

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Thomas J. Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 28, 2022

Court of Appeals Case No.
21A-CR-1880

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2008-MR-24

Tavitas, Judge.

Case Summary

[1] Thomas J. Jackson was convicted of murder, a felony, enhanced by the use of a firearm, and sentenced to an aggregate sentence of eighty-five years in the Department of Correction. Jackson appeals and claims that the trial court abused its discretion in the admission of hearsay testimony and erred in sentencing him. Concluding that: (1) the challenged testimony was cumulative of other evidence and, therefore, any error in the admission was harmless; and (2) the trial court did not err in sentencing Jackson, we affirm.

Issues

[2] Jackson raises two issues, which we restate as:

- I. Whether the trial court abused its discretion by admitting testimony regarding an out-of-court statement made by another witness.
- II. Whether the trial court erred in sentencing Jackson to an aggregate term of eighty-five years of incarceration.

Facts

[3] In August 2020, then forty-one-year-old Jackson lived at Room 240 of the Roadway Inn in Fort Wayne, Indiana, with his nineteen-year-old girlfriend Angel Carter. Cameron Barnett was staying in Room 213. In the late hours of August 8 and early morning hours of August 9, Jackson, Carter, Barnett, Peter Long, and others were outside Room 213 smoking, drinking alcohol, and playing cards. At some point, Jackson told Carter, “[M]omma tomorrow

daddy is gonna [sic] need some dope and alcohol.” Tr. Vol. II p. 182. This upset Carter, who returned to Room 240 shortly thereafter. Jackson stayed outside near Room 213.

- [4] Jackson and Carter messaged each other using Facebook, and Carter eventually sent Jackson a message that stated:

Bro I can't no more with you. It's always one thing or the next. Not tripping. I don't hate you but I'm done. We can split ways. We can still be Kool tho. I deserve allot [sic] . . . more than I get or feel. I love you but I'm out[.]

Ex. Vol. p. 93, State's Ex. 73.

- [5] At approximately 3:30 a.m., the police went to the Roadway Inn to deal with a car that needed to be impounded. Jackson and others gathered to watch the police. Long overheard Jackson ask one of the police officers:

[I]f hypothetically a guy kills his girlfriend or his wife and then if the cops track him down a couple hours later and everything and the cops end up brutally injuring him or murdering him, killing him, who would be more at fault, the guy who killed his girlfriend or his wife, or the cop.

Tr. Vol. II p. 183. Long heard the officer reply to Jackson, “they would both be equally wrong [I]f there was no showable weapon or anything like that then the cop would be in the wrong as well, you know.” *Id.* at 184.

- [6] Jackson later retrieved a handgun from Room 213, walked in and out of the room, and repeatedly cocked the gun. Long decided at that time to leave

because he was afraid that “some S [was] about to hit the fan.” *Id.* at 184. Jackson asked Carter if he could retrieve some of his items from Room 240, but Carter told Jackson to wait until after she left the room. Unsatisfied with this response, Jackson banged on the door of Room 240 with the gun in his hand. Carter warned Jackson that, if he continued to bang on the door, someone would call the police because it was approximately 4:00 a.m. Carter told Jackson to wait in Barnett’s room and stated that she would be out of Room 240 in a few hours. Undeterred, Jackson went to the front desk of the hotel and requested a room key. The hotel clerk confirmed that Jackson had rented Room 240 before giving him a room key. The clerk also noted that Jackson appeared to be intoxicated.

