MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jacob White,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 15, 2023

Court of Appeals Case No. 23A-CR-1096

Appeal from the St. Joseph Superior Court

The Honorable Elizabeth Hurley, Judge

Trial Court Cause No. 71D08-2203-F5-51

Memorandum Decision by Judge Riley
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Jacob White (White), appeals his sentence for two Counts of causing serious bodily injury when operating a vehicle while intoxicated, Level 5 felonies, Ind. Code § 9-30-5-4(a)(3).

[2] We affirm.

ISSUE

[3] White presents this court with one issue: Whether his ten-year sentence is inappropriate in light of the nature of his offenses and his character.

FACTS AND PROCEDURAL HISTORY

[4] On July 23, 2021, after consuming six-to-eight shots of alcohol, White drove his Chrysler 300 at a high rate of speed northbound on State Road 23 near Tyler Road north of Walkerton, Indiana. When he encountered a curve in the road, White crossed the center line and drove his vehicle into the southbound lane. Mikala Dinsmore (Dinsmore), who was driving southbound on State Road 23, was able to steer out of White's path by leaving the roadway, but Sherri Wiegand (Wiegand), who was driving her Jeep directly behind Dinsmore, did not have adequate time to evade White's vehicle. White collided head on with Wiegand's Jeep at a high rate of speed in the southbound lane, pinning Wiegand and her passenger, Jeannie Franklin (Franklin), in the Jeep. Wiegand suffered a broken sternum, a broken arm, and torn ligaments in her wrist and hand that required surgery and a cast. Franklin lost consciousness and suffered a broken sternum and three broken ribs. White's blood was drawn after he was

transported for treatment for a broken leg, broken ribs, a head injury, and stomach injuries. White was found to have an ACE of .182 g/100 ml and to have THC in his blood stream.

[5] On March 4, 2022, the State filed an Information, charging White with two Counts of Level 5 felony causing serious bodily injury when operating a vehicle while intoxicated and with two Counts of Level 5 felony causing serious bodily injury when operating a motor vehicle with an ACE of .08 or more. On November 18, 2022, White entered a guilty plea without the benefit of a plea agreement with the State. The trial court took White's guilty plea under advisement.

[6] On January 6, 2023, the probation department filed White's presentence investigation report which it supplemented on January 17, 2023. White was thirty-three years old on the day of the offenses. White had felony convictions for domestic battery and intimidation (twice), and he had misdemeanor convictions for public intoxication, domestic battery, and pointing a firearm (which had been reduced from a Class D felony upon White's completion of probation). For these offenses, White had received probation on four occasions, suspended sentences, community corrections (twice), and three executed sentences with the Department of Correction (DOC), two of which were the result of probation revocations. White had been ordered to undergo counseling with the Department of Veterans Affairs (VA) and alcohol treatment. In 2017, White was ordered to complete Purposeful Incarceration. White had his probation revoked on three occasions and had his probation

extended once. White's community corrections placement had been revoked once. At the time he committed the instant offenses, White was on probation for his last felony intimidation conviction, and he was on pretrial release for pending charges of Level 5 felony intimidation, Level 6 felony criminal recklessness, misdemeanor battery, and misdemeanor criminal mischief. In addition to his record of convictions, White had been arrested for leaving the scene of an accident (twice), strangulation (twice), battery with moderate bodily injury, domestic battery (twice), invasion of privacy, and intimidation where the victim was a judge, bailiff, or prosecutor. At the time his presentence investigation report was filed, White had two separate active no-contact orders pertaining to three individuals.

[7] White reported to his presentence investigator that he had served in the United States Army from 2005 to 2011 and was in active combat duty in Iraq for one year. White suffers from PTSD, anxiety, depression, and paranoia, he is disabled, and he has received disability benefits since 2015. White received mental health treatment through the VA. White reported that he had attempted suicide in 2011 "due to legal issues." (Appellant's App. Vol. II, p. 29). White began drinking at the age of seventeen. White informed his presentence investigator that he had consumed alcohol heavily in the past, but that, prior to the crash, he was only consuming "a couple [of] beers a couple times per month." (Appellant's App. Vol. II, p. 29). White also reported daily marijuana use up to the date that he was placed on pretrial release in his pending felony

case, at which point he reduced his marijuana consumption to once or twice per week. White had engaged in substance abuse treatment with the VA in 2013.

[8] On May 8, 2023, the trial court held White's sentencing hearing, accepted his guilty plea, and granted the State's motion to dismiss the remaining two charges against White. The State summarized Wiegand's and Franklin's victims' impact statements as indicating that they suffered mental anguish and PTSD as a result of the offenses. Wiegand and Franklin had also incurred a combined $80,000 in medical bills that were not covered by their insurance. At his sentencing hearing, White did not request Purposeful Incarceration as part of his sentence. During his short allocution, White apologized for his offenses, and he stated that he "knew better than to drink and drive." (Tr. p. 18).

[9] White requested a fully suspended sentence. The trial court found as mitigating circumstances White's military service, including his active duty in combat and "the issues that have flowed from that," and that White had pleaded guilty without the benefit of a plea agreement. (Tr. p. 18). As aggravating circumstances, the trial court found that White had a criminal record, including three prior felony convictions, he was on probation at the time of the offenses, and that he was on pretrial release on felony charges when he committed the offenses. The trial court further found in aggravation that White's ACE was "extremely high," he had THC in his blood stream, he had almost hit a third person, and that he had had a number of chances at probation and to engage in services. (Tr. p. 18). The trial court concluded that the totality of those

circumstances "d[id] not now merit another opportunity on probation." (Tr. p. 19).

