

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Tayshawn Malczynski,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 15, 2023

Court of Appeals Case No.
22A-CR-2588

Appeal from the St. Joseph
Superior Court

The Honorable Elizabeth C.
Hurley, Judge

Trial Court Cause No.
71D08-2101-MR-3

Memorandum Decision by Judge Mathias
Judges May and Bradford concur.

Mathias, Judge.

[1] Tayshawn Malczynski appeals his sentence following his convictions for Level 1 felony attempted murder, as found by a jury, and Level 2 felony voluntary manslaughter, pursuant to a guilty plea. Malczynski presents two issues for our review:

I. Whether the trial court erred when it interpreted [Indiana Code section 35-50-2-11\(g\)](#) and enhanced his sentence for voluntary manslaughter by five years on the firearm enhancement.

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

[2] We affirm.

Facts and Procedural History

[3] On December 15, 2020, Malczynski arranged a meeting with Joseph McFarland to buy marijuana from him. Malczynski and some of his friends arrived at the predetermined location in a car driven by Daniel Allen. On the way there, Malczynski told Allen that he intended to rob McFarland. Malczynski was armed with a 9mm handgun.

[4] McFarland arrived at the location first in a Jeep driven by his friend Vinny Trozzy. When Malczynski got there, he got out of Allen's car and walked over to the driver's side door of Trozzy's Jeep and spoke to Trozzy. When Trozzy reached into the center console to get the marijuana, Allen, carrying an AK-47, approached the passenger-side door of the Jeep. Malczynski and Allen demanded money and drugs from McFarland and Trozzy. At that point,

McFarland pulled out a handgun, and “gunfire erupted.” Tr. Vol. 2, p. 120. After several shots were fired, Malczynski left the scene on foot, and Allen returned to his car and drove off. Trozzy had been struck by a bullet in his temple and died as a result. That bullet was later found to have come from Malczynski’s gun. McFarland was shot twice and grazed by a third bullet, but he survived his injuries.

[5] The State charged Malczynski with murder, attempted murder, and attempted robbery resulting in serious bodily injury. The State also filed a firearm enhancement. A jury found Malczynski guilty of attempted murder, but it deadlocked on the remaining charges. Malczynski subsequently pleaded guilty to voluntary manslaughter, a lesser-included offense of murder, in exchange for the State’s dismissal of the robbery charge. Malczynski also agreed to admit to the firearm enhancement, and he agreed that the trial court could enhance his sentence by a term between five and twenty years. At sentencing, the court imposed sentence as follows: thirty-five years for attempted murder; and twenty years for voluntary manslaughter, enhanced by five years for the firearm enhancement. The court ordered that the sentences would run consecutively, for an aggregate term of sixty years, with ten years suspended. This appeal ensued.

Discussion and Decision

Issue One: Firearm Enhancement

- [6] Malczynski first contends that the trial court erred when it expressed disagreement with his argument that, under [Indiana Code section 35-50-2-11\(g\)](#), the court could impose a sentence enhancement of between five and twenty years but was not required to impose any sentence enhancement at all.¹ We need not address this argument, however, because, in his plea agreement, Malczynski agreed that his sentence would be enhanced for the firearm enhancement by between five and twenty years and that the enhancement would run consecutively to the other sentences. The trial court complied with the plea agreement when it imposed a five-year sentence enhancement on the twenty-year sentence for his voluntary manslaughter conviction. Malczynski has waived this issue for our review.

Issue Two: Appellate Rule 7(B)

- [7] Malczynski next contends that his sentence is inappropriate in light of the nature of the offenses and his character. The trial court had discretion to sentence Malczynski on the Level 1 felony for a fixed term of between twenty

¹ [Indiana Code section 35-50-2-11\(g\)](#) provides:

If the jury (if the hearing is by jury) or the court (if the hearing is to the court alone) 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 under subsection (d), the court may sentence the person to an additional fixed term of imprisonment of between five (5) years and twenty (20) years.

and forty years, with the advisory sentence being thirty years. I.C. § 35-50-2-4. For the Level 2 felony, the court had discretion to impose a sentence of between ten and thirty years with an advisory sentence of seventeen and one-half years. I.C. § 35-50-2-4.5. And for the firearm enhancement, the trial court had discretion to impose an enhancement of between five and twenty years. I.C. § 35-50-2-11(g). The trial court imposed consecutive sentences of thirty-five years for the Level 1 felony; twenty years for the Level 2 felony; and an additional five years for the firearm enhancement. Thus, Malczynski’s aggregate sentence is sixty years with ten years suspended.

[8] Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (*per curiam*).

[9] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as

showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[10] While Malczynski acknowledges the gravity of the offenses, he argues that the circumstances of the shootings “were not clear,” as evidenced by the deadlocked jury on two of the charges, including murder. Appellant’s Br. at 21. And Malczynski notes that his codefendant, Allen, who was “more heavily armed” and who “started shooting first,” was sentenced to only ten years. *Id.* Finally, Malczynski distinguishes these offenses from those where the victims are innocent of any crimes because McFarland and Trozzy were armed and engaged in a drug deal when they were shot. Thus, he asserts that his sentence is inappropriate in light of the nature of the offenses. We cannot agree.

[11] The State presented evidence at Malczynski’s trial that he planned the armed robbery of McFarland and that Malczynski fired his handgun at least ten times into the car during the robbery. In addition, Malczynski fired the shot that killed Trozzy. We cannot say that his sentence is inappropriate in light of the nature of the offenses.

[12] With respect to his character, Malczynski points out that he was only sixteen years old at the time of the offenses. He argues that his young age “is a significant mitigating factor.” *Id.* And Malczynski points out that his criminal history includes a single juvenile adjudication. Finally, Malczynski emphasizes

his history of mental illnesses, including Attention Deficit/Hyperactivity Disorder (“ADHD”), Oppositional Defiant Disorder (“ODD”) and Major Depression Disorder (“MDD”). But he does not explain how his mental illnesses bear on the question of his character.

[13] Malczynski has not presented compelling evidence showing substantial virtuous traits or persistent examples of positive attributes to show a good character. *See Stephenson, 29 N.E.3d at 122*. While his criminal history includes only a single juvenile adjudication, it was for domestic battery involving his mother. And while Malczynski was offered treatment for his mental illnesses, including medication and therapy, he did not follow through with treatment. We cannot say that Malczynski’s sixty-year sentence is inappropriate in light of his character.

Conclusion

[14] For all these reasons, we affirm Malczynski’s convictions and sentence.

[15] Affirmed.

May, J., and Bradford, J., concur.