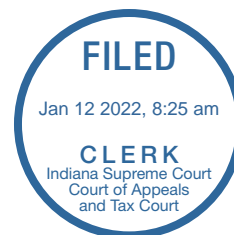


MEMORANDUM DECISION

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

Tyler J. Green,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 12, 2022
Court of Appeals Case No.
21A-CR-1627
Appeal from the
Brown Circuit Court
The Honorable
Mary H. Wertz, Judge
Trial Court Cause No.
07C01-2001-F4-44

Molter, Judge.

- [1] Tyler J. Green pleaded guilty to burglary as a Level 4 felony, and the trial court sentenced him to eight years, with three years executed in the Indiana

Department of Correction (“DOC”) and five years suspended to probation. The executed portion of Green’s sentence is three years less than the advisory sentence. Green argues his sentence is inappropriate considering his character and the nature of his offense. Finding no error, we affirm.

Facts and Procedural History

- [2] Green and his wife, Laci, were friends with Jasmine and Jeffrey Milligan. In September or October of 2019, the Milligans hired Green to perform home improvement projects at their home. They were reluctant to hire Green because of his significant history of substance abuse but decided to hire him anyway after Laci told them Green needed money to fix his truck and to buy Christmas presents. The Milligans showed Green how to enter their home while they were away.
- [3] In November of 2019, the Milligans noticed that one of their handguns was missing. Green initially denied taking the handgun, but after police questioned him, he admitted he did take it. He then returned the gun, and the Milligans cut ties with him.
- [4] On January 27, 2020, Green broke into the Milligans’ home; ransacked it; and stole two rifles and a vase containing between \$50 and \$100 in coins. He then sold one of the rifles to a drug dealer. Tr. at 14, 26–27.
- [5] On November 30, 2020, the State charged Green with burglary as a Class 4 felony and theft of a firearm, a Class 6 felony. On April 19, 2021, Green agreed to plead guilty to the burglary charge, and the State agreed to dismiss the theft

charge. The plea agreement also provided that the executed portion of Green's sentence could not exceed three years but otherwise left the terms and duration of Green's sentence to the trial court's discretion.

[6] On July 26, 2021, a sentencing hearing was held. Green testified about (1) his history of substance abuse, (2) how his addiction contributed to the crime he committed, and (3) a drug treatment program he had recently completed. Tr. at 9–11, 17, 22–24. Jasmine Milligan testified that Green knew how to enter their home because of Green's previous work at their home. *Id.* at 61–62. At the end of the hearing, the trial court found the following aggravating factors: (1) Green's criminal history; (2) Green had several times violated the terms of bond and probation in several cases; and (3) Green sold one of the rifles he stole to a drug dealer. *Id.* at 84; Appellant's App. Vol. 2 at 48. The trial court also cited that Green violated his position of trust with the Milligans as an aggravating factor. Tr. at 82 ("I do find that um, you did violate a position of trust with the [Milligans]. They let you into their home and you violated that trust."); *see also* Tr. at 84 ("So, as for as aggravating circumstances . . . we've got violation of a position of trust . . ."). The trial court found the hardship on Green's young daughter as a slight mitigating factor. Tr. 2 at 84; Appellant's App. Vol. 2 at 48. The trial court sentenced Green to eight years in DOC with three years executed and five years suspended to probation. Tr. 2 at 84; Appellant's App. Vol. 2 at 48. Green now appeals his sentence.

Discussion and Decision

- [7] Green claims his eight-year sentence is inappropriate. The Indiana Constitution confers jurisdiction in this Court for “review and revision of sentences for defendants in all criminal cases” “to the extent provided by rule.” Ind. Const. art. 7, § 6. “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).
- [8] Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Id.* at 160. Thus, we generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “Such deference 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).

I. Nature of Offense

- [9] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App.

