34-35. A volunteer firefighter who was aware that the police were looking for Gravit from overhearing a report on his police radio saw Gravit and followed him to the apartment complex. *Id.* at 32. The firefighter informed the police of the location of Gravit’s U-Haul, and officers responded and began reviewing the apartment complex’s surveillance footage. *Id.* at 32-33.
- [7] While watching the surveillance video, one of the officers heard voices, looked outside, and observed Gravit’s wife and son. *Id.* at 33. As the officer was talking with the wife and son, Gravit came down a stairwell and out of one of the apartment buildings. *Id.* The officer approached Gravit and told him to stop, to which Gravit “said no.” *Id.* Gravit went back into the building’s stairwell, and when the officer identified himself and again told Gravit to stop, Gravit “said f\*ck you and closed the door in [the officer’s] face.” *Id.* When backup officers arrived, Gravit’s son led them to the family’s apartment after receiving a text from Gravit in which Gravit stated he was going to jump off the balcony. *Id.* When the officers got to the apartment, Gravit was standing with his hands behind his back. *Id.* at 34. Because of their fear that he would jump, the officers then “took [Gravit] to the ground” and placed him in handcuffs. *Id.*

After arresting Gravit, the police applied for and obtained a warrant to take a blood sample. The blood sample was taken and analyzed, and it showed that Gravit's blood alcohol content was ".27 BAC (serum)." *Appellant's App. Vol. II* at 10.

[8] The State charged Gravit with leaving the scene of an accident during or after committing operating while intoxicated causing death as a Level 3 felony and operating while intoxicated causing death as a Level 4 felony. *Id.* at 22-23. The State also alleged that Gravit was an habitual offender. *Id.* at 25-26. On June 22, 2020, without a plea agreement, Gravit pleaded guilty to both charges and admitted that he was an habitual offender. *Id.* at 36.

[9] The sentencing hearing was held on August 3, 2020. *Tr. Vol. 2* at 14. At sentencing, the trial court had Gravit's pre-sentence investigation report, which included his criminal history. *Appellant's Conf. App. Vol. II* at 40-44. Gravit, who was forty-six at the time of sentencing had an adult criminal history that spanned from June 1994 to the present. *Id.* In June 1994, he was convicted of a Class C misdemeanor for operating a motor vehicle without financial responsibility, and the next year he was convicted of Class A misdemeanor conversion. *Id.* at 40. In November 1995, Gravit was convicted of two counts of Class D felony fraud; he was placed on probation, which he later violated, and his probation was revoked. *Id.* at 41. In 1998, Gravit was convicted of theft of mail and theft of stamps in Michigan. *Id.* In March 2004, he was convicted of Class A misdemeanor check deception, and in June 2008, Gravit was convicted of Class D felony theft and Class A misdemeanor criminal

mischievous. *Id.* at 41-42. In October 2011, Gravit was convicted of Class D felony domestic battery, and in June 2012, he was convicted of both Class D felony and Class A misdemeanor resisting law enforcement. *Id.* at 42. Then, in 2015 and in 2016, he was convicted of Class A misdemeanor driving while suspended. *Id.* at 42-43.

[10] At the time he committed the present crimes, Gravit was on probation for 2018 convictions for Level 6 felony possession of methamphetamine and Class A misdemeanor possession of paraphernalia, and there were pending probation violations at the time of sentencing in this case. *Id.* at 43. Additionally, at the time he committed the present offenses, Gravit was also four months into another probationary term for having committed Class A misdemeanor operating while intoxicated endangering a person, and he had a pending charge for Class A misdemeanor driving while suspended, which he was convicted of in September 2019. *Id.*

[11] After considering the pre-sentence report and hearing evidence at sentencing, the trial court found as mitigating factors the fact that Gravit had pleaded guilty with no guarantee of what his sentence would be and that he showed remorse. *Tr. Vol. 2* at 67. As aggravating factors, the trial court found that Gravit had an extensive criminal history spanning twenty-nine years, that he had a pending case, that he was on probation for operating while intoxicated at the time he committed the instant offenses, and that his blood alcohol content at the time of the offenses was almost three-and-a-half times the legal limit. *Id.* The trial court found that the aggravating factors outweighed the mitigating factors and

sentenced Gravit to sixteen years for leaving the scene of an accident during or after committing operating while intoxicated causing death, enhanced by twenty years for being an habitual offender, and twelve years for operating while intoxicated causing death; the court ordered the sentences to be served consecutively. *Id.* at 68; *Appellant's App. Vol. II* at 76-77. Gravit now appeals.

