MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Senaca James,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

July 8, 2022

Court of Appeals Case No. 21A-CR-2911

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2001-MR-1

Robb, Judge.

Case Summary and Issue

[1] Senaca James pleaded guilty without a plea agreement to murder and admitted to using a firearm in the commission of the offense. The trial court sentenced him to sixty years for the murder conviction, enhanced by twenty years for the use of a firearm. James now appeals, raising the sole issue of whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding the sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] In December 2019, Dominique Taylor was shot and killed as she sat in the passenger seat of a friend's car. The investigation of her murder led police to Dawann Martin and James. James, sixteen years old at the time, was arrested. He first told police that he was not present when Taylor was shot. He later admitted to police that he was present, but claimed he shot a gun into the air to scare Taylor and Martin was the one who shot her. James was waived to adult court and charged with murder. The State also sought an additional penalty for the use of a firearm in the commission of the offense. While awaiting his jury trial, James sent several letters to the trial judge proclaiming his innocence.

[3] On October 19, 2021, a jury was selected, and on October 20, the State began its case-in-chief. The State presented thirteen witnesses and offered approximately eighty exhibits into evidence. Following a late afternoon break, James' counsel informed the trial court that James wished to "enter a plea of

guilty to counts one and . . . two without benefit of a plea recommendation at this time in order to save the Court and the jurors additional time and effort in this matter." The Transcript, Volume 2 at 213. The trial court gave James the proper advisements and ascertained that he understood his rights and was changing his plea of his own free will. James admitted that "[o]n the night of December 22nd, 2019, [he] shot and killed a female named Dominique Taylor[,]" and that he used a firearm belonging to another person who was present that night. *Id.* at 219-20. The trial court accepted his plea of guilty, ordered a pre-sentence investigation to be conducted by the probation department, and scheduled a sentencing hearing.

[4] The pre-sentence investigation report showed that James was eighteen years old and had seven juvenile delinquency adjudications prior to this offense, four of which would have been felonies if committed by an adult.[1] Prior to this offense, he lived with his mother and siblings. He began using marijuana daily at age eleven and alcohol at age fifteen or sixteen. He had completed tenth grade and had a job for one month in 2019 before he quit. He has one child, born shortly after his arrest in this case. James apologized for his actions during the interview, stating, "If I could take everything back, it would save her mom from crying and my mom from crying as well." Appellant's Appendix, Volume II at 117. Probation recommended a sentence of sixty-five years for murder,

[1] James' offenses included conversion, two counts of escape, two counts of receiving stolen auto parts, false informing, and leaving the scene of an accident. *See* Appellant's Appendix, Volume II at 113-14.

enhanced by twenty years for the use of a firearm, for a total executed sentence of eighty-five years.

[5] James submitted a sentencing memorandum to the trial court detailing his childhood. He is one of eight children born to Tequila James, one of whom is a full-blood sibling and the youngest of whom is three years old. When James was six years old, he left his grandmother's home after a visit and recalls being "just around the block" when he heard gunshots. *Id.* at 146. He and his mother and sister returned to the home to find his grandmother and an aunt dead. James did not meet his biological father until he was nine years old, but his father remained largely absent from his life even after that and they have a "strained" relationship. *Id.* at 147. Instead, James looked to Senaca Lapsley, a boyfriend of his mother's, as a father-figure. Lapsley is the father of three of Tequila's children and James recalled Lapsley being in his life as far back as he could remember. But in 2014, when James was eleven years old, Lapsley was sent to prison with a seventy-year sentence and James began to exhibit "significant behavioral changes[.]" *Id.* at 148. School records show James was frequently in trouble due to "emotionally charged and impulsive behaviors[.]" *Id.* He was eleven when he was first involved with the juvenile justice system. In 2017, James was diagnosed with attention deficit hyperactivity disorder, conduct disorder, post-traumatic stress disorder, and unspecified neurodevelopmental disorder. The sentencing memorandum also included literature about adolescent brain development. James asked the trial court to consider the following as mitigating circumstances: his age at the time of the

offense; the "developmental stage of [his] brain at the time of the offense"; his "mental health diagnoses as they relate to his actions on December 22, 2019"; his plea of guilty; and his remorse for taking Dominque Taylor's life. *Id.* at 154-55.

