MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Matthew Holland,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 20, 2023

Court of Appeals Case No. 22A-CR-1888

Appeal from the Marion Superior Court

The Honorable Mark Stoner, Judge

Trial Court Cause No. 49D32-0005-CF-88056

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

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Matthew Holland (Holland), appeals his sentence for criminal confinement, a Class B felony, Ind. Code § 35-42-3-3(a)(1) (1999); prisoner possessing dangerous device or material, a Class B felony, I.C. § 35-44-3-9.5 (1999); and attempted aggravated battery, a Class B felony, I.C. §§35-41-5-1; 35-42-2-1.5 (1999).

[2] We affirm.

ISSUE

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

FACTS AND PROCEDURAL HISTORY

[4] The stipulated facts underlying Holland's convictions as recited at his guilty plea hearing and as narrated by another panel of this court in a prior appeal, are as follows:

> On May 29, [] 2000, John Redmond [(Redmond)] was a corrections officer employed with the Marion County Sheriff's Department [(MCSD)]. He'd been a corrections officer, had been employed by the MCSD for approximately fifteen years. On May 29, [] 2000, [] Holland, was incarcerated in the Marion County Jail [i]n what is known as 4–West. He was there with other individuals, particularly a Michael Henson, a [Damon Forte], and others. On that day and before noon on that day, [Holland] possessed a shank. A shank [,] in this case, was a piece

of metal that had been secured from the prison library. It ha[d] been sharpened [] against the walls and bars of a jail cell, and had a handle made of cloth wrapped around one end so as to be grabbed.

[Holland] possessed a shank along with [] Henson and Forte. At approximately 12:15 in the afternoon, [] Redmond and a trustee by the name of Jesse Carter [(Carter)] came into 4–West to serve lunch. As was [] Redmond's practice, he and [] Carter took the trays on a cart, pushed it all the way to the end of the cell block, then turned around and came back to serve the [] prisoners. [] Redmond had passed cell number eight, which was [] Forte's cell, and had not noticed that [] Holland was in [] Forte's cell, and had been standing behind him or had been hidden. When [] Redmond came back up and was in a position near cell eight and with his back to it, [] Forte opened the door and Forte and [Holland] rushed [] Redmond.

[] Forte grabbed [] Redmond from behind around the arms and around the neck, and [Holland] taking the shank that he had possessed earlier began to stab at [] Redmond's abdomen. [] Redmond, because of his training, was able to block the blows from [Holland], and was not struck by the shank in the abdomen.

[] Carter fled. [Holland] took a swing at [] Carter. [] Redmond was able to free himself from [] Forte[']s] and [] Holland's assault. [] Holland had secured to grab the keys of the cell block from [] Redmond in this altercation. [] Redmond and [] Carter fled and secured assistance of other officers. They responded to the scene. They came into the cell block. They found the shank that [Holland] had, now was hidden behind a television set in the cell block. They locked down the prisoners, searched the cells, and came up with shanks in the possession of other individuals as well.

Holland v. State, No. 49A04-1004-CR-218, 2010 WL 4410537, at *1-2, (Ind. Ct. App. Nov. 8, 2010) *trans. denied*.

[5] On May 31, 2000, the State filed an Information, charging Holland with several Counts, including two Counts of Class A felony attempted murder and five Class B felonies — conspiracy to commit escape, attempted escape, criminal confinement, possession of a dangerous device or materials, and attempted aggravated battery. Holland committed these offenses while awaiting trial for recklessness and carrying a handgun without a license in Cause number. 49G06-9910-CF-17981 (Cause -17981), and for attempted escape in Cause number 49G06-9912-CF-222829 (Cause -222829), and while awaiting sentencing for robbery in Cause number 49G06-9910-CF-188757 (Cause -188757).

