

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Virgus Browning,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2023

Court of Appeals Case No.
22A-CR-2543

Appeal from the Decatur Circuit
Court

The Honorable Timothy B. Day,
Judge

Trial Court Cause No.
16C01-1905-F5-672

Memorandum Decision by Judge Riley.
Chief Judge Altice and Judge Pyle concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Virgus Browning (Browning), appeals his sentence following his guilty plea to robbery, a Level 5 felony, Ind. Code § 35-42-5-1; and to theft, a Level 6 felony, I.C. § 35-43-4-2.

[2] We affirm.

ISSUE

[3] Browning presents this court with one issue, which we restate as: Whether his aggregate sentence is inappropriate in light of the nature of his offenses and his character.

FACTS AND PROCEDURAL HISTORY

[4] On May 19, 2019, Browning, who had been awake for two weeks using methamphetamine, crashed his car into a ditch in a rural section of Decatur County, Indiana. Browning abandoned his car and was observed running through a field clad only in a towel. Browning was located by local deputies, who then returned Browning to his car so that it could be removed from the ditch and Browning could get his clothes. After ascertaining that no apparent crime had been committed and that Browning did not appear to be intoxicated at that time, the deputies left Browning at a local truck stop so that he could find a ride home.

[5] Instead of going home, Browning left the truck stop and made his way to Paul Campbell's (Campbell) home on County Road 850 East in Decatur County.

Campbell, who was a stranger to Browning, was at home with his four-year-old son that day. Browning knocked on Campbell's door and told Campbell that he had been in a car accident. Campbell saw that Browning was bloodied and disoriented, and he invited Browning inside for something to eat. After Browning had gained entry to the home, Browning began looking through rooms, asked Campbell if he had any guns, and confirmed that only Campbell and his son were present. Campbell told Browning that he did not own any guns and that he would take Browning back to his car. Campbell went outside to his Ford Explorer, and while Campbell started to strap his son into the backseat, Browning walked up behind Campbell and ordered Campbell to surrender his car keys and get into the Explorer's passenger side seat. Campbell did as Browning instructed, and Browning got into the driver's seat. After Campbell told Browning that his son was not strapped into his car seat, Browning allowed Campbell and his son to exit the Explorer and go inside the house, but not before taking Campbell's cellphone and telling Campbell that he would be back later. Browning drove away in Campbell's Explorer. Campbell retrieved a rifle from his home, ran to a neighbor's house with his son, and called 9-1-1.

[6] A responding Decatur County Sheriff's Department deputy called Campbell's cellphone, and Browning answered and provided a location. A description of the stolen Explorer was broadcast to surrounding counties, and Browning was eventually located in Ripley County. When confronted by law enforcement, Browning fled on foot but was apprehended. Browning was so physically

agitated and erratic that the deputies transporting him were concerned that he was preparing to attack or to open the vehicle's door. Browning was returned to Decatur County, where, after being medically cleared at a hospital, he was detained at the jail.

[7] On May 21, 2019, the State filed an Information, charging Browning with Level 5 felony robbery, Level 6 felony theft, and Class A misdemeanor theft. On June 19, 2019, Browning was released on his own recognizance. On September 20, 2019, Browning filed his notice of intent to present an insanity defense, and on October 21, 2019, the trial court appointed Dr. George Parker (Dr. Parker) and Dr. Don Olive (Dr. Olive) to examine Browning for his competency to stand trial and for purposes of his insanity defense. Dr. Parker interviewed Browning on December 27, 2019, and Dr. Olive interviewed Browning on November 19, 2020. Both doctors filed their reports on December 10, 2020. Drs. Parker and Olive concluded that Browning was competent to stand trial and that he was primarily under the influence of voluntary methamphetamine intoxication at the time of the offenses. Neither doctor concluded that mental illness contributed to the instant offenses.

[8] On May 17, 2022, Browning and the State entered into a plea agreement which provided that Browning would plead guilty to the Level 5 felony robbery and the Level 6 felony theft charges; Browning's sentences would be capped at 1,280 days and 540 days, respectively; Browning's sentences would be served concurrently; and the State would dismiss the Class A misdemeanor charge. On June 20, 2022, Browning pleaded guilty as provided in his plea agreement.

[9] On August 8, 2022, Browning's presentence investigation report (PSI) was filed. Browning was thirty-two years old at the time his PSI was prepared. Browning had eleven prior felony convictions for offenses including multiple burglaries, battery with bodily injury, battery against a law enforcement officer, resisting law enforcement, and intimidation. Browning had a history of misdemeanor convictions for offenses including theft, battery, disorderly conduct, and public intoxication. Browning had served three executed sentences in the Department of Correction (DOC), shorter jail terms, and terms of probation. Browning's probation had been revoked on two occasions. Browning was free on bond in one of his previous theft cases when he committed the instant offenses. After he was released on his own recognizance in the instant matter, he was charged with disorderly conduct and public intoxication in Shelby County.

[10] On September 26, 2022, the trial court accepted Browning's guilty plea and proceeded to sentencing. Browning provided sworn testimony at his sentencing hearing that he had been in a relationship for two years, he worked part-time repairing motorcycles, tattooing, and modeling, and that he had started massage therapy school in March 2022 and had one more year of school to finish. Browning, who is six feet and four inches tall and weighs 210, expressed his remorse for the offenses but commented that "I think that I looked more aggressive than what I actually was." (Transcript Vol. II, p. 34). On cross-examination by the prosecutor, Browning acknowledged that he had frightened both Campbell and Campbell's son and that neither of his victims would ever forget what had happened to them.