[6] At the sentencing hearing, James' counsel largely deferred to the sentencing memorandum, but did emphasize James' age and that he "was a very impulsive, immature young man." Tr., Vol. 2 at 227. Counsel also noted that although James had several delinquency adjudications, none of the acts "rise to the level of outright violence [and] this [act] is an aberration in his young life[.]" *Id.* Counsel asked the trial court to impose the advisory sentence of fifty-five years for murder with ten years suspended, enhanced by ten years for the use of a firearm, "for a net of 55 years executed, followed by ten years of a suspended sentence and probation." *Id.* James also addressed the trial court directly:

> I just want to say that I apologize for my actions, but I do take full responsibility and whatever you about [sic] to hand me. I mean, I did what I did. I can't take it back, even though I wish I could . . . but I gotta stand here and take full responsibility in what I did and that's what I'm doing.

Id. at 237.

[7] The State acknowledged James' age but argued it should be given minimum weight "given the number of rehabilitation opportunities that have been presented to [him] prior to this incident[.]" *Id.* at 232. The State also asked the trial court to "find that there is no nexus established in the record in this case

between [James' mental health] diagnoses and the choices that [he] made back in December [and] reject that as proposed mitigation in this case." *Id.* at 233. And the State noted that although James' remorse and guilty plea without an agreement are "entitled to some mitigating weight[,]" James did not plead guilty until the State had already presented the bulk of its case, including the testimony of the victim's mother. *Id.* The State argued the following aggravating circumstances were present: the impact on not only the victim, but the victim's family; James' juvenile history, including that he was under supervision for many of his juvenile offenses when he committed the next; failed attempts at rehabilitation by the legal system and by his family; and the nature and circumstances of the crime.

[8] The trial court found James' guilty plea a mitigating circumstance but gave it minimal weight "because you pled guilty day two of the trial at 4:20 in the afternoon, after the State of Indiana had already presented 13 witnesses against you." *Id.* at 237. The court "accept[ed] at face value that you're sorry for what it is that you did" and found James' remorse a mitigating circumstance. *Id.* at 238. The court also "accept[ed] the premise that the teen brain is different from the adult brain," but declined to find James' mental health and diagnoses as a mitigating circumstance because there was no established nexus between them and his crime. *Id.* As aggravating circumstances, the court found James' "juvenile record with failed efforts at rehabilitation covering a period of time from 2015 to 2021"; "significant victim impact"; and the nature and circumstances of the crime, stating, "I've been on the bench a minute, Mr.

James, and . . . [y]ou had no business doing what you did. The shocking escalation of your conduct is frightening." *Id.* at 238-39. The trial court ordered James committed to the Indiana Department of Correction ("DOC") "for a period of 60 years, enhanced by a term of 20 years for the use of a firearm, for a net sentence of 80 years in the [DOC]." *Id.* at 239.

[9] James now appeals his sentence. Additional facts will be provided as necessary.

Discussion and Decision

I. Standard of Review

[10] Indiana Appellate Rule 7(B) permits us to revise a sentence "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." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "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).

[11] The defendant carries the burden of persuading us the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006),

and we may consider any factors appearing in the record in making such a determination, *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017). The question under Rule 7(B) is "not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Whether a defendant's 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*, 895 N.E.2d at 1224. "The principal role of appellate review should be to attempt to leaven the outliers, . . . not to achieve a perceived 'correct' result in each case." *Id*. at 1225.

II. Inappropriate Sentence

[12] James argues his sentence is inappropriate in light of the nature of his offense and his character. He argues that his "acceptance of responsibility, young age, lack of serious delinquent activity, troubled childhood, and mental health history warranted a less-severe sentence." Brief of Appellant at 9.

A. Nature of the Offense

[13] Our analysis of the "nature of the offense" portion of the review begins with the advisory sentence. *Clara v. State*, 899 N.E.2d 733, 736 (Ind. Ct. App. 2009). The advisory sentence is the starting point selected by the legislature as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. The sentence for murder is a fixed term of between forty-five and sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3(a).

