MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE COURT OF APPEALS OF INDIANA

Jeffrey L. Glasgow, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 18, 2022

Court of Appeals Case No. 21A-CR-1923

Appeal from the Vigo Superior Court

The Honorable John T. Roach, Judge

Trial Court Cause No. 84D01-2012-F5-4229

Crone, Judge.

Case Summary

[1] Jeffrey L. Glasgow, Jr., appeals his twelve-year aggregate sentence imposed following his guilty plea to two counts of level 5 felony burglary, arguing that the trial court abused its discretion by finding an allegedly improper aggravating factor and that his sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

Facts and Procedural History

[2] On December 7, 2020, Glasgow broke into and entered the Mascari Landscaping facility and the Rose Hill Landscaping facility, taking landscaping equipment including mowers and tractors. The State charged him with two counts of level 5 felony burglary and two counts of level 6 felony theft. The trial court placed him on pretrial supervision, but in June 2021, he was charged with level 5 felony burglary in cause 84D01-2106-F5-1849 ("F5-1849"). That same month, the State and Glasgow executed a plea agreement, in which Glasgow agreed to plead guilty to the burglary charges in this case, and the State would dismiss the theft charges as well as the burglary charge in F5-1849. Sentencing was left to the trial court's discretion.

[3] In August 2021, the trial court accepted the plea agreement, entered judgment of conviction on the level 5 felony burglaries, and dismissed the theft charges and the charge in F5-1849. The court then proceeded with sentencing. Glasgow's mother and fiancée, with whom he had a two-month-old son, testified on his behalf. Glasgow also made a statement:

> Your Honor, I [accept] full responsibility for my actions that have got me in front of you today. Um, I'm just asking for one more chance for Home-Detention to go home and raise my son. Um, I wasn't strong enough when my dad died. I wish I was, I wouldn't be in this position. Drugs, drugs took over. I stayed clean for fifteen (15) years and I know I can do it again. I know I can go out there and work and be a normal person. I just need that chance. My main focus is just getting home to my fiancé[e] and raise my son, staying sober. I have a job out there waiting on me. The drugs [led] to the charges I'm on now, but that's not an excuse.

Tr. Vol. 2 at 25.

[4] The court found that the fact that Glasgow had led a law-abiding life for a significant period and his acceptance of responsibility for the current offenses were mitigating factors. In determining aggravating factors, the trial court referred to the charge in F5-1849, stating, "I find that the Probable Cause underl[ying] the case that was dismissed, establishes the other aggravator and that was while I let you out, you committed another crime. Same crime, right? Burglary." *Id*. at 33. Glasgow agreed that it had been burglary. The court continued, "I know it's dismissed, but the evidence before the Court in that case, gives me reason to think that condition is an aggravating factor in this case as well." *Id*. The trial court found that Glasgow's extensive thirty-year criminal history and his commission of a new offense while he was on pretrial release were aggravating factors.

[5] The court found that the aggravating factors outweighed the mitigating factors and sentenced Glasgow to six years for each burglary conviction, to be served

consecutively, for an aggregate twelve-year sentence. The court ordered that this sentence be served as a direct placement in work release and that if Glasgow successfully completed half of his executed sentence, the court would consider modifying his placement to in-home detention. This appeal ensued.

Discussion and Decision

[6] Glasgow first argues that the trial court abused its discretion by relying on an allegedly improper aggravating circumstance. "Generally speaking, sentencing decisions are left to the sound discretion of the trial court, and we review the trial court's decision only for an abuse of this discretion." *Singh v. State*, 40 N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied* (2016). "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (quotation marks omitted), *clarified on reh'g* 875 N.E.2d 218. One way a trial court can abuse its discretion is by relying on an aggravating circumstance that has no support in the record. *Id*. at 490-91.