[7] With the room key in hand, Jackson returned to Room 240, where he unlocked the door and let himself into the room. There, he shot Carter in the neck and left. Carter followed him, but she collapsed on the balcony outside the door. A short time later, Jackson went back into the room and gathered some of his items. Jackson checked on Carter but left her lying on the balcony. Barnett then joined Jackson, and the two men walked away. Long, who was in the hotel office, heard a commotion and looked out to see Jackson running “across the grass heading toward Goshen Road.” *Tr. Vol. II p. 185.*

[8] At some point early that morning, David Healey, the occupant of the room adjacent to Room 240, returned to his room and saw Carter’s body lying near his door. He called 911, and first responders arrived within ten minutes of his call. Medical personnel pronounced Carter dead at the scene. Sergeant Juan

Gutierrez of the Fort Wayne Police Department investigated and observed a trail of blood leading from near the bathroom of Room 240 to Carter's body. He also found a shell casing on the bed. Sergeant Gutierrez also noticed that the hotel had security cameras. Sergeant Gutierrez obtained the video from the cameras, which depicted Carter lying outside Room 240 and a man, later identified as Jackson, walking back and forth with something in his hand. Based on this video, the police were able to get a physical description of Jackson and his clothing.

[9] Fort Wayne Police Detective David Wilkins also investigated Carter's death. As he did, Long approached Detective Wilkins and reported that he had seen "Thomas" "[u]n westbound from the hotel, or the motel, to across Goshen Road." *Id.* at 140-41. Long also told Detective Wilkins about Jackson's statements to the police earlier that morning. The police later obtained security video from a neighboring hotel that depicted Jackson walking away from the Roadway Inn.

[10] Based on this information, the police obtained warrants to search both Room 240 and Room 213. The police found in Room 240 a copy of the rental agreement showing that Jackson had rented the room. The police also recovered the shell casing, from a nine-millimeter bullet, on the bed. In Room 213, the police found several nine-millimeter bullets and an empty gun box. They also observed blood, later identified as Carter's blood, at the foot of the bed.

- [11] An autopsy performed on Carter’s body revealed that she had been shot in the left side of her neck. The bullet went through her left carotid artery and jugular vein, her trachea, and her right carotid artery. This caused Carter to quickly lose blood and have difficulty breathing, which would have caused her to die within minutes of being shot.
- [12] On August 13, 2020, the State charged Jackson with murder and alleged that Jackson had used a firearm during the crime. Jackson was arrested later that month. The police interrogated Jackson on August 27, 2020. During the interrogation, Jackson claimed that two unknown men had attempted to rob him and Carter. These unknown assailants, Jackson claimed, stabbed him and shot Carter. Jackson said he then ran for his life. The police then showed Jackson the video that did not corroborate his story and instead implicated him in Carter’s murder. Jackson still denied that he had killed Carter.
- [13] A two-day jury trial commenced on June 16, 2021. At trial, Detective Wilkins testified that Long had told him that Long saw “Thomas” fleeing the hotel the night of the murder. Jackson objected on hearsay grounds, but the trial court overruled the objection. The trial court determined that the statement was not offered to prove the truth of what Long said but to show the course of the investigation. Long was also called as a witness, and he too testified that he told Detective Wilkins that he saw Jackson fleeing the hotel. During the first phase of the trial, the jury found Long guilty of murder and, during the second phase of the trial, also found that Jackson had used a firearm during the commission of the crime.

[14] On July 30, 2021, the trial court held a sentencing hearing. The trial court found several aggravating factors, including: (1) Jackson's criminal history; (2) prior attempts at rehabilitation had failed; (3) Jackson's probation and conditional release in prior cases had been revoked; and (4) Jackson was on probation at the time he committed the instant offense. The trial court also noted the brutal nature and circumstances of Carter's death as aggravating. The trial court found no mitigating factors. The trial court sentenced Jackson on the murder conviction to sixty-five years in the Department of Correction. The trial court also imposed an additional twenty-year sentence enhancement based on Jackson's use of a firearm during the murder. Jackson now appeals.

I. Admission of Evidence

[15] Jackson first claims that the trial court erred by admitting certain testimony. We review challenges to the admission of evidence for an abuse of the trial court's discretion. *Fansler v. State*, 100 N.E.3d 250, 253 (Ind. 2018) (citing *Williams v. State*, 43 N.E.3d 578, 581 (Ind. 2015)). We will reverse only where the decision is clearly against the logic and effect of the facts and circumstances. *Id.* (citing *Joyner v. State*, 678 N.E.2d 386, 390 (Ind. 1997)).

