

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jamal Long,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 16, 2023

Court of Appeals Case No.
23A-CR-123

Appeal from the
Clark Circuit Court

The Honorable
Vicki L. Carmichael, Judge

Trial Court Cause No.
10C04-2005-F1-10

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] Jamal Long was convicted of Level 4 felony arson and sentenced to twelve years. He now appeals, arguing the evidence is insufficient to support his conviction, the trial court considered improper aggravating factors at sentencing, and his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] The evidence most favorable to the conviction is as follows. James “Jimmy” Long (“Jimmy”) and Deana Long (“Deana”) lived in a house on Jordan Drive in Charlestown with their daughter, Ilana, and son, Josh, who has special needs. Long, their other son, had a bedroom in the basement of the house where he stayed periodically, but he did not live there full time. There was a second bedroom in the center of the basement that used to be Josh’s, but he had moved upstairs, so Long was essentially the only family member who used the basement. As of May 2020, Long had been living at the house for a couple of months. At that time, Long was twenty-two years old, Jimmy was sixty-four, and Deana was sixty-two.
- [3] On the afternoon of May 16, Long and Deana got into a loud argument. Long told Deana she “was driving him . . . crazy,” and he hit a cabinet, which broke the door off. Tr. Vol. IV p. 153. Long was still angry after the altercation, so he packed some clothes, shoes, and toiletries and put them in Ilana’s car. Long

went back to his bedroom for some time, and at 5:47 p.m., he searched “can gasoline [sic] be detected after a fire” on his phone and then deleted the search from his internet history. Exs. 38, 39. Still mad from his argument with Deana, Long grabbed two gasoline cans from the garage and used one to pour a trail of gasoline from the front door to the sidewalk. He also poured gasoline on the outdoor steps at the back of the house that led down to the walk-out basement. He then set a paper towel on fire with a lighter and threw it onto the trail of gasoline, but he did not set fire to the gasoline on the back steps.

[4] Around 9:00 p.m., Ilana smelled gasoline and discovered the fire in front of the house. She yelled to Jimmy and Deana that there was a fire, and they immediately ran outside. They put out the fire themselves by pouring water and stomping on it. After extinguishing the fire, Jimmy found a gasoline can next to the basement window. The family did not see Long during the fire, so Deana went into the basement to look for him. She could not find him in his room, but she did not check any of the other rooms in the basement. After Jimmy, Deana, and Ilana were all back inside the house, Ilana set the security alarm. From 9:31-9:43 p.m., Ilana and Long exchanged a series of text messages about the fire. Ilana asked Long why he was trying to kill the family and why he poured the gasoline and set the fire, but Long insisted he had been gone and didn’t do anything. *See Ex. 40; Tr. Vol. IV pp. 112-13.*

[5] Jimmy, Deana, Ilana, and Josh were sitting together on the main floor of the house when Ilana started smelling smoke. The smoke detectors went off, and the family saw smoke in the living room. Around the same time, the security

alarm started going off, and Deana heard the basement door open. Jimmy went to the basement to find the source of the smoke, and when he opened the door to the center bedroom, he was hit with heat and extreme smoke. The family did not know whether Long was home at that point, but based on location data later gathered during the investigation, Long's cell phone was on the property until 9:45 p.m. Long's phone then began moving away from the property, and after that, two neighbors saw a man who looked like Long run from the back of the house to a wooded area behind the property. Around 10:00 p.m., three different neighbors saw Long walking on Jordan Drive away from the house. These sightings all occurred before the neighbors heard sirens or saw the fire.

[6] Ilana called 911 at 10:07 p.m., and the family evacuated the house. Ilana told the dispatcher that Long “got mad at [her] mom,” “put gasoline all over [the] house,” and “set the house on fire[.]” Tr. Vol. IV pp. 55, 58. When firefighters arrived, only the center bedroom in the basement was on fire, but there was heavy smoke throughout the main floor. One of the firefighters smelled gasoline in the basement area. They began working to extinguish the fire in the center bedroom, but some of the ceiling tiles fell in on them, so they had to evacuate the house. At that point, the fire spread and became uncontrollable, eventually destroying the home. The loss of the house and its contents, the damage to Ilana's car and the family van, and the family's living expenses after the fire totaled around \$720,000.

