

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Leopard,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 13, 2021

Court of Appeals Case No.
21A-CR-335

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-2007-F5-108

Riley, Judge.

STATEMENT OF THE CASE

- [1] Appellant-Defendant, Christopher Leopard (Leopard), appeals his sentence following his guilty plea to carrying a handgun without a license having a prior conviction, a Level 5 felony, Ind. Code § 35-47-2-1(e)(2)(A); and resisting law enforcement, a Class A misdemeanor, I.C. § 35-44.1-3-1(a)(3).
- [2] We affirm.

ISSUE

- [3] Leopard presents one issue on appeal, which we restate as: Whether his sentence is inappropriate in light of the nature of his offenses and his character.

FACTS AND PROCEDURAL HISTORY

- [4] On June 26, 2020, while deputies of the Tippecanoe County Sheriff's Department were investigating a report of a residential entry in West Lafayette, they observed a black pickup truck slowly pass by the scene of their investigation several times. Deputy Robert Loop (Deputy Loop) followed the truck, observed it make a traffic infraction by veering into the oncoming traffic lane, and initiated a traffic stop. The driver of the truck, Jessica Donoho (Donoho), pulled over. Unbeknownst to Deputy Loop, Leopard was hiding under a blanket in the back seat of the truck.
- [5] After conversing with Donoho, Deputy Loop became suspicious that there might be illegal substances in the truck. Deputy Loop removed Donoho from the truck so that he could perform a walk around it with his canine partner,

who subsequently alerted for the presence of narcotics in the truck. When Deputy Loop told Donoho that he was calling for backup, Donoho informed him that Leopard was hiding in the truck.

[6] As Deputy Loop returned Donoho to his patrol vehicle, he observed Leopard exit the truck and run away. Deputy Loop recognized Leopard and knew that he had an open warrant for his arrest for failing to return to lawful detention. While several deputies searched for Leopard, another deputy searched the truck. In a backpack containing Leopard's mail and personal possessions, the deputy found a .40 caliber handgun magazine with bullets in it, 4.5 grams of marijuana, 1.3 grams of methamphetamine, and a glass pipe with white residue. Due to finding the drugs and the loaded magazine, the deputies became concerned that Leopard might be armed and intoxicated on methamphetamine. After a further search of the truck, a loaded .40 caliber handgun and Leopard's cell phone were found where Leopard had been hiding in the back seat. Leopard, who was still at large, eventually returned to the location of the pickup truck. Upon perceiving deputies in their clearly-marked sheriff's vehicle, Leopard turned and began to walk in the other direction. A deputy gave Leopard loud, clear commands to stop, but Leopard ran away. After a foot chase, Leopard was apprehended.

[7] On July 1, 2020, the State filed an Information, charging Leopard with carrying a handgun without a license, elevated to a Level 5 felony due to a prior conviction; Level 5 felony possession of methamphetamine; Class A misdemeanor carrying a handgun without a license; Class A misdemeanor

resisting law enforcement; Class A misdemeanor possession of marijuana; and Class C misdemeanor possession of paraphernalia. On December 18, 2020, Leopard pleaded guilty, pursuant to an agreement with the State, to the Level 5 felony carrying a handgun without a license and the Class A misdemeanor resisting law enforcement charges. Leopard also agreed to admit that he violated his probation in an unrelated case and to serve his previously-suspended sentence consecutively to his sentences in the instant matter and in a third, unrelated matter. The State agreed to dismiss all remaining charges in this cause and in an unrelated cause wherein Leopard had been charged with failure to return to lawful detention.

- [8] On January 22, 2021, the Tippecanoe County Probation Department filed Leopard's presentence investigation report (PSI) that revealed the following facts and circumstances pertaining to Leopard. Leopard's adult criminal history consists of ten misdemeanors for offenses including battery and resisting law enforcement and two felony convictions for criminal trespass and failure to return to lawful detention for a three-month escape from community corrections. Leopard had received probation, community service, suspended jail sentences, executed jail sentences, community corrections, and sentences served with the Department of Correction (DOC). By the time of sentencing, Leopard had been subject to four petitions to revoke his probation, with one having been found to be true and two pending against him. Leopard had been subject to six petitions to terminate a community corrections placement, with one having been granted and two pending against him. Leopard was on

probation and was serving a sentence in community corrections for failure to return to lawful detention when he committed the instant offenses.