[6] On May 3, 2001, pursuant to a plea agreement, Holland pleaded guilty to Class B felonies—criminal confinement, prisoner possessing a dangerous device or material, and attempted aggravated battery. As part of the plea agreement, his sentence was capped at thirty-five years, and the State agreed to dismiss the remaining charges. The trial court accepted Holland's plea and scheduled a sentencing hearing for May 11, 2001, during which Holland was sentenced to the Department of Correction (DOC) to concurrent sentences of twenty years each for the criminal confinement and attempted aggravated battery convictions and a consecutive sentence of ten years for the prisoner possessing a dangerous device or material conviction, resulting in an aggregate sentence of thirty years. Additionally, the trial court ordered that Holland's thirty-year sentence run

consecutively to any sentences he received in Cause numbers- 179817, -222829, and -188757.

[7] On April 28, 2009, Holland petitioned the court to file a belated appeal, and the trial court granted Holland's request. Holland, however, did not commence his appeal. Holland filed a second petition to file a belated appeal which was again granted. Holland finally initiated his appeal and argued that his convictions violated the constitutional prohibitions against double jeopardy and that his sentence was inappropriate in light of the nature of his offenses and his character. The State cross-appealed, arguing that the trial court should not have granted Holland's request to file a belated appeal. We first addressed the State's claim, concluded that Holland had not been diligent in pursuing his appeal, and dismissed his appeal. *See Holland*, slip op. at 5. Regardless, we determined that even if Holland had diligently pursued his appeal, he had waived his right to challenge his convictions on double jeopardy grounds since he had entered into a plea agreement. *Id* at 6. Further, we determined that his thirty-year aggregate sentence was appropriate, considering the nature of the offenses and Holland's character. *Id*.

[8] In 2022, Holland filed a *pro se* post-conviction relief petition, arguing that the sentencing court had erred in believing that the statute required consecutive sentences on the combined guilty pleas in his other Causes. After conducting an evidentiary hearing, the post-conviction court ordered a new sentencing hearing on May 31, 2022. Specifically, the post-conviction court found that the trial court had incorrectly concluded that Indiana Code section 35-50-1-2(d)

required mandatory consecutive sentencing. It clarified that consecutive sentences were only mandated if Holland was on probation, parole, or serving a term of imprisonment when he committed the offenses, which was not the case as he was awaiting trial and sentencing for his other Causes.

[9] On July 20, 2022, the trial court conducted Holland's resentencing hearing. During the hearing, Holland expressed that his release from prison would enable him to care for his disabled parents. He claimed that when he committed his offenses, he was an "[i]gnorant punk kid" and that during his incarceration, he developed an interest in the stock market, leading him to turn his life around. (Transcript Vol. II, p. 12). He testified that upon his release, he would establish a not-for-profit organization that would assist in educating inmates on the stock market. While Holland agreed that he deserved to serve a lengthy sentence for his convictions, he requested to serve the remaining six years in community corrections or under house arrest.

[10] Holland's updated pre-sentencing report (PSI) disclosed that he had accumulated seventy-six conduct violations and regularly consumed illegal drugs and alcohol while in the DOC. At the end of the hearing, the trial court ordered a similar sentence, that is, concurrent twenty-year terms for the criminal confinement and attempted aggravated battery convictions, to run consecutively to ten years for the prisoner in possession of a dangerous device or material conviction, resulting in an aggregate sentence of thirty years.

[11] Holland now appeals. Additional information will be provided as necessary.

DISCUSSION AND DECISION

[12] Holland claims that his aggregate thirty-year sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in imposing a sentence, Indiana Appellate Rule 7(B) provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The primary role of a Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008).

[13] Whether we regard a sentence as appropriate 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 a myriad of other considerations that come to light in a given case. *Suprenant v. State*, 925 N.E.2d 1280, 1284 (Ind. Ct. App. 2010), *trans. denied*. We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Cardwell*, 895 N.E.2d at 1225. An appellant bears the burden of persuading this court that his sentence is inappropriate. *Corbally v. State*, 5 N.E.3d 463, 471 (Ind. Ct. App. 2014).