Further, the State may seek to have a person who committed certain offenses including murder sentenced to an additional fixed term of imprisonment if the State shows beyond a reasonable doubt that the person knowingly or intentionally used a firearm in the commission of the offense. Ind. Code § 35-50-2-11(d); *see also* Ind. Code § 35-50-2-11(b) (defining "offense" to include a felony under Indiana Code article 35-42 that resulted in death). If the State has proved the knowing or intentional use of a firearm, "the court may sentence the person to an additional fixed term of imprisonment of between five (5) and twenty (20) years." Ind. Code § 35-50-2-11(g). The trial court sentenced James to sixty years, a sentence between the advisory and the maximum fixed term, and enhanced the sentence by twenty years, the maximum enhancement allowed by statute.

[14] The nature of the offense is found in the details and circumstances of the offense and the defendant's participation therein. *Lindhorst v. State*, 90 N.E.3d 695, 703 (Ind. Ct. App. 2017). When considering a sentence that 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. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*.

[15] James does not make a specific argument about the nature of the offense, although he does call this a "devastating event." Br. of Appellant at 10. Briefly, Taylor's death was the culmination of a dispute between a friend of Taylor's, Szarita Comer, and James' aunt, Quinesha Chillous, who had been

roommates. On the day of the shooting, Taylor was helping Comer move her belongings out of Chillous' house when Comer and Chillous got in a physical fight. Taylor broke up the fight. Taylor and Comer both rebuffed efforts by Chillous over social media to resume the fight. Later that evening, Taylor accompanied Comer to what they thought was going to be a drug sale but was in fact a set up to continue the fight. While Taylor waited in the car for Comer to conduct the transaction, she was surrounded by a group including James and Chillous. She was shot twice, once in the neck by Martin, who was standing directly in front of the car, and once in the side of the chest by James, who was standing at the driver's side door. Taylor did not die instantly; once Comer returned to the car, Taylor was able to ask Comer if she was dying and to thank Comer for staying with her. By the time law enforcement and medical personnel arrived, Taylor was unresponsive. She died at the hospital in the early morning hours of the next day as a result of a severed aorta and internal bleeding caused by the bullet James shot. Taylor was eighteen years old.

[16] In essence, James participated in a plan to get revenge over the earlier fight, which he had not been involved in. As the trial court noted, "You had no business doing what you did." Tr., Vol. 2 at 239. Nonetheless, James interjected himself into the situation and inflicted the "much more catastrophic" wound. *Id.* at 146. That this encounter was orchestrated and James took a primary role make this offense deserving of an above-advisory sentence. *Cf. James v. State*, 178 N.E.3d 1236, 1242 (Ind. Ct. App. 2021) (noting, in revising a murder sentence for a thirteen-year-old offender, that the nature of the offense,

"[a]lthough tragic, . . . lacks the type of malice present in other cases in which we have found the worst offenses and offenders"), *trans. denied*.

B. Character of the Offender

[17] The "character of the offender" portion of the Rule 7(B) standard refers to general sentencing considerations and relevant aggravating and mitigating factors, *Williams v. State*, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), *trans. denied*, and permits a broader consideration of the defendant's character, *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. A defendant's life and conduct are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.

[18] A typical factor to be considered in examining a defendant's character is his or her criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). The significance of a person's criminal history varies based on the "gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). However, "[e]ven a minor criminal record reflects poorly on a defendant's character," *Reis*, 88 N.E.3d at 1105, as does a history of arrests, *Rutherford*, 866 N.E.2d at 874.

[19] James focuses primarily on his character in arguing his sentence is inappropriate, specifically his age. James argues the facts of his case are "extremely similar" to those in *Brown v. State*, 10 N.E.3d 1 (Ind. 2014), a case in which the Indiana Supreme Court revised a juvenile offender's sentence for robbery and two murders. Br. of Appellant at 12.

[20] In *Brown*, the defendant was sixteen years old when he, along with two other teens, robbed two people in their home. The homeowners were shot and killed during the robbery, and the defendant and his friends took money, marijuana, a handgun, and other items from the home. After being arrested in connection with the crime, the defendant gave police a statement in which he admitted his involvement and that he had a gun, but said his friends had each shot one of the victims. Following a bench trial, the defendant was convicted of two counts of murder and one count of robbery as a Class B felony and sentenced to the maximum term for each crime, to be served consecutively, for a total sentence of 150 years. The court stated the trial court "certainly acted well within its broad discretion in imposing this sentence[,]" but determined the sentence was inappropriate and revised it to eighty years. *Brown*, 10 N.E.3d at 4, 8.

