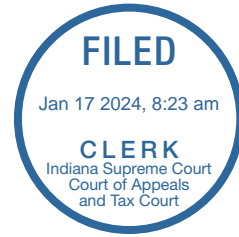


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Reonte Moore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 17, 2024

Court of Appeals Case No.
23A-CR-596

Appeal from the
Wells Circuit Court

The Honorable
Kenton W. Kiracofe, Judge

Trial Court Cause No.
90C01-2110-F1-3

Memorandum Decision by Judge Foley
Judges Pyle and Taviton concur.

Foley, Judge.

[1] Reonte Moore (“Moore”) pleaded guilty to attempted murder,¹ a Level 1 felony, and admitted to a sentencing enhancement for the use of a firearm in the offense.² The trial court sentenced Moore to an aggregate sentence of sixty years executed in the Indiana Department of Correction. Moore appeals his sentence and raises the following restated issues for our review:

- I. Whether the trial court abused its discretion when it sentenced him because the court purportedly omitted several significant mitigating factors; and
- II. Whether his maximum sixty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On the morning of October 22, 2021, Moore and Louis Robinson (“Robinson”) were working at Berne Apparel in Ossian, Indiana when they had a disagreement. Moore, who had been acting extremely aggressive and irritated, told Robinson to go outside. Moore then called his girlfriend, Jayana Herman (“Herman”), and told her to come to Berne Apparel. Herman arrived and provided Moore with a handgun. Meanwhile, Robinson had gone outside to

¹ Ind. Code §§ 35-42-1-1(1), 35-41-5-1(a).

² I.C. § 35-50-2-11.

the parking lot and was walking away from Moore. Moore intercepted Robinson as he walked away, approached him within a couple of feet, and then shot Robinson approximately eight times at close range.³ Robinson attempted to run away, but Moore chased after him. After shooting Robinson, Moore ran back to Herman's vehicle, and they drove away. A witness immediately called 911 to report the shooting and gave a description of Moore and the vehicle in which he fled the scene. Robinson was transported to the hospital in critical condition.

[4] Shortly after the shooting, police initiated a traffic stop on the vehicle in which Moore and Herman were traveling. When they were pulled over, Herman was driving the vehicle, and Moore was in the passenger seat. While conducting the traffic stop, the officer smelled the odor of marijuana emanating from the vehicle and observed green, leafy plant material in plain view inside the vehicle. The officer also saw a black, nine-millimeter automatic handgun on the passenger floorboard of the vehicle near where Moore was sitting. The handgun was loaded with twelve assorted nine-millimeter rounds. The police found several nine-millimeter shell casings at the scene of the shooting. After being stopped, Moore immediately informed the officer that he was on probation. After interviewing Herman, the police learned that Moore was

³ Moore admitted that he shot Robinson five or six times, but at sentencing, in his victim impact statement, Robinson stated that Moore shot him a "total of eight times, maybe even more." Tr. Vol. III p. 147.

associated with the street gang known as GDN and that Moore was the primary suspect in a recent shooting where Herman was shot six times.

[5] On October 25, 2021, the State charged Moore with Level 1 felony attempted murder and Level 4 felony unlawful possession of a firearm by a serious violent felon.⁴ The State also sought a sentencing enhancement for use of a firearm in the offense. A jury trial commenced in January 2023. However, Moore and the State eventually reached a plea agreement. On January 24, 2023, the morning of the second day of the jury trial, Moore pleaded guilty to Level 1 felony attempted murder and admitted to the use of a firearm in the commission of the offense in exchange for dismissal of the Level 4 felony charge. After a factual basis was given, the trial court accepted Moore's guilty plea and took the plea agreement under advisement until sentencing.