[14] When determining whether a sentence is inappropriate, we recognize that the presumptive sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006). The sentencing range for his Class B felonies at the time Holland committed the instant offenses was between six and twenty years, with the presumptive sentence being ten years. I.C. § 35-50-2-5 (2001). The trial court ordered concurrent maximum sentences of twenty years for the criminal confinement and attempted aggravated battery convictions, and a consecutive presumptive term of ten years for the prisoner possessing dangerous device or material conviction, for an aggregate sentence of thirty years.

[15] Turning to the nature of the offenses, Holland and other inmates launched a premeditated attack on correctional officer Redmond, who was delivering their lunch at the Marion County Jail. Had Holland successfully stabbed Redmond with the shank during the attack, it could have caused serious bodily injury or even death. Notwithstanding the egregious nature of his offenses, Holland contends that the nature of his offenses does not justify a "maximum, executed sentence in prison" given that "[t]he encounter with correction[al] officer Redmond was brief and fortunately did not result in physical injury." (Appellant's Br. p. 10). In support of his argument, he cites *Marlett v. State*, 878 N.E. 2d 860 (Ind. Ct. App. 2007) and asks us to reach a similar result. In *Marlett*, Marlett was a seventeen-year-old high schooler who was diagnosed with Asperger's Disorder who obtained a pass to leave his class and go to the nurse's office. *Id*. at 863. Marlett did not immediately go to the nurse's office,

and while walking the halls, he saw a fellow female student who was alone in a classroom. *Id*. He retrieved his knife from his backpack, entered the classroom, approached from her behind, put one hand over her mouth, placed the blade against her neck, and then cut her neck. *Id*. Marlett and the female struggled, the female student was able to take the knife from Marlett, a teacher intervened, and the police arrived shortly after that. *Id*. Marlett was charged and pleaded guilty but mentally ill to Class B felony criminal confinement of a person under eighteen by someone other than parent or guardian, a crime that qualified him a sex offender. *Id*. Marlett appealed his conviction and sentence. *Id*. With regards to his sentence, we determined that the facts surrounding the nature of the offense were particularly "egregious" but on the "other hand, the period of confinement" was "exceedingly brief", the victim was able to stop the attack, and we declined to characterize Marlett's offense as belonging in the worst class that would justify a maximum sentence. *Id*. at 867. Reviewing his character, we found redeeming his guilty plea, his mental health, and his lack of criminal history. *Id*. We determined that Marlett's redeeming qualities were "weighty enough to entirely counterbalance the egregious nature of the offense" and, therefore, reduced his Class B felony criminal confinement sentence of twenty years to seventeen years. *Id*. at 868. However, we find the *Marlett* case readily distinguishable from Holland's case because Holland lacks any redeeming qualities that could counteract his egregious offenses.

[16] Considering Holland's character, it is evident that his sentence is appropriate. Holland has a history of juvenile adjudications that includes true findings for

disorderly conduct, trespass, carrying a handgun without a license, robbery, auto theft, resisting law enforcement, and burglary. As an adult, Holland committed criminal recklessness, robbery, and attempted escape. During the time he was in custody and awaiting trial and sentencing for his collective adult offenses, Holland committed the instant offenses.

[17] Holland's substance abuse also reflects poorly on his character. The PSI shows that Holland began consuming alcohol as a teenager every week or every other two weeks. While incarcerated in the DOC from 2001 to 2021, Holland admitted to illegally consuming alcohol "once every two months". (Appellant's App. Conf. Vol. II, p. 227). In addition, Holland began using a variety of illegal substances at age ten, and as a teenager, he consumed marijuana and LSD on a daily basis. After his incarceration, he became addicted to spice, smoked daily, and only stopped in May 2021. Holland's addiction to spice had negative consequences while he was in the DOC, such as being removed from programs and being involved in violent incidents. The trial court also considered Holland's post-sentencing behavior, which revealed that Holland had accumulated seventy-six conduct violations. Although Holland attempts to diminish the seriousness of these conduct violations by contending that most were for "low-level [] violations," they reflect poorly on his character. (Appellant's Br. p. 13). One of Holland's conduct violations was for making and possessing a shank, which the trial court found very troubling, as Holland's underlying offenses involved a shank, and it opined that Holland could have

used the shank "against a [correctional officer] or another inmate." (Tr. Vol. II, p. 27).