[7] Police officers searched the neighborhood for Long and eventually found him about four miles from the house. Officers transported Long to the Charlestown

Police Department, where Detectives Jason Broady and Tejuan Johnson interviewed him. Long told the detectives it was emotionally draining for him to be in the home and that he was “tired of it there[.]” Tr. Vol. II p. 195. He initially denied pouring any gasoline or setting a fire but ultimately admitted to starting the fire outside the house. He said he had “so much built up anger” and that he was still angry from his argument with Deana when he set the fire. *Id.* at 196. He repeatedly denied setting the second fire or pouring gasoline inside the house, but he stated throughout the interview that he “just set [his] parents’ house on fire,” *id.* at 211, that “everybody’s going to think [he’s] crazy because [he] set [his] house on fire,” *id.* at 213, and that he “ruined [his] mom’s house,” Tr. Vol. V p. 135. The detectives interviewed Long again two days after the fire, and Long maintained that he did not pour any gasoline in the basement or set a fire inside the house. During both interviews, Long filled out a written statement admitting to starting the fire outside and describing the events leading up to it.

- [8] On May 17, the fire-investigation team took an accelerant detection K-9 through the property. The K-9 alerted to the presence of ignitable liquids in several locations, including the center bedroom in the basement.
- [9] The State charged Long with four counts of Level 1 felony attempted murder and one count of Level 4 felony arson. At the jury trial, Fire Marshal Clayton Kinder confirmed that there were two distinct fires and that the second fire was the one that consumed the house. He testified that due to the extent of the damage, he could not determine the origin of the fire or whether it was started

intentionally as opposed to accidentally or from a natural cause. Instead, he concluded that, based on statements from Jimmy and the responding firefighters, the fire originated in the center bedroom in the basement.

[10] The jury found Long not guilty on the attempted-murder charges but guilty of Level 4 felony arson. At the sentencing hearing, the trial court found several aggravating factors: Long’s prior convictions for Class A misdemeanor conversion and Class B misdemeanor marijuana possession, the fact that the damage “substantially exceeded what was necessary to prove the elements” of Level 4 felony arson, Deana’s and Jimmy’s ages, Josh’s mental disability, and Long’s “position of trust” as a son. *Id.* at 242-43. The court found as the sole mitigator Long’s efforts to rehabilitate himself while incarcerated. Finding the aggravators outweighed the mitigators, the court sentenced Long to twelve years in the Department of Correction.

[11] Long now appeals.

Discussion and Decision

I. Sufficiency

[12] Long first contends there is insufficient evidence to sustain his arson conviction. When reviewing sufficiency-of-the-evidence claims, we neither reweigh the evidence nor judge witness credibility. *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). We consider only the evidence supporting the verdict and any reasonable inferences that can be drawn from it. *Id.* We will affirm a conviction

if there is substantial evidence of probative value to support each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. *Id.*

[13] To convict Long of arson as charged here, the State had to prove he intentionally damaged Jimmy and Deana’s dwelling by means of fire without their consent. Ind. Code § 35-43-1-1(a); Appellant’s App. Vol. II p. 29. Long argues the State failed to present evidence that he set the fire inside the house, and that even if the State proved he started the fire, there is no evidence that he did so to intentionally damage the house. We disagree.

[14] After his heated argument with Deana, Long put some belongings from his room into Ilana’s car and searched “can gasline [sic] be detected after a fire” on his phone. Still angry from his fight with Deana, he poured gasoline around the outside of the house and lit the first fire. His phone was located at the property until 9:45 p.m., and the fire inside the house started some time before 10:07 p.m. (when Ilana called 911). When the security alarm and smoke detector started going off from the indoor fire, Deana heard the basement door open. Two neighbors saw a person who looked like Long run from the back of the home. Around 10:00 p.m., three other neighbors saw Long walking on Jordan Drive away from the house. The second fire started in the center bedroom in the basement, and one of the firefighters smelled gasoline fumes in the basement area. Ilana and Deana testified that, for the most part, Long was the only family member who ever went into the basement. After the fires, Long told detectives he had “so much built up anger” and was “tired of it there[.]” During

his various interviews with the detectives, Long stated, “I just set my parents’ house on fire,” “I set my house on fire,” and “I ruined my mom’s house.” Taken together, this evidence is sufficient for a reasonable jury to find beyond a reasonable doubt that Long intentionally damaged the house by means of fire.

