

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Jennifer A. Joas
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General

David P. Dekold
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Michael Hall,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 31, 2023

Court of Appeals Case No.
23A-CR-653

Appeal from the Switzerland
Circuit Court

The Honorable W. Gregory Coy,
Judge

Trial Court Cause No.
78C01-1905-MR-252

Memorandum Decision by Judge Kenworthy
Judges Bailey and Taviton concur.

Kenworthy, Judge.

Case Summary

- [1] The State charged Michael Hall with felony aiding in murder¹; Level 3 felony conspiracy to commit aggravated battery²; Level 5 felony assisting a criminal³; Level 6 felony obstruction of justice⁴; and Level 6 felony aiding in obstruction of justice.⁵ Hall pleaded guilty to an amended count of Level 2 felony voluntary manslaughter,⁶ and the State moved to dismiss the remaining charges. The trial court accepted the plea agreement and sentenced Hall to seventeen and one-half years in the Indiana Department of Correction.
- [2] Hall now appeals his sentence, arguing it is inappropriate in light of the nature of the offense and his character. We affirm, concluding Hall's sentence was not inappropriate.

Facts and Procedural History

- [3] On June 2, 2018, Justin Girdler; his mother, Vivian Moore; his girlfriend, Victoria Hall; and Victoria's brother, Hall; drove to Dennis Dziwulski's home.

¹ Ind. Code §§ 35-42-1-1(1) (2017) & 35-41-2-4 (1977).

² I.C. §§ 35-42-2-1.5(3) (2014) & 35-41-5-2 (2014).

³ I.C. § 35-44.1-2-5(a)(2) (2016).

⁴ I.C. § 35-44.1-2-2(a)(3) (2017).

⁵ I.C. §§ 35-44.1-2-2(a)(3) & 35-41-2-4.

⁶ I.C. § 35-42-1-3 (2014).

Girdler invited Hall to join them and told Hall to bring a baseball bat “for protection.” *Appellant’s App. Vol. 2* at 22.

[4] When the group arrived at Dziwulski’s home, Dziwulski was asleep on the couch. Moore struck Dziwulski with a skillet about fifteen times, Girdler struck Dziwulski with a hammer about three times, and Hall struck Dziwulski with the baseball bat about three times. Dziwulski died. Hall helped Moore and Girdler move the body under the house.

[5] Hall joined Girdler the next day in moving Dziwulski’s body from under the home into the surrounding woods. Hall also helped Girdler drive and abandon Dziwulski’s vehicle in Kentucky to make it seem as if Dziwulski had moved out of state. When police found Dziwulski’s body on June 25, 2018, it had decomposed and separated into parts “due to gravity, rain water and carnivore activity.” *Tr. Vol. 2* at 28.

[6] In May 2019, the State charged Hall with numerous crimes. Hall pleaded guilty to an amended count of Level 2 felony voluntary manslaughter. The plea agreement provided the State would move to dismiss the remaining counts and Hall’s sentence would be capped at twenty years.

[7] The trial court held a sentencing hearing in February 2023. There, Hall claimed if he did not participate in striking Dziwulski, Girdler and the others “could come at [him]” and “could a got” him. *Tr. Vol. 2* at 13. Hall’s mother testified about Hall’s mental disabilities and tendency to be influenced by others into committing crimes.

[8] The trial court found as mitigators: Hall entered a guilty plea; the crime was “unlikely to reoccur”; Hall “acted under strong provocation”; Hall is illiterate, has serious mental deficits and learning disabilities, and “at the time of the crime was receiving SSI benefits due to a disability, that he had been receiving since age four.” *Id.* at 26. The trial court found as an aggravator “the harm, injury, loss or damage suffered by the victim Dennis, was significant and greater than the elements necessary to prove the commission of the offense [of voluntary manslaughter].” *Id.* The court also found Hall “deliberately attempted to mislead the police investigation.” *Id.* at 27.

[9] Finally, the trial court found Hall had a juvenile and criminal history. *Id.* He committed attempted theft as a juvenile and was placed on probation for one year. After he committed the offense here, he was found in possession of methamphetamine, a Level 6 felony, and sentenced to 180 days to be served consecutively with the sentence he received in this case. Hall admitted committing this offense while under the influence of methamphetamine. The trial court accepted the guilty plea and sentenced Hall to seventeen and one-half years in the Department of Correction.

