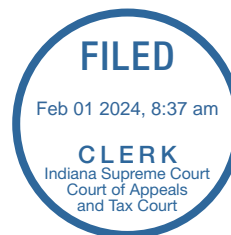


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Andrew R. Rutz
New Albany, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jhonna K. Parra,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 1, 2024

Court of Appeals Case No.
23A-CR-1588

Appeal from the
Floyd Superior Court

The Honorable
Carrie K. Stiller, Judge

Trial Court Cause No.
22D01-2201-F3-26

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Jhonna K. Parra (“Parra”) pleaded guilty to robbery resulting in bodily injury¹ as a Level 3 felony and was sentenced to seven years executed in the Indiana Department of Correction (“DOC”) with the trial court recommending her for the Recovery While Incarcerated program while in the DOC. The trial court also stated it would consider a modification of Parra’s sentence after three years of incarceration. Parra appeals her sentence, asserting that her sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

[2] On December 13, 2021, Parra, who was then eighteen years old, was at the home of Shyann Miller (“Miller”) with Miller, M.C., K.R., S.W., and J.S. They decided to call Destiny Hardy (“Hardy”), who they knew from school, and ask if she could give them a ride in her car. Hardy agreed to give Parra and her friends a ride in exchange for twenty dollars and planned to meet them at Binford Park in New Albany, Indiana. Unbeknownst to Hardy, Parra and her friends actually planned to rob Hardy and take her car when she arrived at Binford Park. Parra and the others, except for Miller who remained behind, walked to Binford Park to meet Hardy.

[3] Hardy arrived at Binford Park in a vehicle driven by Taylor Manley (“Manley”). Manley’s two young children were in the backseat area of the

¹ Ind. Code § 35-42-5-1(a)(1).

vehicle in child seats. Parra and S.W. went to the driver's side and pulled Manley out of the driver's seat. After Manley was out of the vehicle, Parra punched her in the face at least four times, which caused swelling and bruising to Manley's face, eyes, and back. S.W. then walked around to the front passenger door where K.R. and M.C. were trying to force Hardy out of the vehicle. S.W. pulled out a Glock handgun and pointed it at Hardy and pulled her out of the vehicle. Once Hardy was out of the vehicle, K.R. and S.W. began punching and kicking her, resulting in bruising and swelling to Hardy's head, hands, and knee.

[4] Parra and her accomplices allowed Manley to remove her two children from the vehicle, and then they all got in the vehicle. Parra got into the driver's seat and began to back up, nearly running over one of the two children. Parra drove away and only drove a short distance before hitting a utility pole, damaging the vehicle and leaving it inoperable. The group abandoned the vehicle in a parking lot and walked to a friend's house.

[5] On January 6, 2022, the State charged Parra with Level 3 felony robbery resulting in bodily injury. On May 17, 2023, Parra pleaded guilty as charged in an open plea agreement with a cap of seven years executed for her sentence. In return, the State agreed to dismiss charges under a separate cause number,² cap

² Parra was charged with two counts of Level 6 felony obstruction of justice and two counts of pointing a firearm under the separate cause number. At sentencing, the State informed the trial court that because "there are problems with that case," the arrest should not be considered as a part of Parra's criminal history, and the trial court did not consider the charges in sentencing Parra. Tr. Vol. 1 p. 35.

her sentence at seven years, and that she could petition for a sentence modification after serving three years of her sentence with the State reserving its right to object to the modification.

[6] On June 13, 2023, the trial court accepted the plea agreement and conducted a sentencing hearing. At the hearing, evidence was presented that Parra was eighteen years old at the time she committed the instant offense and first became involved with the criminal justice system in 2007, when she was placed on an informal adjustment for unknown charges. In 2017, Parra was adjudicated delinquent for conduct that, if committed by an adult, would be Class B misdemeanor disorderly conduct and Level 6 felony battery against a public safety official. She later violated her probation and was ordered to serve ninety days in juvenile detention. In 2020, Parra was adjudicated delinquent in three separate cases, for offenses that if committed by an adult, would be Class B misdemeanor false informing, Level 6 felony auto theft, and Level 6 felony escape. Parra was also alleged delinquent for leaving home without permission of a parent, guardian, or custodian, but the resolution of that case was not known. At the time of sentencing, Parra had a pending charge from Kentucky of receiving stolen property of \$10,000 or more.

[7] Evidence was presented that Parra smoked marijuana for the first time when she was eight or nine years old and began smoking regularly when she was twelve years old. Parra reported in her presentence investigation report that she was “an alcoholic from age [fourteen] to [fifteen],” and that she started abusing ecstasy when she turned eighteen years old and continued until January 2023.

Appellant's App. Vol. II p. 90. As of the sentencing hearing, Parra had never sought treatment for her substance abuse. Evidence was also presented that Parra had been the victim of sexual abuse from first grade until she was fourteen years old.

