MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Derrick O. Martin,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

August 5, 2024

Court of Appeals Case No.
23A-CR-2134

Appeal from the Allen Superior Court

The Honorable Steven O. Godfrey, Judge

Trial Court Cause No.
02D04-2108-F6-1136

Memorandum Decision by Judge Foley
Judges Riley and Brown concur.

Foley, Judge.

[1] Following a jury trial, Derrick O. Martin ("Martin") was convicted of Level 6 felony leaving the scene of an accident resulting in moderate bodily injury,[1] Level 6 felony operating a vehicle while intoxicated ("OWI"),[2] and being a habitual vehicular substance offender ("HVSO").[3] The trial court sentenced Martin to two years of imprisonment each for leaving the scene of an accident and OWI, and then enhanced Martin's OWI sentence by eight years due to Martin's HVSO status. The trial court ordered Martin to serve his sentences consecutively, resulting in an aggregate sentence of twelve years executed in the Indiana Department of Correction ("DOC"). Martin appeals and raises the following restated issues for our review:

I. Whether sufficient evidence supported Martin's convictions for leaving the scene of an accident and OWI;

II. Whether Martin's aggregate sentence violates the consecutive sentencing statute; and

III. Whether Martin's sentence is inappropriate in light of the nature of his offenses and his character.

[2] We affirm.

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[1] Ind. Code § 9-26-1-1.1(a).

[2] I.C. § 9-30-5-2.

[3] I.C. § 9-30-15.5-2.

Facts and Procedural History

[3] On August 24, 2021, a motorcyclist was traveling westbound on State Road 930 in Allen County with a green light to continue through the intersection with Meyer Road. A green SUV ("the SUV") traveling eastbound on State Road 930 turned in front of the motorcyclist onto Meyer Road which caused the motorcyclist to T-bone the rear passenger side of the SUV, resulting in a loud crash. The collision caused the motorcyclist to fly off his motorcycle, landing on the road, and the operator of the SUV—later identified as Martin—to briefly lose control of the SUV. The collision also blew out the left rear tire on Martin's SUV. After Martin regained control of the SUV, he drove away with the flat tire making a "thud" sound. Tr. Vol. 2 p. 120. The collision disrupted traffic from both directions.

[4] Two witnesses ran to the motorcyclist's assistance and called the police. Bryson Underwood ("Underwood"), who did not witness the accident, assisted by blocking westbound traffic on State Road 930. After a few minutes, witnesses observed the SUV drive past the scene of the accident without stopping. A few more minutes passed, and the witnesses again observed the SUV drive past the scene of the accident without stopping. At that time, Underwood decided to follow the SUV, so he got into his vehicle, called 911, and began following the SUV to an automotive supply store. Underwood never saw the driver of the SUV.

[5] Martin entered the automotive supply store and told the store attendant that he needed a new tire. While interacting with Martin, the store attendant observed

that Martin's speech was slurred and that he seemed unsteady when he walked. The store attendant went outside and inspected Martin's SUV and noticed that the left rear tire was blown out, the back windshield was cracked, and the back bumper was hanging on the ground. The store attendant asked Martin what happened, and Martin replied that "someone ran into him." *Id.* at 141. Minutes later, police officers arrived at the store and placed Martin under arrest. The officers observed that Martin had red and watery eyes, was unsteady on his feet, slurred his speech, and smelled like alcohol. The officers searched Martin's SUV, which "reeked of alcohol" and found several containers full of alcohol on the passenger side of the SUV. *Id.* at 233. Martin was transported to the police station, and while there, he urinated on himself twice and refused to consent to a breath test and a blood draw. Officer Joshua Alexander ("Officer Alexander") obtained a search warrant for a blood draw and transported Martin to the hospital for the blood draw. While at the hospital, Martin told Officer Alexander that "a motorcycle hit his [SUV] and that it wasn't his fault." *Id.* at 244.

