MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Harve Hensley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 27, 2023

Court of Appeals Case No.
23A-CR-601

Appeal from the
Jefferson Superior Court

The Honorable
Blaine S. Goode, Judge

Trial Court Cause No.
39D01-2102-F6-182

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Harve Hensley ("Hensley") was convicted after a jury trial of Level 6 felony forgery.[1] Hensley now appeals, raising two issues for our review:

I. Whether the State presented sufficient evidence to support his conviction; and

II. Whether his sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts and Procedural History

[3] Bronson Hensley ("Bronson, Sr.") passed away, leaving five adult children including Hensley. A dispute emerged regarding who would be the personal representative of Bronson, Sr.'s estate and the trustee of his revocable living trust ("the Trust"). Subsequently, the probate court declared Hensley's older brother the personal representative of the estate and the trustee of the Trust. The probate court also determined that Hensley was not entitled to receive certain real estate from the Trust and/or the Estate.

[4] On December 14, 2020, Hensley executed four quitclaim deeds as "sole trustee" and delivered them to the Jefferson County Recorder to be recorded. Each deed purported to transfer the respective property ("the Properties") from the

[1] Hensley was charged under Indiana Code section 35-43-5-2(d)(1), which was later recodified to Indiana Code section 35-43-5-2(b)(1) without changes to the substantive offense, *see* Pub. L. No. 174-2021, § 44.

Trust to Hensley. The Recorder did not record the quitclaim deeds because she knew that Hensley's older brother was the trustee of the Trust.

[5] On February 25, 2021, the State charged Hensley with: Count I, forgery as a Level 6 felony; and Count II, perjury as a Level 6 felony.[2] The State moved to dismiss Count II, and the trial court granted the motion. A jury trial was held, and Hensley was found guilty. The trial court sentenced Hensley to two years executed in the Indiana Department of Correction. Hensley now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[6] Hensley contends that the State presented insufficient evidence to sustain his forgery conviction. Sufficiency of the evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. Put differently, we will affirm the conviction "unless no reasonable fact-finder could find the

[2] Ind. Code. § 35-44.1-2-1(a)(1).

elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007)).

[7] Hensley was convicted of forgery. Indiana Code Section 35-43-5-2(b)(1) provides: "A person who, with intent to defraud, makes, utters, or possesses a written instrument in such a manner that it purports to have been made . . . by another person . . . commits forgery, a Level 6 felony." Hensley asserts that the State failed to prove beyond a reasonable doubt that he had "the requisite intent to defraud another person." Appellant's Br. p. 10.

[8] "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." Ind. Code § 35-41-2-2(a). Because intent is a mental state, "the trier of fact often must infer its existence from surrounding circumstances when determining whether the requisite intent exists." *Goodner v. State*, 685 N.E.2d 1058, 1062 (Ind. 1997).

[9] Hensley argues that he "always believed that [Bronson, Sr.] intended to leave substantial assets to Hensley to recompensate for his investment of labor." Appellant's Br. p. 11. Hensley heavily relies on his testimony at trial as indicative of his belief "in his own authority to control the Propert[ies]," *id.* at 12, and his lack of the intent to defraud. Hensley's arguments simply ask us to reweigh evidence, which we will not do. *See, e.g.*, *Powell*, 151 N.E.3d at 262.

Here, the evidence favorable to the conviction indicates the probate court issued an order that explicitly stated: "Hensley is not the personal representative of Bronson[,] Sr. nor the trustee of the Trust." Ex. Vol. I p. 17. The order also found that Hensley was not entitled to the Properties because Hensley had already "received *inter vivos* gifts from [Bronson,] Sr. equal to the amount [ ] Hensley was to receive under the terms of the Trust . . . these gifts constitute an ademption." *Id.* at 16.

[10] After receiving the probate court's order, Hensley, purporting to be the "sole trustee," executed four quitclaim deeds for the Properties and delivered the notarized quitclaim deeds for recording. These actions clearly circumvented the probate court's order. At the time Hensley committed these acts, he was both aware that he did not possess the authority to convey the Properties and that he was not entitled receive the conveyances. Therefore, sufficient evidence was presented for the jury to conclude that Hensley intended to defraud the Recorder when he attempted to record the four quitclaim deeds. *See Diallo v. State*, 928 N.E.2d 250, 253 (Ind. Ct. App. 2010) (concluding there was sufficient evidence for the fact-finder to conclude the defendant intended to defraud his customers where there was evidence that the defendant wanted his customers to believe that his "knock-off" merchandise was genuine).

II. Inappropriate Sentence

[11] The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this court to revise a sentence when the sentence is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). "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).

[12] When considering the nature of the offense, we look to the advisory sentence which is the starting point our Legislature chose as an appropriate sentence for the crime committed. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). Indiana Code section 35-50-2-7(b) provides: "A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Hensley's two-year executed sentence is six months below the maximum possible sentence for his offense.

[13] The nature of Hensley's offense reveals that Hensley executed various quitclaim deeds purporting to be "sole trustee" and delivered them to the Recorder's Office to be recorded. Hensley did this after the probate court issued an order

that determined that Hensley was not the trustee for the Trust and not entitled to the Properties conveyed by the quitclaim deeds. The reason why Hensley's attempt was unsuccessful was not due to Hensley being forthcoming about not being the trustee, but rather, due to the Recorder's knowledge of who the actual trustee was. Hensley asserts that his "crime lacked any violence or intent to cause harm." Appellant's Br. p. 14. Hensley further claims that he "did not act in a cruel manner [n]or prey on an unsuspecting victim." *Id.* However, none of Hensley's assertions portray the nature of his offense in a positive light, "such as accompanied by restraint, regard and lack of brutality." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). To the contrary, the nature of Hensley's offense was to circumvent the orders of the probate court. Thus, Hensley has not shown that the sentence is inappropriate in light of the nature of the offense.

[14] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Hensley's criminal history consists of three misdemeanor and two felony convictions that he claims are "more than a decade old." Appellant's Br. p. 14. However, Hensley's most recent contacts with the criminal justice system occurred within a span of four months. On December 14, 2020, Hensley was arrested for the present offense. On March 2, 2021, Hensley was released on bond and ordered to abide by the pretrial release conditions. On March 22, 2021, Hensley violated his pretrial release conditions when he was arrested for

fraud. Hensley was convicted of fraud in 2022, about six months before his present conviction. *See* Appellant's App. Vol. 2 p. 195. Although Hensley's recent criminal history is not violent or extensive, Hensley nevertheless committed two offenses within four months. Both criminal offenses involved dishonesty, which does not reflect well on his character. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (concluding that the defendant's criminal history—although not extensive—was still a poor reflection on his character). Moreover, Hensley testified that he planned to evict anyone living in the residence on one of the Properties so that he may live there. Hensley's testimony indicates disdain for the judicial authority of the probate court. Consequently, we do not believe that Hensley met his burden to demonstrate "substantial virtuous traits or persistent examples of good character" supporting his assertion that his two-year sentence is not inappropriate based on his character. *Stephenson*, 29 N.E.3d at 122.

Conclusion

[15] We conclude that the State presented sufficient evidence to support Hensley's conviction and that Hensley's sentence is not inappropriate in light of the nature of his offense and his character.

[16] Affirmed.

Altice, C.J., and May, J., concur.