

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brandi S. Bare,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 11, 2023

Court of Appeals Case No.
22A-CR-2879

Appeal from the Blackford
Superior Court

The Honorable Nick Barry, Judge

Trial Court Cause No.
05D01-2206-F4-206

Memorandum Decision by Judge Crone
Judge Kenworthy and Senior Judge Robb concur.

Crone, Judge.

Case Summary

- [1] Brandi S. Bare operated a vehicle while intoxicated, killing two people and severely injuring two others. She pled guilty to seven crimes, and the trial court sentenced her to an aggregate term of fifty-seven years. She now appeals, challenging two of her convictions as violating principles of double jeopardy. She further claims that her sentence is inappropriate in light of the nature of the offenses and her character. Concluding that she has waived her ability to directly appeal her convictions following a guilty plea and that she has not met her burden to establish that her sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] On June 2, 2022, Bare spent the day drinking alcohol before eventually plowing her car through Jake Michael's¹ home from the back to the front, killing two family members and severely injuring two others who were on the front porch of the home preparing for a rummage sale. Jake was killed. Jake's five-year-old great-grandson J.R. was also killed. First responders discovered that J.R.'s body was trapped under Bare's car and his "brain matter was ... in the grass." Appellant's App. Vol. 2 at 121-22. J.R.'s father, Jerod Reynolds, suffered a severe concussion as a result of Bare's actions. Jerod's one-year-old daughter, E.R., was rendered unconscious and suffered a fractured skull. *Id.* at 124.

¹ Jake's real name was Jerry, but his family called him Jake.

- [3] When police officers arrived at the scene, Bare was sitting on the ground near her crashed vehicle. A witness at the scene identified her as the driver. Bare smelled like alcohol, her speech was slurred, and her eyes were red. Her pants were wet with urine, and an officer had to hold her up while he escorted her to his police vehicle. The officer handcuffed Bare and put her in the back seat of his vehicle while he returned to help the victims.
- [4] After the officer left her, Bare slipped her wrist from the handcuffs, exited the police vehicle, and started to walk away from the scene. When an officer noticed and commanded her to stop, she attempted to run through a tree line to get away. Officers caught her, and she fought them as they returned her to the police vehicle. Bare was eventually transported to the Montpelier Police Department, where officers requested that she submit to a chemical blood alcohol test. Bare refused, and a search warrant for a blood draw was sought and obtained. Bare was transported to the hospital, where a blood draw was conducted pursuant to the warrant. She resisted the blood test and had to be forcibly held down while nurses drew her blood. After the blood draw was complete, Bare was arrested and transported to jail. Her alcohol concentration equivalent was .26 grams of alcohol per 100 milliliters of blood.
- [5] The State charged Bare with two counts of level 4 felony operating a vehicle while intoxicated causing death, two counts of level 5 felony reckless homicide, two counts of level 5 felony operating a vehicle while intoxicated causing serious bodily injury, and class A misdemeanor resisting law enforcement. The State further alleged that she was a habitual vehicular substance offender. Bare

pled guilty as charged without a plea agreement on September 9, 2022. A sentencing hearing was held on November 4, 2022. The trial court sentenced her to consecutive sentences of twelve years for each level 4 felony, with one count enhanced by eight years for being a habitual vehicular substance offender. The court further sentenced her to consecutive sentences of six years for the four level 5 felonies and one year for the class A misdemeanor, for an aggregate sentence of fifty-seven years executed. This appeal ensued.

Discussion and Decision

Section 1 – Bare has waived her double jeopardy challenge.

[6] Bare argues that her convictions for operating a vehicle while intoxicated causing death and reckless homicide for causing the same deaths (two convictions relating to Jake and two convictions relating to J.R.) violate the Indiana Constitution’s prohibition against double jeopardy as it has been “recontextualiz[ed]” in *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020). Appellant’s Br. at 12. However, by pleading guilty, Bare waived her right to assert a double jeopardy challenge through a direct appeal. Our supreme court has clearly held that “one consequence of pleading guilty is restriction of the ability to challenge the conviction on direct appeal.” *Tumulty v. State*, 666 N.E.2d 394, 395 (Ind. 1996). “A conviction based upon a guilty plea may not be challenged by motion to correct errors and direct appeal.” *Id.* Indeed, the waiver doctrine unequivocally applies to a defendant, like Bare, who has pled guilty and then attempts to challenge convictions on double jeopardy grounds. *See McDonald v. State*, 179 N.E.3d 463, 464 (Ind. 2022) (per curiam) (“We summarily affirm the

“Double Jeopardy” section of the Court of Appeals opinion, agreeing “[i]t is well-established that a defendant who has pleaded guilty may not challenge the validity of his conviction on direct appeal.”); *see also Mapp v. State*, 770 N.E.2d 332, 334 (Ind. 2002) (holding that defendant waived right to challenge convictions on double jeopardy grounds when he entered plea agreement). Bare has waived review of her double jeopardy claim.²

Section 2 – Bare has not met her burden to establish that her sentence is inappropriate.