[9] Leopard has two minor children and is self-employed doing lawn maintenance and landscaping. Forty-four-year-old Leopard reported to his PSI investigator that he began drinking alcohol at the age of sixteen and consuming illegal substances at the age of seventeen. Leopard had abused marijuana and methamphetamine. Leopard reported that drugs and alcohol had affected all aspects of his life and that he was intoxicated on methamphetamine at the time he committed the instant offenses. Throughout his contacts with the criminal justice system, Leopard had received recommendations for substance and alcohol assessments and treatment on five separate occasions, but Leopard had not participated in any substance abuse treatment. Leopard reported that he had never been diagnosed with any mental illness or disorder, had never attempted suicide, and had no mental health referrals.

[10] On January 27, 2021, the trial court conducted Leopard's sentencing hearing. Leopard testified that eight years ago he separated from the mother of his children, became depressed, turned to drugs, and spiraled out of control. Although he admitted that he had not previously disclosed this information, Leopard testified that he had attempted to commit suicide by overdosing on ibuprofen after he was previously charged with escape. Leopard stated that he had sought out general counseling in jail while awaiting the disposition of this matter. On cross-examination by the State, Leopard acknowledged that he had been on community corrections previously, had not completed their

requirements, and tested positive for illegal substances multiple times. Leopard also commented that the programs available in community corrections “are really not conducive” to the self-employed. (Transcript p. 41).

[11] The trial court found Leopard’s guilty plea, his acceptance of responsibility, and undue hardship to his dependents to be mitigating circumstances. The trial court found as aggravating circumstances that Leopard had a criminal record and had recently violated the terms of his pretrial release, probation, and community corrections. The trial court found that the aggravating circumstances outweighed the mitigating ones and sentenced Leopard to five years for the handgun conviction and to one year for the resisting law enforcement conviction, to be served concurrently in the DOC. The trial court also recommended Leopard for Purposeful Incarceration. In its oral sentencing statement, the trial court observed that Leopard was not a good candidate for community corrections based upon his previous failure to abide by its rules and his previous escapes. The trial court advised that after Leopard completed Purposeful Incarceration, it would consider putting him on probation, not community corrections, to serve the balance of his sentence. More specifically, the trial court advised Leopard, “I’ll modify you if you do the work . . . I will pull you out not with doing 4 years or 5 years DOC but doing a heck of a lot less.” (Tr. pp. 56, 57).

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

DISCUSSION AND DECISION

[13] Leopard argues that his sentence, and more specifically, his placement at the DOC, is inappropriately severe given the nature of his crimes and his character. “Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of this sentencing decision.” *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019). Thus, we may revise a sentence if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offenses and the character of the offender. *Id.* The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “In assessing whether a sentence is inappropriate, appellate courts may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge.” *McFall v. State*, 71 N.E.3d 383, 390 (Ind. Ct. App. 2017). The defendant bears the burden to persuade the reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018). In addition, this court has observed that, while the location where a defendant’s sentence is to be served is reviewable pursuant to our constitutional authority, a defendant raising such a challenge must meet the high burden of convincing us that the given placement itself is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 343-44 (Ind. Ct. App. 2007).

A. *Nature of the Offenses*

[14] When assessing the nature of an offense, the advisory sentence is the starting point that the legislature selected as an appropriate sentence for the particular crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Leopard pleaded guilty to a Level 5 felony and a Class A misdemeanor. A Level 5 felony carries a sentencing range of between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). A Class A misdemeanor carries a maximum sentence of one year. I.C. § 35-50-3-2. Therefore, Leopard faced a potential maximum sentence of seven years. The trial court sentenced Leopard to five years for the Level 5 felony and to one year for the Class A misdemeanor, to be served concurrently, for an aggregate executed sentence of five years. Thus, the trial court imposed an aggravated, but not the maximum, sentence.