[6] On August 30, 2021, the State charged Martin with: Count I, leaving the scene of an accident resulting in moderate bodily injury as a Level 6 felony; and Count II, Part I—OWI as a Level 6 felony, Part II—OWI as a Level 6 felony,[4]

[4] The charging information alleged that Martin has a previous conviction for OWI in Cause No. 02D04-1811-CM-5292. *See* Appellant's App. Vol. II p. 27.

and Part III—HVSO.[5] On July 25 and 26 of 2023, a bifurcated jury trial was held, and the motorcyclist, the two witnesses, Underwood, the store attendant, and Officer Alexander testified.

[7] The motorcyclist's testimony reiterated how Martin turned in front of him which caused the collision and described the injuries he suffered as a result. As a result of the collision, the motorcyclist's left elbow was "dislocated[,]" and he sustained "a ton of road rash" and abrasions to his knees and legs. *Id.* at 117. The motorcyclist had to undergo elbow surgery because of "a torn ligament in [his] elbow." *Id.* The two witnesses testified regarding what they observed and heard when and after the accident occurred. Although Underwood did not see nor hear the collision because he approached the intersection after it had happened, he testified regarding what he observed and heard, and how he followed the SUV to the automotive supply store. The automotive store attendant testified regarding what he observed when Martin came to the store to inquire about a new tire for his SUV. Officer Alexander testified regarding what he observed after Martin was placed under arrest and what Martin said to him when they were at the hospital.

[8] At the conclusion of the first phase of the trial, the jury found Martin guilty of Level 6 felony leaving the scene of an accident resulting in moderate bodily injury (Count I), Level 6 felony OWI (Count II, Part I), and Level 6 felony

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[5] The charging information also alleged that Martin has two more prior convictions for OWI in Cause Nos. 02C01-1007-FD-335 and 02D04-1811-CM-5292. *See id.* at 29.

OWI (Count II, Part II). The HVSO phase of the trial proceeded, and the jury found Martin guilty of being a HVSO. Martin's presentence investigation report revealed that he had seventeen prior misdemeanor and four prior felony convictions, which included: two Class A misdemeanor Operating While Suspended; Class A misdemeanor OWI; two Class D felony battery to a police officer; Class D felony OWI; five Class A misdemeanor resisting law enforcement; Class D felony resisting law enforcement; Class B misdemeanor disorderly conduct; Class A misdemeanor battery; Class B misdemeanor public intoxication; two Class A misdemeanor habitual traffic violator; Class B misdemeanor habitual substance offender; Class A misdemeanor OWI endangering a person; Class A misdemeanor driving while suspended: knowing violation and prior conviction within ten years; and Class B misdemeanor false informing. When he committed the instant offenses, Martin was on probation for driving while suspended and false informing. Martin's probation had been revoked twice before, and he failed to complete substance abuse treatment on five prior occasions. Martin's driver's license was suspended at the time that he committed the instant offenses.

[9] A sentencing hearing was held, and the motorcyclist and his significant other testified. The motorcyclist revealed that he had not yet healed from the accident and that he still faced "daily struggles as a result." Tr. Vol. 3 p. 87. He testified that "motorcycling [was] not only a hobby, [but] also [his] therapy." *Id.* The motorcyclist also testified that his injuries caused him to miss "countless time with [his] family that [he will] never be able to get back."

Id. The motorcyclist's significant other testified that the motorcyclist "often locks himself in his room and isolates" ever since the collision occurred. *Id.* at 84. She further testified that the collision "limited [the motorcyclist's] abilities, causing life altering changes for the entire family" including their children. *Id.*

[10] The trial court sentenced Martin to two years for Level 6 felony leaving the scene of the accident and two years for Level 6 OWI. The trial court then enhanced Martin's OWI sentence by eight years and imposed consecutive sentences, resulting in an aggregate sentence of twelve years. This appeal ensued.