[7] Bare asks us to reduce her 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.” Bare bears the burden to show that her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218. 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). “We do not look to determine if the sentence was appropriate; instead we look to make sure the

² Bare suggests that it would be “appropriate” for this Court to consider this post-guilty-plea challenge to her convictions because her counsel raised the double jeopardy concern during sentencing. Reply Br. at 6. As stated above, her guilty plea forecloses direct appeal of the double jeopardy issue. Instead, “[s]eeking post-conviction relief pursuant to Indiana Post Conviction Rule 1 is the proper vehicle for challenging the validity of a guilty plea.” *Collins v. State*, 740 N.E.2d 143, 146 (Ind. Ct. App. 2000) (citing *Jones v. State*, 675 N.E.2d 1084, 1090 (Ind. 1996)).

sentence was not inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012).

[8] “[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 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). Ultimately, whether a sentence should be deemed 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*, 895 N.E.2d at 1224.

[9] We begin by observing that “the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed.” *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Bare was convicted of two level 4 felonies, four level 5 felonies, and one class A misdemeanor. She also admitted to being a habitual vehicular substance offender. A level 4 felony has a sentencing range between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. A person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years, with the advisory sentence being

three years. Ind. Code § 35-50-2-6(b). A person who commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year Ind. Code § 35-50-3-2. The habitual vehicular substance offender enhancement provides for a sentence enhancement of at least one year but not more than eight years. Ind. Code § 9-30-15.5-2. Bare's fifty-seven-year aggregate sentence represents the maximum allowable sentence for her crimes.³

[10] As to both the nature of the offenses and her character, Bare argues that a maximum sentence is inappropriate because her crimes are not the worst of the worst, and neither is her character. Bare correctly asserts that maximum sentences are ordinarily reserved for the "very worst offenses and offenders." *Buchanan v. State*, 699 N.E.2d 655, 657 (Ind. 1998). But this "refer[s] generally to the *class* of offenses and offenders," which "encompasses a considerable variety [of both]." *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002). "Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario." *Id.* Our supreme court has explained that "cases constituting the worst of the worst are such that we trust our trial courts will know them when they see them." *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011).

[11] This case indeed represents the worst of the worst. When reviewing the nature of the offenses, this Court considers the "details and circumstances surrounding

³ Bare further notes that her driving privileges have been suspended for twenty-six years.

the offense[s] and the defendant's participation therein." *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied* (2019). Bare chose to operate her vehicle while she was severely intoxicated. In doing so, she plowed through a house where a family that included very young children was gathering. She killed two people and severely injured two others who continue to suffer the lasting physical and psychological effects of the damage inflicted upon them. The details surrounding the scene of Bare's crimes are horrific and gruesome, and we decline to highlight them here. To make matters worse, she knowingly tried to flee the scene with no regard for her victims' suffering, and she continued to actively resist and interfere with the investigation of her crimes even while at the hospital. The nature of these offenses simply cannot be portrayed in a positive light, and we must agree with the trial court that they are the worst of the worst.

[12] We reach a similar conclusion regarding Bare's character. An offender's character is shown by her "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). We conduct our review of a defendant's character by engaging in a broad consideration of her qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). This assessment includes consideration of the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). In 2012, Bare was convicted of class A misdemeanor operating a vehicle with an alcohol concentration equivalent to .15 or more. In 2015, she was convicted of level 6 felony operating a vehicle while intoxicated, a crime that was later reduced to a class A misdemeanor. She has also been convicted of

driving while suspended and public intoxication. Bare's criminal history reveals her longstanding problem with alcohol and her refusal to seek treatment for her admitted alcohol addiction or to reform her dangerous behavior. Bare directs us to not a single virtuous trait or persistent example of good character. She has not persuaded us to disagree with the trial court's assessment that she is one of the very worst offenders.

[13] Based on the foregoing, we cannot say that Bare's maximum sentence is inappropriate in light of the nature of the offenses or her character. Therefore, we affirm the aggregate sentence imposed by the trial court.

[14] Affirmed.

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