[7] Glasgow contends that the court's finding that he committed an offense while on pretrial release is unsupported by the record. Specifically, he asserts that because F5-1849 was dismissed, there was no factual basis that he committed that burglary, and the State failed to ask the court to take judicial notice of the probable cause affidavit or to introduce any evidence to show that he committed the burglary. We note that a trial court may take judicial notice of

records in its own case. Ind. Evidence Rule 201(b). In addition, a court may take judicial notice on its own, whether requested or not, and judicial notice may be taken at any stage of the proceeding. Ind. Evidence Rule 201(c), -(d). Here, the court on its own took judicial notice of the probable cause affidavit in F5-1849 when it stated that the probable cause underlying that charge and the evidence before the court in that case showed that Glasgow had committed another offense while on pretrial release. Tr. Vol. 2 at 33. Accordingly, the trial court did not abuse its discretion by finding that Glasgow's commission of a new offense while on pretrial release was an aggravating factor.[1] *See Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011) (concluding that trial court did not abuse its discretion by taking judicial notice of defendant's bond revocation to find that his commission of a new criminal offense was an aggravating factor).

[8] Glasgow also asks us to revise his 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." Glasgow has the burden to show that his sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the

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[1] Although we find no abuse of discretion, the better course of action would have been for the court to specifically state, for clarity's sake, that it was taking judicial notice of the probable cause affidavit.

appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017); *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[9] 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 sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). In conducting our review, we may consider all aspects of the penal consequences imposed by the trial court in sentencing, i.e., whether it consists of executed time, probation, suspension, home detention, or placement in community corrections, and whether the sentences run concurrently or consecutively. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). "[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 the 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).

[10] Turning first to the nature of the offenses, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The advisory sentence for a level 5 felony is three years, with a range of one to six years. Ind. Code § 35-50-2-6. Although the trial court imposed a six-year sentence for each burglary count, Glasgow was not ordered to serve that sentence in the Indiana Department of Correction ("DOC") but was afforded the opportunity to serve it in work release with the possibility of modification to in-home detention. We note that consecutive sentences are appropriate given that there were multiple victims. *See Cardwell*, 895 N.E.2d at 1225 ("Whether the counts involve one or multiple victims is highly relevant to the decision to impose consecutive sentences if for no other reason than to preserve potential deterrence of subsequent offenses.").

[11] "When determining the appropriateness of a sentence that deviates from an advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that 'makes it different from the typical offense accounted for by the legislature when it set the advisory

sentence.'" *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*. Other than the fact that Glasgow committed these offenses on the same day, the minimal record does not reveal anything about them that makes them more or less egregious than the typical burglary.

[12] In reviewing Glasgow's character, we engage in a broad consideration of his qualities. *Elliott v. State*, 152 N.E.3d 27, 40 (Ind. Ct. App. 2020), *trans. denied*. An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Garcia v. State*, 47 N.E.3d 1249, 1251 (Ind. Ct. App. 2015), *trans. denied* (2016). The significance of a defendant's criminal history "is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Bryant v. State*, 841 N.E.2d 1154, 1157 (Ind. 2006).

[13] Here, Glasgow is forty-three years old and has a criminal history spanning thirty years. He became involved with the justice system beginning in 1993 when he was fifteen and was sent to the Indiana Boys School at least twice for crimes such as battery and auto theft. As an adult, he has four misdemeanor convictions and ten felony convictions, including for crimes of violence such as battery resulting in serious bodily injury and criminal confinement, and crimes related to the current offenses, such as burglary, auto theft, and receiving stolen

property. He also has several probation and parole violations. He was sentenced to the DOC in 1996, 1999, and 2004. He was released in 2008 and did not have any new arrests or convictions until July 2020, when he was charged with level 6 felony residential entry, level 6 felony domestic battery committed in the presence of a child less than sixteen years old, and level 6 felony domestic battery, which involved his prior girlfriend. Glasgow's criminal history shows him to be a dangerous person and warrants an enhanced sentence.

[14] Glasgow emphasizes the twelve years that he had no arrests or convictions and that he worked steadily during that time. He states that he faltered when his father died in 2019 and he returned to drugs. Twelve years as a law-abiding, productive member of society and his acceptance of responsibility for the current offenses shows some promise that Glasgow will ultimately be able to reform his behavior. We believe this prospect will be facilitated by his placement in work release and the possibility of being able to serve the latter half of his sentence on in-home detention. In light of Glasgow's criminal history and his violations of parole, probation, and pretrial release, we conclude that he has failed to carry his burden to show that his sentence is inappropriate. Accordingly, we affirm his sentence.

[15] Affirmed.

Vaidik, J., and Altice, J., concur.