MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Leevi Emery,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 19, 2021

Court of Appeals Case No. 20A-CR-1770

Appeal from the Clark Circuit Court

The Honorable Vicki L. Carmichael, Judge

Trial Court Cause No. 10C04-1809-MR-2

Brown, Judge.

[1] Leevi Emery appeals his sentence for voluntary manslaughter as a level 2 felony. We affirm.

Facts and Procedural History

[2] On August 6, 2018, Stevie Cornett's remains were found in a cupboard underneath stairs of a residence. Emery had previously shared the residence with Cornett, Cornett's father, and an unrelated adult man.[1]

[3] On September 28, 2018, the State charged Emery with murder and alleged that he knowingly or intentionally killed another human being, Cornett, "by inflicting injuries on her with a sharp instrument." Appellant's Appendix Volume II at 13. That same day, the State filed a notice of intent to seek habitual offender status. On June 17, 2020, the State moved to amend the habitual offender notice to correct certain dates related to two previously alleged crimes. Emery filed an Objection to Amendment of HFO Information.

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[1] We observe the above facts appear in Emery's appellant's brief and that he cites in turn the September 28, 2018 probable cause affidavit on warrantless arrest. *See* Appellant's Brief at 9-10 (Statement of Facts section) (citing Appellant's Appendix Volume II at 44-45). In his reply brief, Emery states that "[t]he State is correct in its assertion that the trial court was properly able to consider the pre-sentence investigation (PSI) report" and that "[t]he PSI, including the attached probable cause affidavit (PCA), contains in narrative form the details of the police investigation into Stevie Cornett's death." Appellant's Reply Brief at 7. The probable cause affidavit states a missing person report was filed on August 2nd for Cornett and that the officers responding to the August 6, 2018 911 call by Cornett's father discovered a badly decaying body covered in towels in the enclosure beneath the staircase leading to the second floor. It further indicates that investigation revealed efforts which had been made to clean up several areas of blood in the living room, officers located numerous suspected blood soaked rags in an outside trash can, the shirt removed from Cornett showed holes in the back consistent with being caused by a sharp instrument, and the medical examiner directed the detective attending Cornett's autopsy to injuries on her hand and arm, which "were defensive type injuries caused by a sharp instrument." Appellant's Appendix Volume II at 45.

[4] On June 22, 2020, the trial court held a hearing at which Emery pled guilty pursuant to a plea agreement to voluntary manslaughter as a level 2 felony.[2] The agreement indicated several terms and conditions of probation, that the court would recommend Emery be accepted into the Recovery While Incarcerated Program at the Indiana Department of Correction ("DOC"), and that all remaining counts would be dismissed. The plea agreement included a handwritten notation that Emery may petition for modification of his sentence after serving the minimum sentence in the DOC.

[5] At the guilty plea hearing, Emery admitted that he knowingly or intentionally killed Cornett by inflicting injuries on her with a sharp instrument while acting under sudden heat.

[6] On August 25, 2020, the court held a sentencing hearing. The court asked Emery if: he had an opportunity to receive the presentence investigation report ("PSI"), to which he answered affirmatively; there were any changes or corrections that needed to be made, to which he answered in the negative; and whether there was anything he wished to say, to which he answered in the negative. Upon inquiry by the court if counsel had anything to state on Emery's behalf, Emery's counsel indicated, "all in all, the [PSI] is not bad," it "accurately characterizes [Emery's] childhood and young adulthood," and he was "a little

[2] The plea agreement stated that Emery stipulated to aggravating circumstances. On appeal, the parties do not indicate to which specific circumstances Emery stipulated, nor does the record indicate any such stipulated circumstances.

(inaudible) that they declined to identify any mitigating factors." Transcript Volume II at 4-5. He stated that Emery

> has suffered from physical abuse as a child as reflected in the report of the Pre-Sentence Investigation and then lost both his parents in early adulthood, continued to . . . spent his whole childhood dealing with Attention Deficit Disorder, Bi-Polar disorder that wasn't really diagnosed until he was an older child and hasn't ever been treated effectively. When this crime occurred, he was in and out of Clark Memorial Hospital seeking treatment, trying to get himself clean, trying to get past the substance dependence that he's struggled with much of his childhood and his entire adult life. And these would seem to be mitigating factors. They don't excuse what happened, but they do put into a context where he was caught up in a situation that, he was probably less aware of his actions, less capable of controlling himself than he might otherwise be.

