MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Francis E. Lynn IV
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

July 26, 2021

Court of Appeals Case No. 21A-CR-209

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-2001-F6-0357
03D01-1903-F6-1557

Tavitas, Judge.

Case Summary

[1] Francis Lynn IV seeks appellate review of his three-year aggregate sentence imposed for possession of cocaine and failure to register as a sex offender, both Level 6 felonies. Lynn contends that the sentence, entered pursuant to a plea agreement that set the maximum sentence at three years, is inappropriate in light of the nature of the offenses and his character. We cannot agree. Accordingly, we affirm the sentence.

Issue

[2] Lynn raises a single issue, which we restate as whether his sentence was inappropriate in light of the nature of the offenses and his character.

Facts

[3] Lynn was convicted of sex offenses in Maryland in 2003, such that he is required to register as a sex offender in Indiana for life. In approximately 2013, Lynn moved to Indiana. In approximately January 2019, a registration letter instructing Lynn to report for his annual appointment was sent to Lynn's address on file in Bartholomew County. Lynn did not appear for the appointment. Officers sought to confirm Lynn's address and learned that the residence was vacant. In March 2019, Lynn was arrested after being pulled over for speeding. Lynn's operator's license was suspended at the time. During the traffic stop, a canine officer alerted to the presence of narcotics, and one of Lynn's passengers was discovered to have cocaine, which Lynn had previously asked the passenger to hold.

[4] On March 19, 2019, the State charged Lynn with possession of cocaine, a Level 6 felony, and driving while suspended, a Class A misdemeanor. On January 21, 2020, the State charged Lynn with two counts of failure to register as a sex offender, Level 6 felonies. The State also charged Lynn with domestic battery, a Level 6 felony, interference with the reporting of a crime, a Class A misdemeanor, and possession of marijuana, a Class B misdemeanor, in July 2020. On October 12, 2020, Lynn entered into a plea agreement wherein he agreed to plead guilty to possession of cocaine and one count of failure to register as a sex offender, and, in exchange, the State agreed to dismiss all other charges. The plea agreement capped any possible sentence at three years.

[5] On January 12, 2021, the trial court sentenced Lynn to one year in the Department of Correction for the possession of cocaine conviction and two years for failure to register as a sex offender conviction, with those sentences to be served consecutively. The trial court noted the following aggravating and mitigating factors:

> Number one, I find as a significant aggravator, the defendant's history of criminal or delinquent behavior. Number two defendant has been on probation in the past and has had multiple petition's [sic] to revoke probation filed. Number three: He has had the opportunity for treatment in the past and has not been successful. And number four: he was on [p]robation at the time of these offenses. Mitigator, I do find his health issues as a slight mitigator . . ., but I will not find the plea as a mitigator because he did receive a deal for the plea.

Tr. Vol. II p. 88. Lynn now appeals.

Analysis

[6] Lynn asserts that his three-year sentence is inappropriate in light of the nature of the offenses and his character. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[7] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "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.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial

court's sentence "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).

[8] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Lynn was sentenced for possession of cocaine and failure to register as a sex offender, both of which are Level 6 felonies. *See* Ind. Code § 35-48-4-6; I.C. § 11-8-8-17. Indiana Code Section 35-50-2-7(b) provides that the sentencing range for a Level 6 felony is six months to thirty months; the advisory sentence is one year. Under that statute, Lynn, therefore, faced a maximum sentence of five years, a minimum sentence of one year, and an advisory sentence of two years. Lynn's plea agreement, however, capped his sentence at three years. Lynn received three years, the maximum allowed under his plea agreement.

[9] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, we set forth the nature of two offenses. First, Lynn was stopped for speeding while driving on a suspended license. During the traffic stop, a canine officer discovered that one of Lynn's passengers possessed narcotics. The passenger indicated that Lynn had asked the passenger to hold what was determined to be a small amount of cocaine. In

addition, Lynn revealed that he failed to update his address with the sex offender registry and had "no excuse" for that failure. Tr. Vol. II p. 80. Moreover, this is not Lynn's first sex offender registry violation.

[10] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). Of notable pertinence in this case is "[t]he significance of a criminal history in assessing a defendant's character and an appropriate sentence [which] varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[11] Lynn's criminal history is decidedly not "minor." The presentence investigation report reflects seventy-seven counts[1] ranging from false statement, to theft, to domestic battery, to various drug charges. The criminal history goes back as far as 1998. In many of the cases, Lynn appears to have received the benefit of a plea bargain, as he did in this case and, yet, has continued to re-

[1] This number simply refers to the number of entries in the report; not all of these counts resulted in convictions, and many of them are from the State of Maryland.

offend. In 2014, a sentencing court revoked Lynn's probation for a battery resulting in bodily injury. Additional probation revocations followed in 2015 and 2019.

[12] Lynn contends that his "conduct in each case did not exceed the statutory elements of the crimes he was charged with. Lynn was not uncooperative or resistant. Lynn's conduct lacked brutality or violence. Lynn did not harm and did not intend to harm anyone by his conduct." Appellant's Br. p. 10. Lynn adds that he has struggled with his mental health and suffers from an array of medical issues. Lynn's argument overlooks, however, the fact that while all of these factors may be true, these facts do not render his sentence inappropriate.

[13] While we are not unsympathetic to Lynn's situation—he clearly cares for his family and has taken steps to provide for them—our Rule 7(B) discretion is not wielded in order to achieve a sympathetic or even perceived correct result in any given case. Our aim is to leaven the outliers and correct those rare sentences that, given the circumstances, are clearly unfair. This is not one of those sentences. Accordingly, we affirm the sentence.

Conclusion

[14] Lynn's sentence is not inappropriate in light of the nature of the offenses and his character. We affirm.

[15] Affirmed.

Najam, J., and Pyle, J., concur.