## **Discussion and Decision**

### **I. Challenge to Convictions**

[12] Gravit argues that his convictions and sentences for leaving the scene of an accident during or after committing operating while intoxicated causing death and for operating while intoxicated causing death violate the constitutional prohibition against double jeopardy. However, because he pleaded guilty, Gravit has forfeited any double jeopardy challenge to his two convictions. It is well-settled that a conviction based on a guilty plea may not be challenged by direct appeal. *Yost v. State*, 150 N.E.3d 610, 612 (Ind. Ct. App. 2020) (citing *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996)). Instead, it must be challenged through a petition for post-conviction relief. *Id.* (citing *Brightman v. State*, 758 N.E.2d 41, 44 (Ind. 2001)). There are two exceptions to the prohibition on challenging a guilty plea on direct appeal: (1) a person who pleads guilty is entitled to contest on direct appeal the merits of a trial court's sentencing decision where the trial court exercised sentencing discretion; and (2) a person who pleads guilty is entitled to contest on direct appeal the trial court's discretion in denying withdrawal of the guilty plea prior to sentencing. *Hoskins v. State*, 143 N.E.3d 358, 360-61 (Ind. Ct. App. 2020). Neither

exception applies here, and, therefore, Gravit may not challenge his convictions through a direct appeal. *See Mapp v. State*, 770 N.E.2d 332, 334 (Ind. 2002) (holding that the defendant waived his right to challenge his convictions based on double jeopardy grounds on direct appeal when he entered his plea agreement). Because Gravit’s challenge to his convictions cannot be brought on direct appeal, we reject his appeal of his convictions and do not reach the merits.

## II. Inappropriate Sentence

[13] Pursuant to Indiana Appellate Rule 7(B), this court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Our Supreme Court has explained that the principal role of appellate review should be to attempt to leaven the outliers, “not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We independently examine the nature of Gravit’s offenses and his character under Appellate Rule 7(B) with substantial deference to the trial court’s sentence. *Satterfield v. State*, 33 N.E.3d 344, 355 (Ind. 2015). “In conducting our review, we do 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*. Whether a sentence is inappropriate ultimately depends upon “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.” *Cardwell*, 895 N.E.2d at 1224. The defendant bears the burden of persuading us that his sentence is inappropriate. *Id.*

[14] Gravit argues that his forty-eight-year aggregate sentence is inappropriate in light of the nature of the offense and the character of the offender. As to the nature of the offense, he contends that his sentence is inappropriate because, although his actions resulted in the death of Schlemmer, the element of death is contemplated in the offenses for which he was convicted, and such actions do not warrant a maximum sentence. Gravit further claims that his maximum enhancement for his habitual offender adjudication is inappropriate because the felonies on which the enhancement were based were lower-level felonies. As to his character, Gravit asserts that his sentence is inappropriate because, although he acknowledges his lengthy criminal history, he pleaded guilty without the benefit of a plea agreement and showed remorse for his crimes. He also urges that we should take notice that he is married with three adult children, was employed at the time of the crimes, and suffers from a significant substance abuse problem. Gravit maintains that his forty-eight-year sentence constitutes an outlier that should be revised because his life history does not show that he is the worst of the worst.

[15] Gravit pleaded guilty to Level 3 felony leaving the scene of an accident during or after committing operating while intoxicated causing death and Level 4 felony operating while intoxicated causing death. In addition, he admitted that he was an habitual offender. A person who commits a Level 3 felony shall be

imprisoned for a fixed term of between three and sixteen years, with the advisory sentence being nine years. Ind. Code § 35-50-2-5(b). A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. A person found to be an habitual offender shall be sentenced to an additional fixed term that is between six years and twenty years for a person convicted of murder or a Level 1 through Level 4 felony. Ind. Code § 35-50-2-8(i). The trial court sentenced Gravit to sixteen years for leaving the scene of an accident during or after committing operating while intoxicated causing death, enhanced by twenty years for being an habitual offender, and twelve years for operating while intoxicated causing death to be served consecutively. *Tr. Vol. 2* at 68; *Appellant's App. Vol. II* at 76-77.

[16] As this court has recognized, the nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). "When determining the appropriateness of a sentence that deviates from an advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that 'makes it different from the typical offense accounted for by the legislature when it set the advisory sentence.'" *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*.