2020). A person convicted of a Level 4 felony shall be imprisoned between two and twelve years, with an advisory of six years. Ind. Code § 35-50-2-5.5. Even if we ignore that Green is required to execute only three years of his sentence, his eight-year sentence exceeds the advisory sentence by only two years and falls short of the maximum sentence for Level 4 felonies by four years.

[10] When determining whether a sentence exceeding the advisory sentence is inappropriate, “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*, 950 N.E.2d at 807), *trans. denied*. Here, the facts that Green ransacked the home and then sold one of the rifles to a drug dealer, endangering more people, support the trial court’s sentence. Tr. At 82–83 (“You put a gun on the street that could harm other people.”); *see Bass v. State*, 974 N.E.2d 482, 485 (Ind. Ct. App. 2012) (the nature of the offense was more serious where defendant burglarized home, stole guns, and traded some guns for drugs, placing weapons in the hands of drug dealers).

[11] We also reject Green’s claim that his sentence is inappropriate considering the nature of his offense because he did not use force or hurt anyone when he committed his crimes. The lack of violence is already factored into the charges. If Green had inflicted an injury during the offense, the State could have charged him with burglary as a Level 3 felony (“results in bodily injury to any person other than a defendant”) or burglary as a Level 2 felony (“results in serious

bodily injury to any person other than a defendant”). *See* Ind. Code § 35-43-2-1(2), (3)(B). Instead, the State charged Green with burglary as a Level 4 felony, which simply entails breaking and entering a “dwelling.” Ind. Code § 35-43-2-1. Thus, the lack of injury to a victim does nothing to lessen the egregious nature of Green’s crime. *See Swedarsky v. State*, 569 N.E.2d 740, 743 (Ind. Ct. App. 1991) (the sentence was not inappropriate despite the nonviolent nature of the crime), *trans. denied*.

II. Character of Offender

[12] Green also contends his sentence is inappropriate considering his character, arguing his criminal record does not justify a sentence two years above the advisory sentence because his two prior convictions, domestic battery and conspiracy to commit trafficking with an inmate, were merely Class A misdemeanors. Green was placed on probation for both convictions.

[13] A limited criminal history may still reflect poorly on a defendant’s character. *Atwood v. State*, 905 N.E.2d 479, 488 (Ind. Ct. App. 2009), *trans. denied*. That is especially so here where there is a close proximity in time between Green’s instant offense and his prior convictions—approximately one year. *See Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015), (“The nature of Sandleben’s recent offenses and their temporal proximity to the current offense weigh heavily against his claim of an inappropriate sentence.”), *trans. denied*.

[14] Also, just two months before Green broke into the Milligan’s home, he took one of their handguns without their permission. Tr. at 55–56. When the

Milligans asked him about the handgun, Green denied he had taken it, although he later admitted he had taken it when questioned by police. Finally, between August 2019 and March 2021, Green violated the terms of probation from his prior convictions three times and violated the terms of bond twice. *See Willians v. State*, 51 N.E.3d 1205, 1211 (Ind. Ct. App. 2016) (violating terms of probation) and *Quintanilla v. State*, 146 N.E.3d 982, 989 (Ind. Ct. App. 2020) (violating terms of bond). All of this reflects poorly on Green’s character.

[15] In short, Green has failed to cast his character in a positive light by showing “substantial virtuous traits or persistent examples of good character.” *See Stephenson*, 29 N.E.3d at 122. Thus, his eight-year sentence is not inappropriate considering his character.

[16] Finally, in determining whether an aggregate sentence is inappropriate, we may consider whether a portion of the sentence was suspended. *See Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010) (“We decline to narrowly interpret the word ‘sentence’ in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge.”); *see also Jenkins v. State*, 909 N.E.2d 1080, 1084 (Ind. Ct. App. 2009) (“Common sense dictates that less executed time means less punishment.”), *trans. denied*. The executed portion of Green’s sentence is three years less than the advisory sentence for Level 4 felonies, which further confirms his sentence is not inappropriate.

[17] **Affirmed.**

Robb, J., and Riley, J., concur.