[6] At the sentencing hearing held on March 15, 2023, a video of the shooting was admitted into evidence, and a victim impact statement by Robinson was read into evidence. In the statement, Robinson stated that, after Moore shot him approximately eight times, he had extensive damage to his intestines and still experienced pain that sometimes interfered with walking and eating. He also stated that he has large medical bills that caused him to be in debt. Robinson further said that he struggled to physically play with his children and that he had experienced depression and difficulty sleeping. He also had trouble being

⁴ The charging information was amended on March 11, 2022, and January 23, 2023, but the charges were not altered.

in groups of people due to a fear that someone would harm him. Moore put forth several mitigating factors for the trial court's consideration, including that he (1) was remorseful; (2) grew up in a violent community and culture; (3) had a substance abuse problem; (4) was previously diagnosed with attention deficit hyperactivity disorder, fetal alcohol syndrome, schizophrenia, intermittent explosive disorder, and obsessive compulsive disorder; (5) pleaded guilty; (6) was young; and (7) had converted to Islam while incarcerated.

[7] The trial court identified several aggravating factors: (1) Moore's extensive delinquent and criminal history, which included many crimes of violence and offenses involving a firearm; (2) allegations that he committed two other batteries while in jail for this offense; (3) prior attempts at rehabilitation have failed with him committing new offenses when assigned to alternative placements; (4) he was on probation for robbery when he committed the present offense; (5) he was a high risk to reoffend; (6) the danger his actions posed to the other people present when he committed the offense; and (7) his lack of sincere remorse in that he attempted to justify his actions and blame the victim. Tr. Vol. III pp. 171–78. The trial court found two mitigating circumstances—Moore's guilty plea and his mental health diagnoses of fetal alcohol syndrome and intermittent explosive disorder. *Id.* at 173, 175.

[8] The trial court declined to find Moore's age mitigating because over the past decade, he had demonstrated increasingly violent conduct. It also declined to find the fact that Moore grew up and lived in a violent community as mitigating because the court found his conduct was unacceptable regardless of the

community or culture in which he lived. It went on to state, “[w]hile it may be part of the culture where Mr. Moore lives in Allen County, it is simply unacceptable here, and there’s no place for it in this community.” *Id.* at 175.

Before imposing the sentence, the trial court explained its decision:

[T]here’s simply no place in this community or in this society for someone who is this violent. Regardless of what the cause of that violence might be, whether that’s a mental health issue, fetal alcohol syndrome, whatever, there’s simply no room[,] and the community needs to be assured that they can be safe from people like [] Moore.

Id. at 177. In pronouncing Moore’s sentence, the trial court stated that Moore was in the class of offenders considered “the worst of the worst” and explained that Moore’s sentence was meant to ensure that he did not harm another person in his lifetime. *Id.* The trial court sentenced Moore to forty years for Level 1 felony attempted murder, enhanced by twenty years for the use of a firearm in the commission of the offense, resulting in an aggregate executed sentence of sixty years. Moore now appeals.

Discussion and Decision

I. Abuse of Discretion

[9] Moore contends that the trial court abused its discretion in sentencing him because the court should have identified additional significant mitigating factors. Specifically, he asserts that the trial court abused its discretion when it failed to find as mitigating factors his young age, his mental health diagnoses, his guilty plea, and the fact that he grew up in a violent community. Sentencing

decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion will be found where 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 from them. *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). A trial court may abuse its discretion in several ways, including by: (1) failing to enter a sentencing statement; (2) entering a sentencing statement that includes aggravating and mitigating factors unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons improper as a matter of law. *Anglemyer v. State*, 868 N.E.2d 482, 490–91 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id.* at 491.

[10] Moore first asserts that the trial court abused its discretion by failing to find that his young age was a significant mitigating factor. An allegation that the trial court failed to identify or find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Davis v. State*, 173 N.E.3d 700, 704 (Ind. Ct. App. 2021) (citing *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000)). The trial court is not obligated to accept the defendant’s contentions as to what constitutes a mitigating circumstance. *Id.* “Focusing on chronological age is a common

shorthand for measuring culpability, but for people in their teens and early twenties it is frequently not the end of the inquiry.” *Ellis v. State*, 736 N.E.2d 731, 736 (Ind. 2001). “There are both relatively old offenders who seem clueless and relatively young ones who appear hardened and purposeful.” *Id.* “[A]ge is not a per se mitigating factor[,]” let alone “automatically a significant mitigating factor.” *Gross v. State*, 769 N.E.2d 1136, 1141 n.4 (Ind. 2002). A defendant must show a nexus between his age and his culpability, and failure to do so means that a defendant has not shown that his age was a significant mitigator. *See id.*

