

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Corey Rucker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 28, 2022

Court of Appeals Case No.
21A-CR-1393

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-2001-F5-6

May, Judge.

[1] Corey Rucker appeals following his conviction of Level 5 felony failure to register as a sex offender¹ and his seven-year sentence, which included an enhancement for being a habitual offender.² Rucker argues the evidence was insufficient to support his conviction and his sentence is inappropriate based on the nature of his offense and his character. We affirm.

Facts and Procedural History

[2] In 2002, Rucker was convicted of predatory sexual assault of a child in Cook County, Illinois. As a result of that conviction, Rucker is a “sex offender” who, if living in Indiana, must register. *See* Ind. Code § 11-8-8-4.5 (defining “sex offender”) & § 11-8-8-7 (defining residency in Indiana and imposing registry requirement). The registration must include a recent photograph and the following information:

The sex or violent offender’s full name, alias, any name by which the sex or violent offender was previously known, date of birth, sex, race, height, weight, hair color, eye color, any scars, marks or tattoos, Social Security number, driver’s license number or state identification card number, vehicle description, vehicle plate number, and vehicle identification number for any vehicle the sex or violent offender owns or operates on a regular basis, principal residence address, other address where the sex or violent offender spends more than seven (7) nights in a fourteen (14) day period,

¹ Ind. Code § 11-8-8-17(a)(5) & § 11-8-8-17(b).

² Ind. Code § 35-50-2-8.

and mailing address, if different from the sex or violent offender's principal residence address.

Ind. Code § 11-8-8-8(a)(1). If any change occurs in the information provided, the sex “offender shall report in person to the local law enforcement authority having jurisdiction over the sex . . . offender’s principal address not later than seventy-two (72) hours after the change and submit the new information to the local law enforcement authority.” Ind. Code § 11-8-8-8(c).

[3] In August 2019, Rucker moved from Cass County to Tippecanoe County and began working at the Subaru factory. On August 9, 2019, Rucker appeared and registered with the Tippecanoe County Sheriff’s Office. He indicated his address was **** South Third Street (“the Residence”). The Residence was a house with multiple bedrooms. Rucker rented a bedroom, and multiple other tenants lived in the Residence as well. Rucker appeared at the Sheriff’s Office again on November 14, 2019, and changed only his telephone number. At no point thereafter did Rucker appear to change his principal residence address or his mailing address; nor did he ever provide an address where he was spending more than seven of fourteen nights. *See* Ind. Code § 11-8-8-8(a)(1).

[4] Eric Johnston was the United States Probation Officer who was supervising Rucker’s probation following his 2012 federal felony conviction of failure to register as a sex offender. On August 13, 2019, Officer Johnston met Rucker at the Residence and Rucker showed him the upstairs room Rucker was renting in the Residence. Rucker again showed Officer Johnston his room at the Residence on September 11, 2019. On October 1, November 15, and

December 10, 2019, Officer Johnston was unable to contact Rucker at the Residence. On December 16, 2019, Officer Johnston sent a certified letter and a regular letter to Rucker at the Residence, indicating a mandatory home visit would occur on January 15, 2020, and both letters came back to Officer Johnston as undeliverable. Officer Johnston met Rucker at the Residence on January 15, 2020, and Rucker claimed he was living in a downstairs room that contained female clothing and children's toys. When the homeowner's daughter began yelling at Rucker, he admitted to Officer Johnston that he had not been living there "for quite some time." (Tr. Vol. II at 48.) Rucker reported he was staying "wherever he could," sometimes with friends and sometimes in a car. (*Id.* at 49.)

[5] As part of his duties with the Lafayette Police Department, Officer Michael Odom conducts residence checks on sex offenders, and Rucker was one of the offenders Odom monitored. On December 12, 2019, Officer Odom went to the Residence and spoke to the homeowner, but Rucker was not present. Officer Odom found Rucker at the Subaru factory on December 17, 2019, and Rucker asserted he still lived at the Residence. Officer Odom also spoke to Rucker at the Subaru factory on January 8, 2020, and January 15, 2020, because Officer Odom "was unable to meet with [Rucker] at his residence for multiple different reasons." (*Id.* at 24.) On January 16, 2020, Officer Odom made arrangements to meet Rucker at the Residence, but Rucker did not appear. On January 17, 2020, Officer Odom tried to find Rucker at the Residence, but he was not there, so Officer Odom went to Subaru and arrested Rucker. Officer Odom read

Rucker his *Miranda* rights,³ and Rucker agreed to talk to Officer Odom. Rucker reported he was looking for a new place to live because the people in the Residence were “weird” and “he had been sleeping in his car various different evenings at various different locations.” (*Id.* at 36.) Rucker did not indicate to Officer Odom how long he had not been staying at the Residence or where he parked the car for sleeping.

[6] After Rucker’s arrest, he was interviewed by Lieutenant Jay Rosen of the Lafayette Police Department. Prior to the interview, Rucker again waived his *Miranda* rights. When Lieutenant Rosen asked Rucker whether he was living at the Residence, Rucker admitted “he was not [sic] he was staying in his car. He told me he was staying at work and those are the ones that, that’s what I remember the most cause I was wondering why he wasn’t registering as homeless, so.” (*Id.* at 60.)