[8] When the trial court pronounced Parra's sentence, the court found as aggravating circumstances Parra's history of criminal or delinquent behavior, her prior probation violations, the fact that she had engaged in acts of deception and had a history of violent behavior, and that there were children present in the car when Parra robbed Manley. The trial court found as mitigating circumstances that Parra had a history of being abused, was young in age, had struggled with substance abuse, and had accepted responsibility by pleading guilty. The trial court stated that it believed that the seven-year maximum sentence under the plea agreement was reasonable considering the seriousness of the crime and the fact that any lesser sentence would depreciate the seriousness of the crime. Therefore, the trial court sentenced Parra to seven years executed in the DOC with a referral for Purposeful Incarceration and Recovery While Incarcerated. The trial court reiterated that Parra could seek modification of her sentence after three years of incarceration, and that the State could object to such modification at that time. Parra now appeals.

Discussion and Decision

[9] Parra argues that her seven-year executed sentence is inappropriate. 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).

[10] 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 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). Moreover, “it is the defendant’s burden to persuade us that a sentence is inappropriate.” *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021).

[11] 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). Here, Parra was convicted of Level 3 felony robbery resulting in bodily injury, and the trial court sentenced her to seven years in the DOC,

which was the maximum sentence allowed under the plea agreement. The sentencing range for a Level 3 felony is between three and sixteen years with the advisory sentence being nine years. Thus, Parra's seven-year sentence, although the maximum allowed for under the plea agreement, was two years below the advisory sentence for a Level 3 felony conviction.

[12] When reviewing the nature of the offense, this court considers “the details and circumstances of the commission of the offense.” *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Parra argues that her involvement in the offense did not consist of luring the victim to the park or carrying any weapon, but she acknowledges that she pulled Manley from the vehicle and struck her, causing Manley bodily injury. However, Parra maintains that she did not cause serious bodily injury and that the injuries sustained by Manley were not severe. Parra maintains that “[h]er role in causing the bodily injury involved pulling . . . Manley from the vehicle and striking her, but Parra’s blows did not cause serious bodily injury as defined in by Indiana Code § 35-31.5-2-292.” Appellant’s Br. p. 15. However, it is not pertinent that Manley did not suffer serious bodily injury as Parra was not charged with causing serious bodily injury to the victim, which would have been a Level 2 felony and subject to even higher punishment.

[13] An examination of the nature and circumstances of Parra’s crime reveals that, although Parra may not have been the one to call Hardy, she was present in the room with Miller and the others when they all hatched the plan to lure Hardy to the park under false pretenses in order to violently rob Hardy. Parra then

went to the park with the others and met Hardy in a vehicle driven by Manley. Parra and her friends then robbed Hardy at gunpoint and battered both Hardy and Manley after dragging them from the vehicle, causing them both bodily injury. In fact, Parra herself pulled Manley out of the driver's seat and punched her in the face at least four times. Further, the robbery and Parra's battery on Manley occurred in the presence of Manley's two young children.

Additionally, when Parra began to drive away in Manley's vehicle, she almost ran over one of the children. Although Parra may not have been aware that children would be in the car when planning the robbery, the fact they were present in the car did not deter Parra from proceeding with the crime. Parra's crime was violent, resulting in bodily injury to the victims, and she acted in reckless disregard for the small children present. Parra has failed to portray the nature of the offense in a positive light "such as accompanied by restraint, regard, and lack of brutality" to support revising her sentence. *Stephenson*, 29 N.E.3d at 122.

[14] The character of the offender is found in what we learn from the offender's life and conduct. *Merriweather*, 151 N.E.3d at 1286. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Id.* As to her character, Parra points to her young age,

prior abuse, capacity for change, and sincerity of remorse which are all positive attributes that support the revision of her sentence to one with more suspended time.

[15] In looking at Parra’s character, although she was only eighteen at the time of the present offense, she had a significant history of juvenile adjudications. She had six prior delinquency adjudications which included adjudications for battery against a public safety official, disorderly conduct, escape, and auto theft. At the time of sentencing, she also had a pending criminal charge in Kentucky for receiving stolen property of \$10,000 or more. Although the present offense was her first conviction as an adult, the crime showed a continuation and escalation of her prior behaviors while a juvenile and a willingness to participate in violence. Parra also had previously violated her probation that had been granted after a delinquency adjudication, which demonstrated that she had not taken advantage of prior opportunities of leniency and had displayed an unwillingness to comply with the requirements of community-based programming. While Parra’s young age and expression of remorse may indicate a capacity to change her behaviors in the future, the trial court offered that chance when it referred her to Recovery While Incarcerated and Purposeful Incarceration, and the plea agreement allowed her the opportunity to seek modification of her sentence after three years of incarceration. Consequently, Parra has failed to identify “substantial virtuous traits or persistent examples of good character” to support revising her sentence. *Stephenson*, 29 N.E.3d at 122.

[16] Based on the facts in the record, Parra has not shown that her seven-year executed sentence for Level 3 felony robbery resulting in bodily injury is inappropriate in light of the nature of the offense and her character.

[17] Affirmed.

Pyle, J., and Tavitas, J., concur.