[21] Relevant to the nature of the offense, the *Brown* court noted the defendant was found guilty of the murders as an accomplice and there was no evidence "the victims were tortured, beaten, or lingered in pain" and therefore the murders were "not particularly heinous." *Id.* at 4-5. With respect to the character of the offender, the court noted first the defendant had a lengthy history of juvenile adjudications, but only one previous violent offense, and these were the first offenses for which he was charged as an adult: "[a]lthough not reflecting favorably upon [his] character, [his] offenses do not appear particularly grave and more importantly are not related to his murder convictions." *Id.* at 6. The court also noted the defendant had been using alcohol and marijuana since the age of eleven but determined his drug use since childhood "reduc[ed] his

culpability for the life path that led him to this crime." *Id.* The court also looked favorably upon the defendant's statement to police that was "the only non-circumstantial evidence produced at trial." *Id.*

[22] "Finally—and most significantly—[the defendant] was only sixteen years old at the time of the crime." *Id.* Recognizing authority from the United States Supreme Court that juveniles are typically less culpable than adults for a variety of reasons, the court reiterated that "[s]entencing considerations for youthful offenders—particularly for juveniles—are not coextensive with those for adults" and it is therefore necessary to consider "an offender's youth and its attendant characteristics." *Id.* at 6-7. For all those reasons, the court's "collective sense" was that 150 years was inappropriate because it "forswears altogether the rehabilitative ideal" and makes good behavior and character improvement immaterial. *Id.* at 8 (quoting *Miller v. Alabama*, 567 U.S. 460, 473 (2012)). The court therefore revised the defendant's sentence to an enhanced sentence of sixty years for each count of murder, to be served concurrently, and an enhanced sentence of twenty years for robbery, to be served consecutively, for a total sentence of eighty years. *Id.*

[23] There are similarities between *Brown* and this case. But there are also significant differences. James was sixteen at the time of the offense, as was the defendant in *Brown*. James has accumulated a significant history of juvenile adjudications in a relatively short amount of time and these are his first adult charges, similar to the defendant in *Brown*, although James had committed no other violent offenses prior to this offense. And James, too, has used alcohol

and marijuana since a young age. But James was not a mere accomplice to this crime, as he interjected himself into a situation that had nothing to do with him and then took the killing shot. *See Fuller v. State*, 9 N.E.3d 653, 659 (Ind. 2014) (revising the 150-year sentence of one of Brown's cohorts but not as significantly because he was one of the actual shooters and not just an accomplice). Moreover, there is evidence that Taylor "lingered in pain," knowing she had been seriously wounded and contemplating aloud whether she was going to die. *See Brown*, 10 N.E.3d at 5. And unlike the defendant in *Brown*, James did not provide useful information to police, but instead lied to them more than once about his involvement and the role of others.

[24] The trial court acknowledged James' young age, as do we. But the fact that James committed this crime when he was sixteen years old does not in itself render his sentence inappropriate and there are circumstances present here that were not present in *Brown*. James' eighty-year-sentence is a lengthy one, but it does not "forswear[] altogether the rehabilitative ideal[.]" *Id.* at 8; *see also Wilson v. State*, 157 N.E.3d 1163, 1184 (Ind. 2020) (stating that revision of sixteen-year-old offender's 181-year sentence to 100 years meant he "has reasonable hope for life outside prison").[2] We conclude the less-than-maximum sentence James received is therefore not inappropriate in light of his character.

[2] We also note that James' sentence includes a firearm sentencing enhancement. In revising the sentence in *Wilson*, our supreme court noted that the defendant was also convicted of a criminal gang enhancement "and we must respect the legislature's determination that the corrosive nature of gang activity justifies a higher sentence" than similarly situated defendants in *Brown* and *Fuller* received. 157 N.E.3d at 1183-84.

Conclusion

[25] James has failed to persuade us that the eighty-year sentence imposed by the trial court is an outlier warranting revision based on the nature of his offense and his character. We therefore affirm the sentence.

[26] Affirmed.

Pyle, J., and Weissmann, J., concur.