[7] The State charged Rucker with Level 6 felony failure to register as a sex offender⁴ and Level 5 felony failure to register as a sex offender with a prior conviction of failure to register, and it alleged he was a habitual offender. Following a bench trial, the court found Rucker guilty of both felony counts but entered conviction on only the Level 5 felony, and it also found Rucker to be a habitual offender. After a sentencing hearing, the court found aggravators in

³ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966), *reh’g denied*.

⁴ Ind. Code § 11-8-8-17(a)(5).

Rucker’s criminal history, his being on federal probation when he committed this offense, and his multiple violations of his federal probation. The court found a mitigator in Rucker’s expression at sentencing that “he has learned something from his actions.” (App. Vol. II at 96.) The court imposed a five-year sentence for the felony, which the court enhanced by two years for the habitual offender finding, and the court ordered all seven years served executed because of Rucker’s multiple past probation violations.

Discussion and Decision

I. Sufficiency of Evidence

[8] Rucker first asserts his conviction is not supported by sufficient evidence.

Claims of insufficient evidence

warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[9] Rucker was convicted of failure to register as a sex offender, which is defined as:

(a) A sex or violent offender who knowingly or intentionally:

- (1) fails to register when required to register under this chapter;
- (2) fails to register in every location where the sex or violent offender is required to register under this chapter;
- (3) makes a material misstatement or omission while registering as a sex or violent offender under this chapter;
- (4) fails to register in person as required under this chapter;
or
- (5) does not reside at the sex or violent offender's registered address or location;

commits a Level 6 felony.

(b) The offense described in subsection (a) is a Level 5 felony if the sex or violent offender has a prior unrelated conviction for an offense:

- (1) under this section;
- (2) based on the person's failure to comply with any requirement imposed on a sex or violent offender under this chapter or under IC 52-12 before its repeal; or
- (3) that is based on the person's failure to comply with a requirement imposed on the person that is the same or substantially similar to a requirement imposed on a sex or violent offender under this chapter or under IC 5-2-12 before its repeal.

Ind Code § 11-8-8-17.

[10] Rucker claims “there was not sufficient evidence that Rucker knowingly or intentionally did not reside at the Residence.” (Appellant’s Br. at 14.) Rucker notes law enforcement authorities were always able to find him at his employment to speak with him, and he asserts there was no “evidence that Rucker was staying at any other residence, let alone that he was spending the ‘most time’ at a different residence.” (*Id.* at 15.) However, Rucker’s claims rest on evidence that is not most favorable to the trial court’s determination, and we may not rely on that evidence in conducting our review. *See Powell*, 151 N.E.3d at 262 (noting we consider only the evidence most favorable to the judgment).

[11] Rather, we look to the evidence most favorable to the trial court’s determination, which includes Rucker’s admissions to Officer Johnston and Lieutenant Rosen that he was not still living at the Residence. Failure to “reside at the . . . registered address” is a violation of the registration requirement. Ind. Code § 11-8-8-17(a)(5). Given that Rucker admitted he was not residing at his registered address, the only reasonable inference is that his failure to stay there occurred at least “knowingly.” *See* Ind. Code § 35-41-2-2(b) (“A person engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.”). The evidence is sufficient to support Rucker’s conviction. *See, e.g., Branch v. State*, 917 N.E.2d 1283, 1286 (Ind. Ct. App. 2009) (where defendant registered an address as his principal residence, he had a duty to report a change of address when he no longer lived there, even if he had not yet established a new principal residence).

II. Inappropriateness of Sentence

[12] Rucker also asserts his seven-year sentence is inappropriate. Our standard of review regarding claims of inappropriate sentence is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We consider both the total number of years of a sentence and the way the sentence is to be served in assessing its appropriateness. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[13] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, “we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-6 provides that a Level 5 felony is punishable by imprisonment “for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.”

Pursuant to the habitual offender statute, the court could enhance Rucker's sentence by a fixed term between two and six years. Ind. Code § 35-50-2-8(i). The court imposed five years for the felony and enhanced it by two years based on Rucker being a habitual offender.

[14] We would agree with Rucker that the nature of his offense is not substantially worse than the typical failure to register offense, but for the fact that this is the third time Rucker has been convicted of some version of this same offense. Rucker has a legal obligation to register, and his continued failure to do so leaves us unwilling to declare a seven-year sentence inappropriate for his Level 5 felony and habitual offender adjudication.

[15] “When considering the character of the offender, one relevant fact is the defendant’s criminal history. The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018) (internal citation omitted). In addition to his prior failures to register, Rucker’s criminal history includes the following convictions: misdemeanor possession of cannabis in 2000, two counts of misdemeanor retail theft in 2001, felony predatory criminal sexual assault of a child in 2002, and misdemeanor theft in 2019. At the time of this offense, Rucker was on Federal Probation for having failed to register as a sex or violent offender in Illinois, and he has violated that probation multiple times, including by commission of this additional crime.

[16] Given Rucker's lengthy inability to abide by the laws and rules placed upon him, his seven-year sentence is not inappropriate. *See Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019) (seven-year sentence not in appropriate for Level 5 and Level 6 felonies).

Conclusion

[17] The State presented sufficient evidence to convict Rucker of Level 5 felony failure to register as a sex offender, and his seven-year sentence is not inappropriate. We accordingly affirm the judgment of the trial court.

[18] Affirmed.

Brown, J., and Pyle, J., concur.