Id. at 5. His counsel also indicated that the crime of voluntary manslaughter contained an element that Emery was acting in a sudden heat which "directly lines up with one of the enumerated mitigating factors in the code which is acted under strong provocation." *Id.* He concluded by asking the court to enter a sentence at or below the advisory sentence.

[7] At the conclusion of the State's argument, the court indicated it had reviewed the PSI and stated:

> Based upon the Plea Agreement and based upon the [c]ourt hearing the argument of the parties and reviewing the Pre-Sentence Investigation Report recommendation, the Pre-Sentence Investigation does place the defendant in a high risk category to re-offend based upon the IRAS assessment tools and the [c]ourt does

> find that the aggravating circumstances of the criminal history as well as the fact that he recently violated conditions of probation, parole or community corrections or pre-trial release and the Court does find that the nature of the crime, although yes, it, voluntary manslaughter, the victim is deceased, however, the manner in which that crime occurred is certainly something the Court can consider as an aggravating circumstance.

Id. at 9. It further indicated that it did find that there "are certainly mitigating circumstances that were not pointed out by the Probation Department" in the PSI, it "does find that [Emery's] childhood as well as the substance abuse and mental health issues are certainly mitigating circumstances," and that, "[h]owever, those are outweighed by the aggravating circumstances." *Id.* The court acknowledged that Emery "will have the right to petition for a modification after serving the minimum term" of ten years. *Id.* It sentenced Emery to thirty years in the DOC, recommended that he participate in Recovery While Incarcerated, and indicated that, upon successful completion of the program, it would consider modification.

Discussion

[8] We initially note that Emery does not contest that he "entered his plea of guilt . . . , testifying under oath that he had knowingly or intentionally caused the death of Stevie Cornett while acting under sudden heat." Appellant's Brief at 8. Rather, Emery argues that his sentence is inappropriate and that his character, "while not exemplary, is more aptly characterized as pitiable than monstrous," given his personal history, substance dependence and related criminal history. Appellant's Brief at 21. He asserts that very little is established about the nature

of the offense committed and that the objective fact that voluntary manslaughter is itself a horrendous crime does not diminish the reality that this offense "does not stand out in any way as being exceptionally or even marginally worse" than any other voluntary manslaughter. *Id.* at 23.

[9] The State argues that Cornett's decomposing body was found in an enclosed space under the staircase inside the home in which Emery lived, the clothing off her body showed multiple holes located in the back of the shirt that had been created by a sharp instrument, and she had defensive wounds on her arms. It argues that Emery received a substantial benefit from pleading guilty to voluntary manslaughter which has a lesser maximum sentence than the original charge of murder, which carries a sentence of forty-five to sixty-five years pursuant to Ind. Code § 35-50-2-3, and that he thus shielded himself from an additional thirty-five years and reduced his potential sentence by an additional twenty years had he been shown to be an habitual offender.

[10] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[11] "A person who knowingly or intentionally kills another human being while acting under sudden heat commits voluntary manslaughter." *Larkin v. State*, 159

N.E.3d 976, 985 (Ind. Ct. App. 2020) (citing Ind. Code § 35-42-1-3(a)). Emery was convicted of voluntary manslaughter as a level 2 felony. Ind. Code § 35-50-2-4.5 provides that a person who commits a level 2 felony shall be imprisoned for a fixed term of between ten and thirty years with an advisory sentence of seventeen and one-half years.

[12] Our review of the nature of the offense reveals that Emery knowingly or intentionally killed Cornett in 2018 by inflicting injuries on her with a sharp instrument, while acting under sudden heat. Our review of the character of the offender reveals Emery pled guilty to voluntary manslaughter as a level 2 felony pursuant to a plea agreement. The State originally charged him with murder and filed its notice of intent to seek habitual offender status on September 28, 2018, and the plea agreement indicated that "[a]ll remaining counts shall be dismissed." Appellant's Appendix Volume II at 23. We note that Emery's June 2020 plea came after the State moved to correct and amend the habitual offender notice and he had filed an objection to the State's amendment. Accordingly, Emery pled guilty more than one year and eight months after being charged.

[13] Our review of the PSI indicates Emery had eleven prior misdemeanor and nine prior felony convictions, and he violated probation on several occasions as an adult.[3] The PSI also states that Emery had "recently violated the conditions of

[3] Per the PSI, in 2004, Emery received sentences of one year suspended and an infraction with a $200 fine for convictions of possession of marijuana and possession of paraphernalia, and he incurred a probation violation in 2005 resulting in "6 months to serve." Appellant's Appendix Volume II at 29. He was found guilty of burglary and sentenced on February 9, 2009, for "4 years to be served in work release." Appellant's

any probation, parole, community corrections placement, or pretrial release granted to the person." *Id.* at 36. It indicates Emery's overall risk assessment score using the Indiana Risk Assessment System places him in the high risk to reoffend category.