[18] According to Holland, his reformed character, supported by his mother's testimony, merited him serving the remainder of his sentence in community corrections. *See Livingston v. State*, 113 N.E.3d 611, 614 (Ind. 2018) (where our supreme court reduced Livingston's aggregate thirty-year sentence to the statutory minimum and ordered the remainder of her time be served in community corrections based on her reformed character, which included but was not limited to her commitment to avoiding a life of crime after her arrest, her becoming a productive member of her community, and her work of assisting others who suffer with addiction). Aside from illegally consuming alcohol and drugs while incarcerated, Holland had also accrued numerous writeups and had failed to adhere to DOC rules, demonstrating that he could not comply with rules if placed in a less restrictive setting. As the trial court observed, Holland's "conduct in DOC was so egregious that DOC used" his conduct violations as "leverage to take away his credit time and keep him in prison longer." (Tr. Vol. II, p. 35). Therefore, we cannot conclude that his placement in the DOC is inappropriate.

[19] Lastly, Holland maintains that his guilty plea reflects positively on his character, and he maintains that he gained no meaningful benefit from the agreement. According to Holland, since the Information and the factual basis "failed to allege specific intent to kill," the State could not have proved beyond a reasonable doubt that he committed the attempted murder charges.

(Appellant's Br. p. 13). We acknowledge that our courts should "carefully assess the potential mitigating weight of any guilty plea." *Marlett*, 878 N.E.2d at 866. "One factor to consider in determining such weight is whether the defendant substantially benefitted from the plea because of the State's dismissal of charges in exchange for the plea." *Id*. While it is true that the dismissal of charges in exchange for a plea does not automatically negate all the mitigating weight of a guilty plea, if, however, "information from sources such as a probable cause affidavit, pretrial discovery, and the factual basis provided for a guilty plea" show that the State had significant evidence that could support convictions for the dismissed charges in exchange for a guilty plea, the mitigating weight of a plea may be reduced. *Id*. Based on the record, it is arguable that the State might not have successfully proved beyond a reasonable doubt the attempted murder charges based on their failure to allege that Holland had the specific intent to kill Redmond. *See Marlett*, 878 N.E.2d at 867 n.3 (noting that the Information failed to allege specific intent to kill to support the attempted murder charge). Further, while Holland admits that the plea agreement capped his sentence at thirty-five years and that this may be seen to have offered him some benefit, he asserts the sentence cap did not benefit him since he would have ultimately been sentenced to a maximum consecutive sentence of thirty years for the Class B felonies, the presumptive sentence for a Class A felony, the next higher felony. *See* I.C. § 35-50-1-

2(c)(2001)[1], I.C. § 35-50-2-4 (2001). For his Class B felonies, Holland could not have been ordered to serve more than the thirty-year presumptive sentence for a Class A felony. We agree with Holland that the sentencing cap on his plea did not offer a substantial benefit to him, and his guilty plea reflects positively on his character; however, we still cannot conclude that his sentence is inappropriate. Holland's criminal history, alcohol and substance abuse in the DOC, along with numerous conduct violations during his DOC stay, preclude us from deeming his sentence inappropriate.

[20] In sum, we hold that Holland has failed to establish that his aggregate thirty-year sentence is inappropriate in light of the nature of the offenses and his character.

CONCLUSION

[21] Based on the foregoing, we conclude that Holland's aggregate thirty-year sentence is not inappropriate in light of his character and the nature Cof the offenses.

[22] Affirmed.

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

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[1] Providing that "[t]he total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the presumptive sentence for a felony which is one class of felony higher than the most serious of the felonies for which the person has been convicted."