[17] Here, the evidence showed that, in the early evening hours of August 16, 2019, Gravit got behind the wheel of a U-Haul truck in an intoxicated state and drove

drunkenly and recklessly on the roads of Noble County. When the Williamses first encountered Gravit, they observed him driving “recklessly” and “all over the road to the point they thought it was going to crash.” *Appellant’s App. Vol. II* at 9; *Tr. Vol. 2* at 53. After he was stopped behind them at a railroad crossing, and the railroad gates began to raise, Gravit drove his U-Haul truck around the Williamses’ vehicle “at a high rate of speed and crossed the tracks almost hitting the railroad gates.” *Appellant’s App. Vol. II* at 9. Gravit then continued driving, turning onto River Road, where he hit Schlemmer, who was riding his bicycle, head on causing serious bodily injury. *Id.* at 9, 10. The evidence showed that Schlemmer was traveling in the opposite direction. Gravit crossed over the center of the road and collided with Schlemmer, causing him to hit the U-Haul’s windshield, which caused the windshield to severely splinter and left a large dent. *Id.* at 9, 10. Schlemmer ultimately died from the injuries he sustained as a result of the collision. *Id.* at 21-23. Despite knowing that he had just caused serious injury to Schlemmer, Gravit did not stop or remain at the scene. Subsequent to arrest, a blood sample was taken and showed that Gravit’s blood alcohol content was “.27 BAC (serum).” *Id.* at 10. To show his sentence is inappropriate, Gravit must portray the nature of the offense in a positive light, “such as accompanied by restraint, regard, and lack of brutality.” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Gravit’s disregard of a person he struck with his truck and everyone else on the road as he drove recklessly does not satisfy this burden.

[18] Further, instead of stopping after hitting Schlemmer, Gravit drove the U-Haul truck to a nearby liquor store and crashed into a parked vehicle in the store's parking lot. *Tr. Vol. 2* at 34. He then drove to the nearby apartment complex where he lived and parked the truck. *Id.* at 34-35. When the police approached him outside of his apartment and told him to stop, Gravit "said f\*ck you and closed the door in [the officer's] face." *Id.* After the police gained access to Gravit's apartment, he refused to submit to arrest, and they had to take him to the ground to place him in handcuffs. *Id.* at 34. Gravit's further actions after striking Schlemmer also do not portray the nature of his offense in a positive light and thus do not lend themselves to a reduction in his sentence.

[19] The character of the offender is found in what we learn of the offender's life and conduct. *Perry*, 78 N.E.3d at 13. When considering the character of the offender, one relevant fact is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). The evidence showed that Gravit had an extensive and lengthy criminal history spanning twenty-nine years and consisting of multiple felony and misdemeanor convictions. These included at least nine misdemeanor convictions, six felony convictions, and multiple probation violations. *Appellant's App. Vol. II* at 40-43. Further, at the time he committed the present crimes, Gravit was on probation for 2018 convictions for Level 6 felony possession of methamphetamine and Class A misdemeanor possession of paraphernalia and was also four months into another probationary term for operating while intoxicated endangering a person, and he had a pending charge for driving while suspended. *Id.* at 43. Gravit's criminal

history demonstrates that nothing thus far has dissuaded him from committing criminal offenses and, unfortunately, this time, his criminal behavior killed an innocent person, who even Gravit describes as an “extraordinary individual loved dearly by his family, friends, and community.” *Appellant’s Br.* at 26.

Gravit’s prior convictions and repeated disregard of the law, particularly those for operating while intoxicated and driving while suspended, and his multiple probation violations pending at the time of his plea agreement, reflect poorly on his character. Gravit has not met his burden to show that his sentence is inappropriate by demonstrating “substantial virtuous traits or persistent examples of good character” that portray his character in a positive light. *Stephenson*, 29 N.E.3d at 122.

[20] While Gravit cites his remorse, acceptance of responsibility, and his substance abuse problem as reasons why his sentence is inappropriate, the trial court found that his repeated choice to break the law and commit further crimes after being given opportunities on probation made him an obvious danger to the community and justified his forty-eight-year sentence. Gravit’s arguments do not portray the nature of his crimes and his character in “a positive light,” which is his burden under Appellate Rule 7(B). *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Gravit has not shown that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We, therefore, affirm the sentence imposed by the trial court.

[21] Affirmed.

Bradford, C.J., and May, J., concur.