[16] Jackson claims that Detective Wilkins's testimony regarding Long's statements to Detective Wilkins constituted inadmissible hearsay. Even if we were to agree with Jackson that Long's out-of-court statements were inadmissible hearsay, any error would be harmless. As noted above, Long was called as a witness at trial and testified that he saw Jackson fleeing the hotel. Thus, Long's out-of-court statement as relayed by Detective Wilkins was cumulative of

Long’s own testimony at trial. Evidence that is merely cumulative of properly admitted evidence is considered harmless and not grounds for reversal. *Garth v. State*, 182 N.E.3d 905, 917 (Ind. Ct. App. 2022) (citing *Pelissier v. State*, 122 N.E.3d 983, 988 (Ind. Ct. App. 2019)); *see also Tobar v. State*, 740 N.E.2d 106, 108 (Ind. 2000) (“Evidence that is merely cumulative is not grounds for reversal.”). Accordingly, we conclude that the trial court did not commit reversible error in the admission of Long’s out-of-court statements.

II. Sentencing

[17] Jackson also claims that the trial court erred in sentencing him to an aggregate term of eighty-five years of incarceration. Jackson claims that his sentence is inappropriate under Appellate Rule 7(B). Yet he also complains that the trial court failed to consider his remorse as a mitigator. We therefore address Jackson’s sentencing argument under both the abuse-of-discretion standard and Appellate Rule 7(B).

A. Abuse of Discretion

[18] “[S]ubject to the review and revise power [under Indiana Appellate Rule 7(B)], sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). “An abuse of discretion occurs only if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual

deductions to be drawn therefrom.” *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)). Among the ways in which a trial court can abuse its discretion is by “entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration[.]” *Ackerman v. State*, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[19] Jackson claims that the trial court should have considered his statements of remorse at his sentencing hearing as mitigating. The trial court “is not obligated to accept the defendant’s contentions as to what constitutes a mitigating circumstance or to give the proffered mitigating circumstances the same weight the defendant does.” *Weishet v. State*, 26 N.E.3d 3, 9 (Ind. 2015) (quoting *Wilkes v. State*, 917 N.E.2d 675, 690 (Ind. 2009), *cert. denied*). “An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.” *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)).

[20] Jackson stated during sentencing that he was “sorry for [Carter]’s family’s loss.” Tr. Vol. III p. 109. The trial court directly addressed Jackson’s claim of remorse when it imposed its sentence, stating: “I don’t find your remorse to be genuine not one bit, Mr. Jackson. You’re sorry for yourself. You’re sorry that you’re going to spend a significant amount of the rest of your life in the Department of Correction.” Tr. Vol. III pp. 109-10. The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her

voice, is in the best position to determine whether the defendant’s claim of remorse is genuine, and absent evidence of some impermissible consideration by the trial court, we accept its determination. *Snyder v. State*, 176 N.E.3d 995, 998 (Ind. Ct. App. 2021) (citing *Hape v. State*, 903 N.E.2d 977, 1002–03 (Ind. Ct. App. 2009)). We see no reason here to disturb the trial court’s factual determination that Jackson’s remorse was not genuine. Accordingly, Jackson’s remorse is not clearly supported by the record.

B. Appellate Rule 7(B)

[21] Jackson also claims that his sentence is inappropriate under Appellate Rule 7(B). 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 it is “inappropriate in light of the nature of the offense and the character of the offender.”¹ 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)). We exercise our authority under Appellate Rule 7(B) only in

¹ Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant’s character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

“exceptional cases, and its exercise ‘boils down to our collective sense of what is appropriate.’” *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[22] “The principal role of appellate review is to attempt to leaven the outliers.” *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is “not to achieve a perceived correct sentence.” *Id.* “Whether a sentence should be deemed 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.’” *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court’s sentence “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).