Discussion and Decision

I. Sufficiency of the Evidence

[11] When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only the evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id*. "We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence." *Id.* Indeed, we will ultimately "affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[12] Here, Martin only challenges the identity elements of his leaving the scene of an accident resulting in moderate bodily injury and OWI convictions. Therefore,

he concedes that sufficient evidence was presented to prove all of the other elements. With respect to leaving the scene of an accident, Indiana Code section 9-26-1-1.1(a) provides in pertinent part as follows:

> The operator of a motor vehicle involved in an accident shall . . . immediately stop the . . . vehicle . . . at the scene of the accident . . . or as close to the accident as possible . . . [and] [r]emain at the scene of the accident . . . If the accident results in the injury . . . of another person, the operator shall . . . provide reasonable assistance to each person injured in . . . the accident . . . and . . . immediately give notice of the accident, or ensure that another person gives notice of the accident, by the quickest means of communication to . . . [t]he local police department . . . [, t]he office of the county sheriff or the nearest state police post . . . [, or a] 911 telephone operator.

"An operator of a motor vehicle who knowingly or intentionally fails to comply with subsection (a) commits leaving the scene of an accident," which is a Level 6 felony if the accident results in moderate bodily injury to another person.

[13] A person who operates a vehicle while intoxicated in a manner that endangers a person commits a Level 6 felony if the person has a previous OWI conviction that occurred within seven years immediately preceding the current OWI conviction. I.C. §§ 9-30-5-2, -3(a)(1).

[14] To sustain both convictions, the State was required to prove that Martin was the person who operated the SUV that collided with the motorcyclist and immediately drove off thereafter. The State may rely on a range of evidence to prove the defendant "operated" a vehicle, including evidence of: "(1) the

location of the vehicle when it is discovered; (2) whether the car was moving when discovered; (3) any additional evidence indicating that the defendant was observed operating the vehicle before he or she was discovered; and (4) the position of the automatic transmission." *Crawley v. State*, 920 N.E.2d 808, 812 (Ind. Ct. App. 2010), *trans. denied*. "If the evidence only inconclusively connects a defendant with the crime, this goes to weight, not the admissibility of the evidence." *Whitt v. State*, 499 N.E.2d 748, 750 (Ind. 1986). "The identity of an accused is a question of fact"; therefore, "the weight to be given identification evidence, and any determination of whether it is satisfactory and trustworthy, is a function of the trier of fact." *Id.* Further, "identity [. . .] may be proved by circumstantial evidence[.]" *Sansom v. State*, 562 N.E.2d 58, 59 (Ind. Ct. App. 1990). Indeed, "[a] verdict may be sustained based on circumstantial evidence alone if that circumstantial evidence supports a reasonable inference of guilt." *Maul v. State*, 731 N.E.2d 438, 439 (Ind. 2000). Although presence at a crime scene alone is insufficient to sustain a conviction, presence combined with other facts and circumstances, including the defendant's course of conduct before, during, and after the offense, may raise a reasonable inference of guilt. *Id.*

[15] Martin contends that both convictions fail because there was insufficient evidence that he was the person operating the SUV. Martin claims that none of the witnesses identified him as the person who was driving the SUV at the time of the accident or as the person who was driving the SUV when it pulled into the parking lot of the automative supply store. To support his assertions,

Martin directs us to dissenting opinions in *Murphy v. State*, 555 N.E.2d 127, 133 (Ind. 1990), and *Crawley*, 920 N.E.2d 808, from Judges DeBruler and Riley, respectively.

[16] However, in both of those cases, the majority determined that there was sufficient evidence from which the factfinder could conclude beyond a reasonable doubt that the defendant was the one who committed the charged offense. *See Murphy*, 555 N.E.2d at 129 (holding that identity testimony of undercover officer who arranged buy of controlled substance from person of same name as defendant was adequate to prove that defendant was perpetrator of crime even though defendant was absent from trial and was not identified in presence of jury as person who committed crime); *see also Crawley*, 920 N.E.2d at 810–13 (concluding that, taken as a whole, there was substantial circumstantial evidence from which a reasonable trier of fact could infer that defendant, who was "soaking wet" when she approached a nearby house, had operated the vehicle although no one saw her drive the vehicle when it was found submerged in a pool).

