MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shannon Kay Richardson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 16, 2023

Court of Appeals Case No. 22A-CR-2502

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-2110-F4-5213

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Shannon Richardson pleaded guilty to Level 4 felony arson,[1] where the plea agreement capped the executed portion of Richardson's sentence at six years. The trial court sentenced Richardson to a total sentence of six years with four years executed in the Indiana Department of Correction ("DOC") and two years suspended to probation. Richardson now appeals, raising one issue for our review: Is Richardson's sentence inappropriate in light of the nature of the offense and the character of the offender? We affirm, concluding Richardson's sentence is not inappropriate.

Facts and Procedural History

[2] As of August 2021, Richardson was in a five-year relationship with Tori Booker. Richardson and Booker lived together in Booker's house with Booker's three children, aged eight, ten, and fourteen. At the end of the month, Booker left home without notice. Richardson could not contact Booker or "track her down," *Tr. Vol. 3* at 22, leaving Richardson to take care of Booker's children for the week. Booker returned a week later on September 5 "[w]ith someone else and told [Richardson] to leave." *Id.* at 23.

[1] Ind. Code § 35-43-1-1(a)(1) (2014).

[3] While Booker and several friends were at a nearby park, Richardson packed her bag and began to leave. Richardson saw a bottle of fire starter, grabbed the bottle, and "threw it on the bed and threw [her] cigarette on it," starting a fire on the bed. *Id.* at 24. One of Booker's children was in the house when Richardson set the bed on fire.

[4] The State charged Richarson with arson. Richardson and the State reached a plea agreement under which Richardson would plead guilty and the executed portion of Richardson's sentence would be capped at six years. Richardson pleaded guilty pursuant to the plea agreement, and the trial court accepted the plea.

[5] The pre-sentencing investigation report shows Richardson was convicted of Class A misdemeanor fraud in 2013, and she was sentenced to eight days executed with 357 days suspended to probation. The report states Richardson has a low risk of re-offending.

[6] The trial court sentenced Richardson to six years total: four years in the DOC and two years suspended to probation. The trial court found as mitigating factors (1) Richardson's guilty plea; (2) her mental health; and (3) the fact she sought treatment on her own. The court found as aggravating factors (1) Richardson's history of criminal or delinquent behavior; (2) a child was in the home when Richardson committed the offense; and (3) the nature and circumstances of the offense showed a disregard for the safety of neighbors. Richardson now appeals.

Discussion and Decision

[7] Under Indiana Appellate Rule 7(B), this Court may revise a sentence if, "after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "The principal role of appellate review should be to attempt to leaven the outliers, . . . but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). That is, we apply Appellate Rule 7(B) "not to determine 'whether another sentence is more appropriate' but rather 'whether the sentence imposed is inappropriate.'" *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)). Ultimately, "whether we regard a sentence as appropriate . . . 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.

[8] We recognize the "special expertise" of trial courts in making sentencing decisions, and we exercise our ability to review and revise sentences "with great restraint[.]" *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. And "we refrain from merely substituting our judgment for that of the trial court." *Golden v. State*, 862 N.E.2d 1212, 1218 (Ind. Ct. App. 2007), *trans. denied*. The defendant bears the burden of persuading the appellate court the sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Moreover, the defendant bears "a particularly heavy burden" when the trial

court imposes the advisory sentence. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[9] The advisory sentence for a Level 4 felony is six years. Ind. Code § 35-50-2-5.5 (2014). Richardson received a sentence equal to the advisory sentence, and the trial court sentenced her to execute only four of those years, with two years suspended to probation. And, under the plea agreement, the trial court could have imposed a sentence of six years executed.

[10] In arguing her sentence is inappropriate,[2] Richardson focuses on the following favorable evidence: she did not plan to set the fire; she thought Booker's son was outside when she set the fire; she spent fifty days in jail before paying her $5,000 bond; she obtained two jobs and hired her own attorney; she complied with all terms of her pretrial supervision; she obtained counseling services and completed an anger management program; she pleaded guilty; she has a prior criminal history of only one conviction, a misdemeanor from 2013; and she has a low risk to reoffend.

[11] As to the nature of the offense, Richardson endangered at least one child. Richardson knew Booker lived in the home with her children. Indeed, Richardson had been caring for the children the previous week. Although

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[2] To the extent Richardson argues the trial court did not give enough weight to the mitigating factors, "a trial court can not now be said to have abused its discretion in failing to 'properly weigh' such factors." *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007). Thus, we will not review the weight the trial court gave the aggravating and mitigating factors.

Richardson says she did not know the child was in the house when she set the fire, she still risked the safety of the children and neighbors. As to the character of the offender, Richardson's criminal history may be slight, but it still contains a criminal conviction. And though Richardson sought a mental health evaluation on her own, she only did so after she pleaded guilty and before she was sentenced. Richardson claims to be remorseful and to have accepted responsibility by pleading guilty. Yet we cannot say Richardson's remorse, given the nature of her offense and her character, ultimately makes Richardson's sentence inappropriate where Richardson set a fire with a child in the home and walked away.

Conclusion

[12] Concluding Richardson's sentence is not inappropriate in light of the nature of the offense and the character of the offender, we affirm.

[13] Affirmed.

Robb, J., and Crone, J., concur.