[10] Hall now appeals his sentence. Additional facts are provided as necessary.

Hall’s Sentence Is Not Inappropriate

[11] This Court may revise a sentence under Indiana Appellate Rule 7(B) 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.” Our role in this undertaking is to “leaven the outliers,” reserving our authority to revise sentences for “exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) (citation omitted). We apply Appellate Rule 7(B) analysis “not to determine ‘whether another sentence is more appropriate’ but rather ‘whether the sentence imposed is inappropriate.’” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)). Our review is “very deferential to the trial court,” and the burden is on the defendant to persuade the appellate court his sentence is inappropriate. *Id.* The defendant bears a “particularly heavy burden” when the trial court imposes the advisory sentence. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[12] The advisory sentence for a Level 2 felony is seventeen and one-half years, Ind. Code § 35-50-2-4.5 (2014), which is the sentence Hall received. And the State amended Hall’s charges in exchange for his plea of guilty, eliminating his felony murder charge, which has an advisory sentence of fifty-five years. Also, under the plea agreement, the trial court could have imposed a sentence of twenty years.

[13] In arguing his sentence is inappropriate in light of the nature of the offense, Hall describes the facts of the case from his perspective as a person with “mental, learning, and behavioral disabilities.” *Appellant’s Br.* at 10–11. Hall explains how his “submissive and dependent tendencies” compelled him to follow Girdler and Moore’s lead in bringing his baseball bat, striking Dziwulski with the bat, hiding the body, and moving the vehicle to Kentucky. *Id.* at 10. In this

explanation, Hall speaks to the character of the offender, not the nature of the offense. And the nature of the offense is undeniably gruesome. Hall armed himself with a baseball bat and helped Girdler and Moore beat to death a sleeping man who Hall had never met. Further, Hall helped Girdler and Moore hide the body (even returning the next day to move the body) and move the victim's vehicle. Nothing about the nature of the offense compels us to revise Hall's sentence.

[14] A defendant's criminal history is relevant to the character of the offender. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Hall claims although he has a criminal history, his crimes were nonviolent before this case, and he was young (twenty years old) when he committed this crime. Hall's criminal history began when he committed attempted theft at fourteen years old. He was placed on probation for the offense but violated the terms of probation. As an adult, after Hall committed the offense here but before he was charged, the State charged him with possession of methamphetamine, possession of paraphernalia, failure to remain at the scene of an accident, operating a vehicle without a license, and operating a vehicle without ever having received a license. Hall also has a history of using illegal substances, including marijuana, cocaine, pain medication, heroin, suboxone, and methamphetamine.

[15] Hall also asks us to consider his remorse for this offense. At the sentencing hearing, Hall said, "if there was anything I could to change that or go back and

made [sic] it to where it didn't happen I would." *Tr. Vol. 2* at 8. He told Dziwulski's family he was "very sorry about what took place." *Id.*

[16] Hall describes his history of mental, learning, and behavioral disabilities from a young age. He notes considerations for the weight to be given to mental illness in sentencing, including: "(1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime." *Weeks v. State*, 697 N.E.2d 28, 30 (Ind. 1998). Hall discusses several factors applicable to those considerations. His IQ decreased from sixty-seven when he was eight years old to fifty-six when he was fifteen. He was prescribed ADHD medication when he was three years old and began receiving social security disability benefits for his mental and intellectual dysfunction at a young age. He says most of his disabilities were left untreated as he grew up. A mental health evaluation taken when he was fifteen years old states Hall's "submissiveness and dependency tendencies coupled with his extremely low cognitive abilities suggest that he could be easily led and be easily preyed upon by older peers or young men." *Ex. Vol. 3* at 19. His mental health evaluations also explain he struggles to comprehend long-term consequences of his actions.

[17] Although we agree Hall's mental, learning, and behavioral disabilities likely affected his participation in the offense, we cannot ignore his criminal history or the shocking nature of the offense. The trial court sentenced Hall to the advisory sentence, which is two and one-half years shorter than the cap Hall

agreed to in his plea agreement. And Hall received leniency in the amendment of the felony murder charge to voluntary manslaughter. We therefore determine Hall's sentence was not inappropriate in light of the nature of the offense and Hall's character.

Conclusion

[18] Concluding Hall's sentence was not inappropriate in light of the nature of the offense and Hall's character, we affirm.

[19] Affirmed.

Bailey, J., and Tavitas, J., concur.