

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Billy Francis Williams II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 12, 2021

Court of Appeals Case No.
20A-CR-1531

Appeal from the Tippecanoe
Superior Court

The Honorable Steven Meyer,
Judge

Trial Court Cause No.
79D02-2002-F5-19

May, Judge.

- [1] Billy Francis Williams II appeals his six-year sentence for Level 5 felony burglary.¹ Williams contends his placement in the Indiana Department of Correction for five of the six years of his sentence is inappropriate given the nature of his offenses and his character. We affirm.

Facts and Procedural History

- [2] On December 12, 2019, Thomas and Marilyn Richardson were awakened in their home at 2:30 a.m. by an alarm alerting them that the entry door to their barn had been opened. Thomas observed a man, later identified as Williams, exiting the barn and running toward a vehicle waiting in the road. When Williams entered the car, it quickly drove off. Thomas and Marilyn got into their own truck and followed the car, eventually blocking the vehicle with their truck after a brief pursuit. They were able to note the license plate number. Thomas exited his vehicle with a rifle and approached Williams to question him. Williams denied stealing anything from the barn and drove away.
- [3] When Tippecanoe County Officers arrived at the Richardsons' home around 3:00 a.m., Thomas and Marilyn provided them with Williams' license plate number and video surveillance footage of the barn's exterior and interior. The video showed Williams approached a gasoline pump near the barn with gas canisters, attempted to remove gasoline from the pump but discovered it was

¹ Ind. Code § 35-43-2-1.

locked, and then entered the barn, walked around the inside, and finally left. Thomas also informed the officers that he found three empty gasoline containers when he retraced Williams' escape route from the barn to the car.

- [4] On February 14, 2020, the State charged Williams with Level 5 felony burglary, and it filed a notice of intent to file information of habitual offender status on April 6, 2020. On June 23, 2020, Williams pled guilty to the burglary charge in exchange for the State's agreement not to introduce a habitual offender enhancement. The plea agreement left sentencing to the discretion of the trial court. On July 21, 2020, the trial court imposed a six-year sentence, and it directed five years of the sentence be executed in the Indiana Department of Correction and one year be served in Tippecanoe County Community Corrections, with a recommendation for work release.²

Discussion and Decision

- [5] Williams challenges the trial court's decision to order five years, rather than three years, of his sentence executed in the Indiana Department of Correction. Although "the place that a sentence is to be served is an appropriate focus for application of our review and revise authority," *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007), it is nonetheless "quite difficult for a defendant to prevail

² The trial court initially sentenced Williams to five years in the Indiana Department of Correction. (Tr. Vol. II at 40.) However, Williams requested the court impose an extra year to be served on Community Corrections Work Release, because he was worried about being homeless following his release. (*Id.* at 41.)

on a claim that the placement of his or her sentence is inappropriate.” *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). “As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a trial court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale.” *Id.* at 343-4.

[6] We will reverse Williams’ sentence as inappropriate only if we determine his sentence is inappropriate in light of both the nature of his offenses and his character. *See* Ind. Appellate Rule 7(B) (“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”). The nature of the offense analysis compares the defendant’s actions with the required showing to sustain a conviction under the charged offense, *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008), while the character of the offender analysis permits broader consideration of a defendant’s character. *Douglas v. State*, 878 N.E.2d 873, 881 (Ind. Ct. App. 2007).

[7] Ultimately, our determination of appropriateness “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. In maintaining the special deference given to the trial court, we recognize that the task at hand is not to evaluate whether another sentence within the prescribed sentencing range is more appropriate, but rather

whether the sentence imposed by the trial court is inappropriate. *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *reh'g denied, trans. denied*. The defendant ultimately bears the burden of demonstrating the inappropriateness of the sentence. *Patterson v. State*, 909 N.E.2d 1058, 1063 (Ind. Ct. App. 2009).

[8] Regarding the nature of the present offense, we emphasize that Williams violated the Richardsons' privacy and sense of security on their own property when he entered their barn without permission. Furthermore, Williams admitted that he was "high" when he decided to enter the Richardsons' barn in search of gas. (Appellant's App. Vol. II at 59.) Despite Williams' assertion that "they lost no property, and were not hurt," (Br. of Appellant at 14), Mr. Richardson informed the police that he was "very shaken up and had never been through anything like this." (*Id.* at 77.) Furthermore, when questioned by Mr. Richardson, Williams denied the allegations and was uncooperative, despite being caught on camera prowling during the very early hours of the morning in and around property that was not his.