II. Aggravating Factors

[15] Long next challenges the trial court’s finding of his criminal history and position of trust as aggravating factors. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). A trial court abuses its discretion when its decision is clearly against the logic and effect of the facts and circumstances before it or the reasonable, probable, and actual deductions drawn therefrom. *Id.* An abuse of discretion can occur when the trial court finds aggravating factors not supported in the record. *Id.*

[16] Long first argues the trial court abused its discretion by identifying his criminal history as an aggravator because his two prior convictions are “nonviolent, minor offenses” and “are not similar to the charged offense in weight or kind.” Appellant’s Br. pp. 13-14. But it is indisputable that a trial court may consider criminal history as an aggravating circumstance in determining what sentence to impose. *See* I.C. § 35-38-1-7.1(a). In effect, Long is challenging the weight the trial court gave his criminal history. But the weight a trial court gives to an aggravating factor is not reviewable on appeal. *See, e.g., Anglemyer*, 868 N.E.2d

at 491 (“The relative weight or value assignable to reasons [for imposing a particular sentence] . . . is not subject to review for abuse.”). The trial court did not abuse its discretion in considering Long’s criminal history as an aggravator.

[17] Long also contends the trial court abused its discretion by finding his position of trust as an aggravating circumstance because there was insufficient evidence he was in such a position. He notes that trial courts traditionally apply the “position of trust” aggravator where an adult with some level of authority over a minor commits an offense against the minor. Here, the trial court used “position of trust” to encompass Long’s role as a son and brother. Even if the court used the wrong terminology to classify this role, the nature and circumstances of the crime—that Long set fire to his family home while his parents and siblings were inside—are still aggravating. The trial court did not abuse its discretion in considering these circumstances at sentencing.

III. Appellate Rule 7(B)

[18] Finally, Long contends his twelve-year sentence is inappropriate and asks us to reduce it to six years. Indiana Appellate Rule 7(B) provides that an appellate 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.” Our role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on the culpability of the

defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[19] The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. Here, the trial court imposed the maximum sentence of twelve years.

[20] As to Long’s character, he had two criminal convictions by the time he was nineteen years old. These offenses were only misdemeanors for which he did not receive jail time, but he committed the second misdemeanor while he was on probation for the first. Long’s efforts to rehabilitate himself during his incarceration for the present offense do reflect positively on his character, but these positive developments must be balanced against the nature of his offense.

[21] Long maintains that he “did not commit the worst of offenses.” Appellant’s Br. pp. 14, 27. But the circumstances of his offense are far beyond what is required to satisfy the elements of Level 4 felony arson. *See Webb v. State*, 149 N.E.3d 1234, 1241 (Ind. Ct. App. 2020) (“The nature of offense portion of the analysis compares the defendant’s actions with the required showing to sustain a conviction under the charged offense.” (citing *Cardwell*, 895 N.E.2d at 1224)). Long set fire not just to “a dwelling of another person” but to his family home.

He knew his parents (including his father who was in remission from Stage 4 lung cancer), mentally disabled brother, and sister were all in the house at the time, but Long left them inside and fled the scene. And he did more than just damage the house—the fire resulted in “total destruction” of the home, Tr. Vol. III p. 230, and the family “lost every single thing,” Tr. Vol. IV p. 170, including family photos and mementos they can never replace. The total loss was over \$720,000, and the family had to live in a hotel for eleven months while they were displaced from their home. These circumstances support Long’s sentence.

[22] Long has failed to persuade us that his twelve-year sentence is inappropriate.

[23] Affirmed.

Bradford, J., and Brown, J., concur.