[23] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Here, Jackson was convicted of murder. “A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years.” Ind. Code § 35-50-2-3(a). Furthermore, “[i]f the jury (if the hearing is by jury) . . . finds that the state has proved beyond a reasonable doubt that the person knowingly or intentionally

used a firearm in the commission of the offense . . . , the court may sentence the person to an additional fixed term of imprisonment of between five (5) years and twenty (20) years.” Ind. Code § 35-50-2-11(g). The trial court here imposed the maximum sentence and the maximum enhancement.

[24] The maximum possible sentences are generally most appropriate for the worst offenders. *Kovats v. State*, 982 N.E.2d 409, 416 (Ind. Ct. App. 2013) (citing *Simmons v. State*, 962 N.E.2d 86, 92 (Ind. Ct. App. 2011)). This rule is not, however, an invitation to determine whether a worse offense could be imagined, as it is always possible to identify or hypothesize a significantly more despicable scenario, regardless of the nature of any particular offense and offender. *Id.* “By stating that maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment, and this encompasses a considerable variety of offenses and offenders.” *Id.* (citing *Simmons*, 962 N.E.2d at 92-93).

1. Nature of the Offense

[25] Our analysis of the “nature of the offense” requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, the nature, extent, and depravity of Jackson’s offense are truly horrifying. Jackson shot his nineteen-year-old girlfriend simply because she announced her intention to end their relationship. Jackson retrieved a handgun to confront Carter, and when she would not unlock the door, he obtained a key from the front desk. This demonstrates a level of planning and forethought. Once Jackson entered the room, he shot

Carter in the neck. Carter attempted to flee the room, but she fell outside the hotel room door. Jackson came back to the scene and checked on Carter but rendered no aid; nor did he attempt to call for help. Instead, he left Carter to bleed and choke on her own blood. Jackson's callous actions certainly qualify his offense as amongst the worst, and nothing about the nature of his offense justifies reduction of his sentence.

2. *Character of the Offender*

[26] Our analysis of the character of the offender involves a “broad consideration of a defendant’s qualities,” *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant’s age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007).

[27] Jackson, who was forty-one years old at the time of the murder, had already been convicted of several prior criminal acts, including one felony and four misdemeanors. Jackson has a prior conviction for aggravated assault in Mississippi, and he has been convicted of battery and domestic battery in Illinois. This demonstrates that Jackson has committed violent criminal acts before. None of this reflects well on Jackson’s character. *See Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (“The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense.”), *trans. denied*; *see also Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (“Even a minor criminal history is a poor reflection of a defendant’s character.”).

- [28] Jackson was shown leniency in the past but to no effect. His probation was revoked twice in previous cases, and his conditional release was twice revoked. Notably, Jackson was on probation at the time he murdered Carter. This too does not reflect well on Jackson's character. *See Sanders v. State*, 71 N.E.3d 839, 845 (Ind. Ct. App. 2017) (noting that a defendant's refusal to take advantage of rehabilitative efforts offered to him reflects poorly on his character) (citing *Phelps v. State*, 969 N.E.2d 1009, 1021 (Ind. Ct. App. 2012)), *trans. denied*.
- [29] Jackson also claims that his behavior was caused by his use of drugs and alcohol, but this does little to paint his character in a positive light. *See Hollins v. State*, 145 N.E.3d 847, 854 (Ind. Ct. App. 2020) (holding that defendant's drug addiction reflected poorly on his character where he never sought assistance to address his addiction), *trans. denied*. In short, there is nothing about the brutal, callous nature of Jackson's offense or Jackson's character that persuades us that his maximum eighty-five-year sentence is inappropriate.

Conclusion

- [30] The trial court did not commit reversible error in the admission of Long's out-of-court statements, nor did the trial court abuse its discretion in rejecting Jackson's claims of remorse. Lastly, Jackson's sentence is not inappropriate in light of the nature of his offense or his character.
- [31] Affirmed.

Bradford, C.J., and Crone, J., concur.