[14] According to the PSI, Emery reported that, when he was nine years old, he was molested by his stepfather, who was also physically abusive. He indicated his mother and father both passed away in 2011 and that they both overdosed. He reported: his current financial situation is unstable and he has no assets, and he does not have any physical health problems and no current prescription medications. We note that, upon inquiry by the court, Emery's counsel stated

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Appendix Volume II at 30. On the same day in February 2009, he received four years for attempted burglary. Also in 2009, he was sentenced two years with thirty-four days of jail credit and a year and two hundred and forty days suspended for felony theft. On January 5, 2010, he incurred a work release violation for the burglary and attempted burglary convictions resulting in "time served." *Id.* The next day, he incurred in the theft case a probation violation, resulting in one hundred and eighty days revoked, "to be served on HIP." *Id.* In 2011, he was found guilty of a felony Possession Schedule I, II, III, or IV Controlled Substance and sentenced for "1.5 years, suspended." *Id.* On May 16, 2012, he again received a second probation violation in the theft case and, as a result, two hundred days of his sentence were revoked. Eight days later, Emery was sentenced to a year and one hundred and eighty days, with a year suspended, for a felony theft conviction. In 2013, he was sentenced to one hundred and eighty days "CTS" for felony theft, and he was sentenced to six months suspended for public intoxication. *Id.* at 31. In 2014, he was sentenced to three years, with one hundred and forty-two days jail credit and two years and two hundred and twenty-three days suspended, for felony possession of a syringe. In 2015, he received one hundred and eighty days, "CTS," sentences for each a misdemeanor theft and a misdemeanor criminal trespass conviction. *Id.* at 32. In 2017, he was sentenced to one year suspended for battery resulting in bodily injury and thirty days, "CTS," with one year probation, for felony theft with a prior conviction for theft; two years and one hundred and fifty-two days suspended for battery resulting in moderate bodily injury; and thirty days, "CTS," for criminal trespass. *Id.* at 33. In that same year, Emery also received a conviction for domestic battery and a separate pair of convictions for battery resulting in bodily injury for which, on November 8th, he incurred a probation violation and "time served, probation reinstated." *Id.*

Meanwhile in Kentucky, Emery was sentenced in 2012 for two days, "CTS," for "Theft by Unlawful Taking[]/Disp Shoplifting" and was convicted for alcohol intoxication in a public place. *Id.* at 31. An entry for case number "15F00344" in 2015 indicates a charge for "Fugitive From Another State-Warrant Required" and states, "Extradition." *Id.* at 32.

that the PSI accurately characterized Emery's childhood and young adulthood. The PSI indicates Emery reported having four children with two different women who live with their maternal grandmothers, and reported affiliation with a gang from eighteen-years old to thirty-three years old.

[15] Also according to the PSI, Emery reported he began using alcohol when he was nine years old, that he was drinking two or three times per week in his late teens to mid-twenties, and that he began using drugs when he was thirteen years old. He reported he has used or experimented with cocaine, MDMA, Molly, pain pills, Xanax, heroin, and methamphetamine; he was using heroin daily; and if he could not obtain heroin, he would use methamphetamine or Xanax. He indicated he previously completed both inpatient and outpatient treatment programs at Turning Point, and we further note that the court recommended that he participate in Recovery While Incarcerated and indicated it would consider modification at the program's successful completion.

[16] After due consideration, we conclude that Emery has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.[4] *See Sipple v. State*, 788 N.E.2d 473, 484 (Ind. Ct. App. 2003)

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[4] To the extent Emery argues the court abused its discretion, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant's guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate"), *trans. denied*), *trans. denied*. Even if we were to address Emery's abuse of discretion

(holding that defendant's maximum sentence for involuntary manslaughter was not inappropriate even though defendant had no criminal history and had pleaded guilty), *trans. denied.*

[17] For the foregoing reasons, we affirm Emery's sentence.

[18] Affirmed.

Vaidik, J., and Pyle, J., concur.

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arguments, we would not find them persuasive in light of his criminal history consisting of violent crimes, nine felonies, and eleven misdemeanors.