[11] Here, Moore was twenty-three years old at the time of sentencing. The trial court acknowledged Moore’s age during sentencing, but ultimately chose not to find it to be a mitigating factor. Specifically, the trial court found that Moore’s relatively young age was offset by his criminal history and the fact that “he ha[d] demonstrated increasingly violent conduct.” Tr. Vol. III p. 174. The trial court, therefore, found that Moore was more like the “relatively young [offenders] who appear hardened and purposeful.” *Ellis*, 736 N.E.2d at 736. The evidence at sentencing established that Moore had an extensive juvenile delinquency and criminal history, which had become more violent over time and culminated with the instant offense where he committed attempted murder. The facts of the crime revealed that Moore shot Robinson multiple times at close range over a workplace argument and then fled the scene. We conclude that the trial court did not abuse its discretion when it did not find Moore’s age to be a mitigating factor.

[12] As to his assertion that the trial court should have found that his upbringing in a violent community was a significant mitigating factor, the trial court stated that it did not disagree with Moore’s contention that, in the community where he grew up and resides, it may be normal to settle things in a violent manner. However, the trial court went on to disagree that those community norms justified mitigation because “this type of conduct is simply not acceptable” and there was “no place for it in this community.” Tr. Vol. III p. 175. We, therefore, do not find that the trial court abused its discretion in not finding this to be a significant mitigating factor.

[13] Regarding Moore’s mental health diagnoses and guilty plea, the trial court actually considered both as mitigating factors.⁵ When discussing Moore’s mental health, the trial court stated,

[Defense counsel] made a comment. I think as a mitigator, when asking the Court to consider, I think a few of the diagnoses that had made it for [] Moore, namely his fetal alcohol syndrome and his explosive disorder, and [defense counsel] talked about this disconnect between this disagreement and the level of conduct that [] Moore used in this disagreement. And I – and I don’t necessarily disagree that that – it is substantial. What is – you know, is this the first workplace disagreement that’s led to some kind of altercation or fight? No. But this disconnect is true. There is a disconnect that this – what probably ordinarily might

⁵ To the extent Moore is arguing that the trial court abused its discretion in the weight it provided to these mitigating factors, we remind him that “the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence and thus a trial court cannot now be said to have abused its discretion in failing to properly weigh such factors.” *Kimbrough v. State*, 979 N.E.2d 625, 628 (Ind. 2012) (internal quotations omitted).

be handled in a shouting match or pushing and shoving or maybe in a fist fight, in this case, immediately goes to a firearm and a murder. But for the grace of God, this would have been a murder.

Id. at 175. In stating this, the trial court considered Moore's mental health diagnoses, specifically fetal alcohol syndrome and intermittent explosive disorder, as mitigating circumstances and discussed how such diagnoses may have led to the disconnect between what started as a workplace dispute and ended with someone being shot multiple times. However, the trial court did not give Moore's mental health much weight in its pronouncement of sentence, explaining:

[T]here comes a point where the Court has to make a decision about the individual's freedom versus the community safety. And there's simply no place in this community or in this society for someone who is this violent. Regardless of what the cause of that violence might be, whether that's a mental health issue, fetal alcohol syndrome, whatever, there's simply no room[,] and the community needs to be assured that they can be safe from people like [] Moore.

Id. at 177. Even though Moore's conduct may have been influenced by his mental health diagnoses, the circumstances of the crime reveal a crime that was more calculating than reactionary. Moore entered the workplace, confronted Robinson, and told him to go outside. In the meantime, he called Herman and told her to drive to the workplace to provide a gun and a way to leave the scene. The trial court considered Moore's mental health diagnoses, but merely failed

to attribute as much weight to those factors as Moore preferred. The trial court did not abuse its discretion.