[17] Similarly, here, the State presented sufficient evidence from which the jury could conclude beyond a reasonable doubt that Martin was the person operating the SUV. The evidence revealed that Martin's SUV was observed by witnesses when it struck the motorcyclist and immediately left the scene. Minutes later, Martin's SUV was observed driving past the scene of the accident on two separate occasions, which led Underwood to follow the SUV so he could report the operator of the SUV to the police. Underwood followed

Martin's SUV and observed it parked at the automotive supply store where Martin went inside, identified the SUV as his, and when asked what happened to his SUV, told the automative store attendant that someone ran into him. After Martin was arrested, he told Officer Alexander that a motorcycle hit his SUV. Moreover, the evidence indicated that Martin was alone in his SUV at all pertinent times. The evidence, taken as a whole, was sufficient for the jury to deduce that Martin was the person operating the SUV that struck the motorcyclist and fled the scene of the accident. We, therefore, conclude that sufficient evidence was presented to support Martin's convictions for Level 6 felony leaving the scene of an accident and Level 6 felony OWI.

II. Consecutive Sentences

[18] A trial court has the discretion to impose consecutive or concurrent terms of imprisonment. *S.B. v. State*, 175 N.E.3d 1199, 1202–03 (Ind. Ct. App. 2021). However, that discretion "does not extend beyond the statutory limits." *Edwards v. State*, 147 N.E.3d 1019, 1021 (Ind. Ct. App. 2020). "Therefore, in reviewing a sentence, we will consider whether it was statutorily authorized." *Id.*

[19] Martin argues that the trial court abused its discretion when it imposed a maximum aggregate sentence of twelve years contrary to Indiana Code section 35-50-1-2(c) ("consecutive sentencing statute") which provides, in pertinent part, that:

> The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10 (before its repeal) to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the period described in subsection (d).

Subsection (d) of the statute provides, "If the most serious crime for which the defendant is sentenced is a Level 6 felony**,** the total of the consecutive terms of imprisonment may not exceed four . . . years." I.C. § 35-50-1-2(d)(1). Additionally, we note that Martin was found to be a HVSO. "The court shall sentence a person found to be a [HVSO] to an additional fixed term of at least one . . . year but not more than eight . . . years of imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3." I.C. § 9-30-15.5-2(d).

[20] Here, Martin's sentence was not contrary to the consecutive sentencing statute because the statute limits consecutive sentences to four years for Level 6 felonies. Pursuant to the consecutive sentencing statute, the trial court sentenced Martin to a total of four years for his two Level 6 felony convictions. As for the HVSO, the consecutive sentencing statute does not apply because a HVSO enhancement is not a separate, consecutive sentence, but an enhancement to a felony conviction. *See McDonald v. State*, 173 N.E.3d 1043, 1048 (Ind. Ct. App. 2021), *opinion aff'd in part, vacated in part*, 179 N.E.3d 463 (Ind. 2022) (noting that an HVSO finding "does not constitute a separate crime

nor result in a separate sentence but is an enhancement to an underlying felony conviction"). Stated differently, the consecutive sentencing statute caps the aggregate sentence imposed for Martin's two Level 6 felony convictions at four years, prior to the attachment of the HVSO enhancement. Under Martin's reading of the statute, if the trial court had ordered Martin's two Level 6 felonies to be served concurrently, thus avoiding application of the consecutive sentencing statute, Martin could have been sentenced to an aggregate sentence of ten and a half years (two and a half years for the Level 6 felony convictions plus eight years for the HVSO enhancement).

[21] At one point, Martin directs us to *Daugherty v. State*, 52 N.E.3d 885 (Ind. Ct. App. 2016). However, that case is inapplicable because it does not involve a sentence enhancement since the defendant's sentence enhancement was vacated. Furthermore, we need not look beyond the plain language of the statute to determine that the instant sentence was compliant. Therefore, the sentence did not run afoul of the consecutive sentencing statute.