[15] When reviewing the nature of offenses, we look to the “the details and circumstances of the offenses and the defendant’s participation therein.” *Madden*, 162 N.E.3d at 564. In conducting our review, we determine whether there is “anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.” *Id.* Leopard contends that his sentence is inappropriate because the “facts of these offenses were no worse than those involved in any other case of this kind.” (Appellant’s Br. p. 11). Leopard more specifically draws our attention to the fact that he did not

threaten the deputies with his handgun, and he argues that he “simply ran away from the officers and was eventually apprehended.” (Appellant’s Br. p. 15).

[16] However, at the time that Leopard committed his offenses, he was a fugitive from justice in that he had not returned to his community corrections placement as required. The handgun he possessed and hid in the truck with was loaded, and he carried a spare magazine. Thus, the handgun was ready to be discharged, rendering the offense potentially more dangerous than if the handgun had been unloaded. Regarding his resisting law enforcement by flight, Leopard ran from the deputies twice, once during the initial traffic stop and again after he returned to the location of the pickup truck. None of these circumstances were elements of the offenses to which Leopard pleaded guilty. *See* I.C. §§ 35-47-2-1(e)(2)(A); 35-44.1-3-1(a)(3). Leopard also created fear among the deputies as they attempted to locate him that he might be armed, which increased the danger during the search for all involved. In light of these circumstances, we cannot credit Leopard’s argument that his offenses were nothing more than typical. Other than his summary statement that the nature of his offenses does not warrant a fully-executed sentence in the DOC, Leopard makes no effort to convince us that his placement in the DOC itself is inappropriate. In short, Leopard has failed to meet his burden of demonstrating to us that his five-year sentence in the DOC is inappropriate. *See Robinson*, 91 N.E.3d at 577; *Fonner*, 876 N.E.2d at 343-44.

B. *Character of the Offender*

[17] Leopard also urges us to revise his sentence in light of his character, as evinced by what he contends is his non-violent criminal history consisting of drug and alcohol-related offenses, his poor mental health, his acceptance of responsibility, and his dedication to addressing his longstanding substance abuse issues. In this portion of his argument, Leopard more explicitly argues that his placement in the DOC is inappropriate given his character. Indeed, he requests that we “order his case remanded to the trial court with instructions that the balance of his term be served in Tippecanoe County Community Corrections, with a requirement that he engage in drug and mental health treatment.” (Appellant’s Br. p. 17).

[18] Upon reviewing a sentence for inappropriateness, we look to a defendant’s life and conduct as illustrative of his character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. We acknowledge that Leopard expressed a desire at sentencing to address his substance abuse and his mental health and that there is evidence in the record that Leopard possesses some positive character traits, such as his self-employment and his love for his family. However, Leopard has been involved with the criminal justice system for over twenty years and has accumulated a substantial criminal history consisting of ten misdemeanors and two felonies. His criminal history is not completely non-violent, as he has a 2003 conviction for battery. Leopard has previously been convicted of carrying a handgun without a license and resisting law enforcement, the very same offenses for which he was sentenced in this case.

Throughout this history of contacts with the criminal justice system, Leopard has had at least five opportunities to address his substance and alcohol abuse issues, but he failed to take advantage of any of them. We do not find Leopard's five-year executed sentence to be inappropriate in light of his substantial criminal history and his failure to address his substance abuse issues, despite having had many opportunities to do so.

[19] As to his request that we revise his sentence so that he may serve it on community corrections, we observe that Leopard has previously violated community corrections placements through rules violations and escape. Indeed, Leopard had absconded from community corrections when he committed the instant offenses. In light of this poor history of compliance with the rigors of community corrections, we cannot conclude that he is a good candidate for alternative placement, much less that the trial court's order that he serve his sentence in the DOC is inappropriate. *See Fonner*, 876 N.E.2d at 343-44. This is especially true given that Leopard voiced his opinion at sentencing that community corrections was not convenable to the self-employed such as he. In addition, the trial court already considered Leopard's acceptance of responsibility in fashioning its extremely generous offer to allow Leopard to bypass community corrections altogether and serve the balance of his sentence on probation after he completes Purposeful Incarceration. As such, we do not disturb the trial court's sentencing order.

CONCLUSION

[20] Based on the foregoing, we conclude that Leopard's five-year aggregate sentence to be served in the DOC is not inappropriate given the nature of his offenses and his character.

[21] Affirmed.

[22] Najam, J. and Brown, J. concur