[9] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Although the extent to which a defendant's criminal history may be used to guide an appropriate sentence "varies based on the gravity, nature, and number of prior offenses in relation to the current offense," *Wooley v. State*, 716 N.E.2d 919, 929 (Ind. 1999), repeated contacts with the criminal justice

system generally reflect poorly on the defendant's character, because such contacts suggest the defendant "has not been deterred [from further criminal behavior] even after having been subjected to the police authority of the State." *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005).

[10] Williams' extensive criminal history includes seven felony convictions and one misdemeanor conviction, including two convictions of Level 5 felony burglary,³ two convictions of Level 6 felony possession of methamphetamine,⁴ and one conviction each of Level 5 felony escape from lawful detention,⁵ Level 6 felony receiving stolen auto parts,⁶ Level 6 felony theft,⁷ and Class A misdemeanor conversion.⁸ Additionally, at the time of the present offense, Williams had pending in Carroll County charges of Level 6 felony possession of methamphetamine,⁹ Class C misdemeanor operating a vehicle while intoxicated,¹⁰ and Class A misdemeanor count of operating a vehicle while intoxicated endangering a person.¹¹ (Appellant's App. Vol. II at 43-47.)

³ Ind. Code § 35-43-2-1(B)(i).

⁴ Ind. Code § 35-48-4-6.1(a).

⁵ Ind. Code § 35-44.1-3-4(a).

⁶ Ind. Code § 35-43-4-2.5(c).

⁷ Ind. Code § 35-43-4-2(a).

⁸ Ind. Code § 35-43-4-3(a).

⁹ Ind. Code § 35-48-4-6.1(a).

¹⁰ Ind. Code § 9-30-5-2(a).

¹¹ Ind. Code § 9-30-5-2(a) & (b).

Williams has had nine petitions for revocation of probation filed against him, for violations such as failing to maintain lawful behavior and failing drug screens, with three petitions being found true. (*Id.* at 47.) He has been discharged from probation unsatisfactorily twice, has violated his home detention on various occasions, and has a history of failing to appear for his court hearings. (*Id.*)

[11] In 2017, Williams participated in a crime strikingly similar to his present offense. In that case, Williams approached gas tanks located behind a barn, attempted to remove gasoline into gas canisters, and escaped via a car waiting for him in the road. The State charged Williams with Level 5 felony burglary and Level 6 attempt to commit theft, and ultimately convicted him of the latter charge. Williams' prior engagement in unlawful behavior similar to the present offense reflects negatively on his character and indicates a particular pattern of disregard for the property of others. *See Hollins v. State*, 145 N.E.3d 847, 854 (Ind. Ct. App. 2020) (defendant's convictions of similar prior offenses, pending charges for theft during the commission of the present offense, and undeterred criminal behavior each time he was released from prison demonstrate appropriateness of sentence), *trans. denied*. Moreover, at the time of the present offense, Williams was out on pre-trial release for charges pending against him in another county and was on probation, both of which demonstrate Williams' continued indifference for the law despite previously having been provided leniency by a trial court. *See Barber v. State*, 863 N.E.2d 1199, 1208 (Ind. Ct.

App. 2007) (the commission of an offense while on probation is a “significant aggravator”), *trans. denied*.

[12] Although Williams emphasizes his mental health issues, consequent self-medication with illegal drugs, and desire for structured treatment, (Br. Appellant at 10), we note the trial court did acknowledge Williams’ continued struggles with substance abuse and addiction as a mitigating factor. However, the trial court understandably could not overlook the failed prior attempts at rehabilitation and treatment. (Tr. Vol. II at 38.) *See Littrell v. State*, 15 N.E.3d 646, 652-53 (Ind. Ct. App. 2014) (defendant’s inability to complete drug treatment programs and the presence of petitions to revoke defendant’s probation confirm appropriateness of sentence). For all these reasons, we find nothing inappropriate about the trial court’s order for Williams to serve five years in the Department of Correction.

Conclusion

[13] Neither Williams’ assertions about the nature of his offense nor those about his character – especially in light of his extensive criminal history including two felony burglary convictions, his failure to take advantage of prior opportunities to modify his behavior, and his continued engagement in lawless behavior while on probation – convince us that the order that he serve five of his six

years in the Indiana Department of Correction is inappropriate. Accordingly, we affirm the trial court's judgment.

[14] Affirmed.

Kirsch, J., and Bradford, C.J., concur.