III. Appellate Rule 7(B)

[22] Martin claims his aggregate sentence is inappropriate in light of the nature of his offenses and his character. The Indiana Constitution authorizes 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). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the

sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[23] Our review under Appellate Rule 7(B) focuses 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." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court's sentencing decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "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).

[24] When reviewing a sentence under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). A person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with the advisory sentence being one year. *See* I.C. § 35-50-2-7(b). If a person is found to be a HVSO, the court shall add a fixed term of at least one year, but no more than eight years of imprisonment, to the term of imprisonment imposed under Indiana Code section 35-50-2 or 35-50-3. *See* I.C. § 9-30-15.5-2(d). Here, the

trial court sentenced Martin to two years for Level 6 felony leaving the scene of the accident and two years for Level 6 OWI. Each sentence was one year above the advisory sentence. The trial court then enhanced Martin's OWI sentence by an additional term of 8 years, resulting in an aggregate sentence of twelve years.

[25] "The nature of the offense is found in the details and circumstances of the offenses and the defendant's participation therein." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, Martin—while intoxicated—decided to drive his SUV on a suspended license. In the process, Martin struck and injured a motorcyclist, causing an accident that disrupted traffic. Instead of remaining on the scene of the accident he caused, Martin immediately fled. What is more disturbing is that after Martin fled, he came back and drove past the accident two times without stopping. As result of the accident caused by Martin, the motorcyclist suffered a dislocated elbow, extensive road rash, and the worst pain of his life. The motorcyclist underwent surgery on his elbow and had another surgery planned at the time of sentencing. Ever since Martin struck him, the motorcyclist testified that he struggles with pain and completing daily tasks. The motorcyclist has also missed out on spending time with his family because of the injuries he sustained from Martin's actions. The accident did not only negatively affect the motorcyclist, but also the motorcyclist's significant other and their children, who now have to deal with his moments of isolation. Martin has failed to portray the nature of his offense in a positive

light, "such as accompanied by restraint, regard, and lack of brutality[.]" *Stephenson*, 29 N.E.3d at 122.

[26] "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Even a minor criminal record reflects poorly on a defendant's character. *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017).

[27] Martin contends that "nothing in his character warrants an aggregate sentence of twelve years . . . in this matter." Appellant's Br. p. 26. We disagree. Martin has an extensive criminal history that commenced when he was a juvenile. On three separate occasions, Martin was adjudicated a juvenile delinquent for robbery, possession of stolen property, and theft. Once he became an adult, Martin racked up seventeen misdemeanor and four felony convictions. Most notable from Martin's significant adult criminal history are his prior convictions involving conduct similar to his current offenses, such as OWI, with the most recent being from 2018, and driving while suspended in 2020. Martin has previously been placed on probation twice, and both times, his probation was revoked. When Martin committed the instant offenses, he was on probation for driving while suspended. Martin's behavior demonstrates his disregard for authority and he failed to take advantage of prior opportunities for treatment on five occasions. Despite his frequent contacts with the judicial system, Martin has continued to commit crimes, which is a poor reflection on his character.

See Rutherford v. State, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007); *see also Connor v. State*, 58 N.E.3d 215, 221 (Ind. Ct. App. 2016) (continued crimes indicate a failure to take full responsibility for one's actions). Consequently, Martin has not met his burden of identifying "substantial virtuous traits or persistent examples of good character" supporting his assertion that his sentence is inappropriate based on his character. *Stephenson*, 29 N.E.3d at 122.

[28] Martin has not demonstrated that his aggregate sentence is inappropriate in light of his offenses or his character.

Conclusion

[29] Based on the foregoing, we conclude that there was sufficient evidence to sustain Martin's convictions for leaving the scene of an accident and OWI. Furthermore, Martin's aggregate sentence did not violate the consecutive sentencing statute and his sentence is not inappropriate in light of the nature of his offenses and his character.

[30] Affirmed.

Riley, J., and Brown, J., concur.

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