[11] The trial court found as mitigating circumstances that Browning had pleaded guilty and that he had expressed remorse. The trial court rejected Browning's proffered mitigator of his mental health, observing that Drs. Parker and Olive had both concluded that his offenses were due to his voluntary methamphetamine intoxication, not any mental illness. The trial court found Browning's criminal history, the trauma to his victims, and the fact that Browning was out on bond when he committed the offenses to be aggravating circumstances. The trial court sentenced Browning to 1,280 days for his robbery conviction and to 540 days for his theft conviction, to be served concurrently.

[12] Browning now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[13] Browning requests that we reduce his sentence pursuant to Indiana Appellate Rule 7(b), which provides that we

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.

The purpose of our review under Rule 7(b) is to attempt to leaven the outliers, not to achieve some perceived more-correct result. *Smith v. State*, 188 N.E.3d 63, 68 (Ind. Ct. App. 2022). In light of this purpose, in conducting our review, we do not determine whether another sentence is more appropriate; rather, we determine if the sentence imposed by the trial court is inappropriate. *Id.* The

defendant appealing his sentence has the burden of persuading us that his sentence is inappropriate. *Malone v. State*, 191 N.E.3d 870, 877 (Ind. Ct. App. 2022). At the end of the day, whether we determine that a particular sentence is 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[14] When considering the nature of the offense(s) for purposes of a Rule 7(b) review, we have acknowledged that “the advisory sentence is the starting point for determining the appropriateness of a sentence.” *Belcher v. State*, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019) (citing *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007)), *trans. denied*. Browning pleaded guilty to Level 5 felony robbery and to Level 6 felony theft. The sentencing range for a Level 5 felony is between one and six years, with an advisory sentence of three years, whereas the sentencing range for a Level 6 felony is between six months and two and one-half years, with an advisory sentence of one year. I.C. §§ 35-50-2-6(b); -7(b). Browning’s potential maximum sentencing exposure for his offenses was seven and one-half years. Browning’s plea agreement provided for concurrent sentences with a cap of 1,280 days (approximately three and one-half years) on the robbery conviction and 540 days (approximately one and one-half years) on the theft conviction. Thus, although Browning received the maximum aggregate executed sentence allowed by his plea agreement, by virtue of that agreement, his sentencing

exposure was cut almost in half before the trial court exercised its sentencing discretion.

[15] The record before us shows that Browning went on a two-week methamphetamine binge, crashed his car, and ran around in public nearly nude, drawing the attention of concerned citizens and law enforcement. Browning was given the opportunity to avoid being arrested and to go home, but instead he made his way to Campbell's home. Browning took advantage of Campbell's act of kindness in welcoming him inside to wander through Campbell's home, quiz him about his possessions, and then demand that Campbell surrender his vehicle and his cell phone, all while Campbell's four-year-old child was present. As Browning acknowledged at his sentencing hearing, these are offenses that neither Campbell nor his son will ever forget. We also cannot overlook that after Browning was apprehended with Campbell's stolen Explorer, he fled from law enforcement and otherwise made transporting him difficult. In light of the nature of the offenses, we do not find Browning's 1,280-day sentence to be inappropriate.

[16] A review of the defendant's character for purposes of a Rule 7(b) sentencing review "involves a broad consideration of the defendant's qualities, life, and conduct." *Crabtree v. State*, 152 N.E.3d 687, 705 (Ind. Ct. App. 2020), *trans. denied*. This includes an examination of the defendant's criminal history. *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Browning has amassed a record of twenty-six criminal convictions, his instant offenses being his twelfth and thirteenth felony convictions. Browning's previous felony

convictions include multiple burglaries, batteries, and intimidation. Browning's criminal behavior has not been curtailed by previous stints in the DOC, jail terms, or probation. Indeed, Browning was free on bond when he committed the instant offenses, and he was twice arrested after being released on his own recognizance in this matter. This is a substantial criminal record that reflects poorly on Browning's character.

[17] In addition, Browning reported during his competency/insanity examinations and to his PSI investigator that he began smoking marijuana daily at the age of twelve and that he has abused heroin, prescription pain medication, and ecstasy in the past. Browning had been using methamphetamine since he was twenty-four and reported that he had been "up for two weeks on crystal meth" at the time of the instant offenses. (Appellant's App. Vol. II, p. 37). Although Browning reported having engaged in drug treatment on three occasions, the last being in the summer of 2020 after he had been charged in this case, he continued using methamphetamine and admitted to Dr. Parker that he had last used in early December 2020. Browning testified at his sentencing hearing that he was sober, but he did not testify regarding how long he had been sober, what efforts he was making to maintain his sobriety, or if he was being drug tested. Browning's long-term drug abuse also reflects poorly on his character.

[18] On appeal, Browning draws our attention to his remorse, the difficulty of his upbringing, his efforts at self-improvement and employment, and his stable personal relationships. However, we note that, even as Browning expressed his remorse at sentencing, he attempted to downplay the impact of his conduct on

his victims. The record before us contains sparse details about Browning's childhood or about how much Browning actually worked at motorcycle repair, tattooing, and modeling. In addition, while we acknowledge Browning's strong family support, particularly for his efforts at remaining clean and sober, Browning is the only person who can make his continued sobriety a reality.

[19] We have observed that our deference to the trial court's sentencing order will 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).”" *Keith v. State*, 200 N.E.3d 986, 991 (Ind. Ct. App. 2022) (quoting *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015)). Browning has failed to present us with such compelling evidence, and, therefore, we do not disturb the trial court's 1,280-day aggregate sentence.

CONCLUSION

[20] Based on the foregoing, we conclude that Browning's sentence is not inappropriate given the nature of his offenses and his character.

[21] Affirmed.

[22] Altice, C. J. and Pyle, J. concur