MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandon Daniels,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 29, 2023

Court of Appeals Case No. 22A-CR-2979

Appeal from the St. Joseph Superior Court

The Honorable Jeffrey L. Sanford, Judge

Trial Court Cause No. 71D03-2206-F6-453

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Brandon Daniels appeals his aggregate five-year sentence for level 5 felony carrying a handgun without a license and level 6 felony public indecency, arguing that it is inappropriate based on the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] In June 2022, Daniels was sitting on a bench in a Mishawaka park where children were present. He began to masturbate with his pants down and his penis exposed. As children ran by him, he told them, "Don't tell your mom." Appellant's App. Vol. 2 at 12. The children's mother called the police. When they arrived, they discovered that Daniels was carrying a fully loaded handgun without a license.

[3] The State charged Daniels with class A misdemeanor carrying a handgun without a license, level 5 felony carrying a handgun with a prior felony, class A misdemeanor public indecency, and level 6 felony public indecency with a prior unrelated conviction. Daniels filed a motion to determine competency to stand trial and a notice of insanity defense. Two court-appointed doctors determined that Daniels was competent to stand trial and was able to appreciate the wrongfulness of his conduct.

[4] Daniels pled guilty to the charges without a plea agreement. The trial court entered judgment of conviction on the felony charges and sentenced Daniels to eighteen months for public indecency and five years for carrying a handgun

without a license, to be served concurrently in the Department of Correction, and recommended that Daniels receive mental health treatment. This appeal ensued.

Discussion and Decision

[5] Daniels asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The 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." Daniels has the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017); *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[6] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "[A]ppellate review 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." *Id*. "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "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). As we assess the nature of the offenses and the character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

[7] Turning first to the nature of the offenses, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The advisory sentence for a level 5 felony is three years, with a sentencing range of one to six years. Ind. Code § 35-50-2-6(b). The advisory sentence for a level 6

felony is one year, with a sentencing range of six months to two and a half years. Ind. Code § 35-50-2-7(b).[1]

[8] Regarding the specific facts and circumstances of Daniels' offenses, we observe that he committed them in a public park with children present. The gun that he was carrying was fully loaded. Children actually saw him masturbating and informed their mother. Daniels attempted to shield himself from the consequences of his actions by telling the children not to tell their mother. These facts support a sentence above the advisory.

[9] As for Daniels' character, he contends that his "mental health and its apparent connection to his criminal conduct" warrant a reduction in his sentence. Appellant's Br. at 7. He claims that both doctors found that he had a history of being treated and medicated for major psychiatric disorders. Daniels fails to explain how his mental health is connected to the current offenses, and in fact, one doctor opined that there was no apparent effect of his mental illness on his decisions to commit the current offenses. Appellant's App. Vol. 2 at 38. In

[1] The State asserts that "the trial court could have sentenced Daniels to nine years." Appellee's Br. at 7. We note, however, that neither of Daniels' crimes is a "crime of violence" as defined in Indiana Code Section 35-50-1-2(a), and thus "the total of the consecutive terms of imprisonment to which [he] is sentenced for felony convictions arising out of an episode of criminal conduct may not exceed" seven years pursuant to Indiana Code Section 35-50-1-2(d)(2). For purposes of Indiana Code Section 35-50-1-2, an "'episode of criminal conduct' means offenses or a connected series of offenses that are closely related in time, place, and circumstance." Ind. Code § 35-50-1-2(b). Neither party presented an argument on this issue below, but the probation officer who prepared Daniels' presentence investigation report recommended a seven-year executed sentence, Appellant's App. Vol. 2 at 57-58, and it clearly appears that Daniels' offenses constituted an episode of criminal conduct, as they were committed simultaneously.

addition, Daniels told the probation officer who prepared his presentence investigation report that he had no concerns about his mental health. *Id*. at 55.

[10] Daniels also asserts that his guilty plea without the benefit of a plea agreement demonstrates his acceptance of responsibility for his crimes. While his acceptance of responsibility is commendable, his lengthy criminal history paints a different picture. Since 2011, Daniels has been convicted of possession of marijuana (twice), driving while suspended (three times), driving while intoxicated endangering a person, false informing, refusal to identify self, failure to return to lawful detention, auto theft, theft, unauthorized entry of a motor vehicle, criminal trespass (twice), possession of paraphernalia, and public indecency. *Id*. at 50-51. He has numerous probation violations and was on probation when he committed the current offenses.[2] At the time of sentencing in this case, he was facing charges of public nudity and possession of paraphernalia in another case. Daniels' pattern of criminal conduct reveals his disrespect for the law and the rights and safety of others. We conclude that Daniels has failed to carry his burden to show that his sentence is inappropriate. Therefore, we affirm.

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[2] Daniels acknowledges that he was unable to legally possess a firearm under any circumstances as a previously convicted felon, but he observes that Indiana's handgun licensing requirements were eliminated less than a month after he committed his offenses, and he suggests that this merits some mitigating consideration. Appellant's Br. at 7-8 (citing Ind. Code § 35-47-2-1). We agree with the State that this "fact does not reduce [Daniels'] culpability[,]" Appellee's Br. at 8.

[11] Affirmed.

Robb, J., and Kenworthy, J., concur.