[10] The trial court sentenced White to five years for each conviction, with three years of each sentence to be served with the DOC and two years of each sentence suspended to probation. The trial court ordered White to serve his sentences consecutively, for an aggregate sentence of ten years and an initially executed sentence of six years. As a term of his probation, the trial court ordered that White be assessed and complete any treatment recommended as a result of that assessment.

[11] White now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[12] White requests that we review and revise his sentence pursuant to Indiana Appellate Rule 7(b), which 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.

The purpose of our review under Rule 7(b) is to attempt to leaven the outliers, not to achieve some perceived more-correct result. *Smith v. State*, 188 N.E.3d 63, 68 (Ind. Ct. App. 2022). In light of this purpose, in conducting our review, we do not determine whether another sentence is more appropriate; rather, we determine whether the sentence imposed by the trial court is inappropriate. *Id.*

The defendant appealing his sentence has the burden of persuading us that his sentence is inappropriate. *Malone v. State*, 191 N.E.3d 870, 877 (Ind. Ct. App. 2022). At the end of the day, whether we determine that a particular sentence is inappropriate "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 v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[13] When considering the nature of the offenses for purposes of a Rule 7(b) review, we have acknowledged that "the advisory sentence is the starting point for determining the appropriateness of a sentence." *Belcher v. State*, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019) (citing *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007)), *trans. denied*. White pleaded guilty to two Counts of Level 5 felony causing serious bodily injury when operating a vehicle while intoxicated. The sentencing range for a Level 5 felony is between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Therefore, White's potential maximum sentencing exposure for his offenses was twelve years. The trial court sentenced White to an aggravated, but not maximum, aggregate sentence of ten years, six years of which is to be executed with the DOC and with the remainder to be served on probation.

[14] Turning to the facts of the instant offenses, White consumed up to eight shots of alcohol and then decided to drive his vehicle, even though he "knew better than to drink and drive." (Tr. p. 18). In this extremely intoxicated state, as evinced

by his ACE of .182 g/100 ml, and after almost hitting Dinsmore's vehicle, White crashed head-on into Weigand's Jeep, seriously injuring Weigand and her passenger, Franklin. Through absolutely no fault of their own, Weigand and Franklin were left to suffer the devastating physical, mental, and financial consequences of White's decision to drink and drive on July 23, 2021. On appeal, White acknowledges that the nature of his offenses is "abhorrent." (Appellant's Br. p. 6). We find nothing about the nature of these offenses that merits a revision of White's sentence.

[15] Pursuant to our review, we must also assess White's character. A review of the defendant's character for purposes of a Rule 7(b) sentencing review "involves a broad consideration of the defendant's qualities, life, and conduct." *Crabtree v. State*, 152 N.E.3d 687, 705 (Ind. Ct. App. 2020), *trans. denied*. This includes an examination of the defendant's criminal history. *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). White has a criminal history consisting of three felonies and three misdemeanors for offenses including public intoxication, battery, and intimidation. White has also been arrested several times for offenses which did not result in conviction, including two arrests for leaving the scene of an accident. White has had the benefit of suspended sentences, probation, community corrections, shorter sentences with the DOC, Purposeful Incarceration, substance abuse treatment through the VA, and mental health treatment through the VA. He has had his probation revoked on multiple occasions and has had his community corrections placement revoked. None of these lesser punishments and treatments had a

deterrent effect on White's conduct on the day of the offenses, a day when he was on felony probation and pretrial release in a case involving multiple felonies.

[16] White argues that his status as a disabled military veteran who suffers from mental health issues, including PTSD, the fact that his drinking increased after he returned from active duty in the military, and the fact that he pleaded guilty without the benefit of a plea agreement all merit a reduction in his sentence. However, these were all factors that the trial court took into account when it fashioned what was already a lenient sentence in light of the fact that White must only initially execute six years. In addition, although we find White's service to our country commendable, it does not constitute an excuse for harming the very citizens he formerly worked to protect. Neither can we find that White's mental health merits a sentencing revision, as he has failed to show any nexus between his mental health diagnoses and his decision to drink and drive. *See Taylor v. State*, 943 N.E.2d 414, 421 (Ind. Ct. App. 2011) (declining to revise Taylor's sentence for burglary and other offenses where he had failed to establish any nexus between his mental illness and the commission of the offenses), *trans. denied*. We also observe that there is conflicting evidence in the record concerning White's drinking patterns. Although White reported heavy alcohol use in the past, he informed his presentence investigator that he had only been drinking a "couple [of] beers a couple times per month" prior to the offenses. (Appellant's App. Vol. II, p. 29). This, of course, was during a time

when White was on probation, and so he should not have been consuming any alcohol, much less the marijuana he also admitted to consuming.

[17] We have observed that our deference to the trial court's sentencing order will 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).'" *Keith v. State*, 200 N.E.3d 986, 991 (Ind. Ct. App. 2022) (quoting *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015)). White has failed to provide us with any such compelling evidence, and, therefore, he has not met his burden of persuasion on appeal. *Malone*, 191 N.E.3d at 877. Accordingly, we do not disturb the trial court's sentencing order.[1]

CONCLUSION

[18] Based on the foregoing, we hold that White's sentence is not inappropriate given the nature of his offenses and his character.

[19] Affirmed.

[20] Bradford, J. and Weissmann, J. concur

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[1] White requests that we order him into Purposeful Incarceration. Such a request is not an issue available for our review. *Miller v. State*, 105 N.E.3d 194, 197 (Ind. Ct. App. 2018). However, even if we were authorized to consider White's request, we would not grant it, given that we have already determined his sentence is not inappropriate and in light of the fact that he has already had the benefit of Purposeful Incarceration.