[14] As to his guilty plea, the trial court considered it as a mitigating factor but did not seem to give it much weight due to the fact that Moore's decision to plead guilty occurred on the second day of trial, which the trial court saw as more of a pragmatic decision than coming from a position of remorse. Further, in exchange for Moore's guilty plea, the State dismissed his Level 4 felony charge of unlawful possession of a firearm by a serious violent felon. It has been recognized that "a defendant who willingly enters a plea of guilty has extended a substantial benefit to the [S]tate and deserves to have a substantial benefit extended to him in return." *Francis v. State*, 817 N.E.2d 236, 237 (Ind. 2004) (citations omitted). "A guilty plea is not necessarily a mitigating factor where the defendant receives substantial benefit from the plea or where evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic." *Amalfitano v. State*, 956 N.E.2d 208, 212 (Ind. Ct. App. 2011), *trans. denied*. In light of the substantial evidence against Moore due to the crime being captured on video, the fact that he waited until the second day of trial to plead guilty, which did not confer a great benefit to the State, and the benefit conferred to him of having his Level 4 felony charge dismissed, we cannot say his plea was entitled to significant weight as a mitigating factor.

[15] We, therefore, conclude that the trial court did not abuse its discretion in its determinations of mitigating factors and in sentencing Moore as a whole.

II. Inappropriate Sentence

- [16] Moore argues that his aggregate sixty-year sentence is inappropriate. The Indiana Constitution authorizes 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). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).
- [17] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).
- [18] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the

crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Moore was convicted of one count of Level 1 felony attempted murder, enhanced by the use of a firearm in the commission of the offense. A conviction for a Level 1 felony carries a sentencing range of between twenty and forty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4(b). The sentencing enhancement for using a firearm in the commission of the crime imposes an additional term between five and twenty years. I.C. § 35-50-2-11. Thus, Moore’s conviction for attempted murder with the enhancement for using a firearm carried a maximum aggregate sentence of sixty years. The trial court sentenced Moore to the maximum sentence for a Level 1 felony, forty years, which was enhanced by the maximum twenty years for the firearm sentencing enhancement, resulting in an aggregate sentence of sixty years in the DOC.

[19] When reviewing the nature of the offenses, this court considers “the details and circumstances of the commission of the offense[s].” *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Moore concedes that his offense was a violent crime that involved the shooting of another person but argues that his sentence is inappropriate because he received a sentence equivalent to one given if the victim had actually died, which did not occur here. He further asserts that his actions were caused by acting out of impulse and rage, which stemmed from his mental health diagnoses.

[20] In looking at the nature and circumstances of Moore’s crime, it is revealed that Moore gunned down his unarmed co-worker over a simple workplace dispute. In response to a disagreement, Moore approached Robinson and told him to go

outside. Moore then called his girlfriend and instructed her to come to bring him a gun and wait for Moore. Once he obtained the gun, Moore went right up to Robinson—who was walking away from Moore—and shot him as many as eight times at close range. Robinson attempted to run away, but Moore chased after him. After shooting Robinson, Moore ran back to his girlfriend’s vehicle, and they drove away. Moore’s actions were not accompanied by restraint, regard, and lack of brutality, but rather were a premediated gunning down of an unarmed co-worker in response to a workplace dispute.

[21] The character of the offender is found in what we learn from his life and conduct. *Merriweather*, 151 N.E.3d at 1286. “A defendant’s criminal history is one relevant factor in analyzing character, the significance of which varies based on the ‘gravity, nature, and number of prior offenses in relation to the current offense.’” *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant’s character for the purposes of sentencing. *Id.*

[22] As to his character, Moore concedes that he has an extensive criminal history but contends that he also has positive attributes, including that he was employed at Berne Apparel until the time of his arrest, he accepted responsibility for his actions by pleading guilty, he was only twenty-three and therefore had the ability to be rehabilitated, and he grew up in a community that exposed him to violence at a young age. In looking at Moore’s character, he has an extensive history with the criminal justice system, starting from when

he was twelve years old, which is filled with episodes of violence and the victimization of others, including through the use of a deadly weapon. As a juvenile, Moore was adjudicated delinquent for acts that would be felonies and misdemeanors if committed by an adult, including Class D felony battery resulting in bodily injury; Class B misdemeanor disorderly conduct for engaging in fighting or tumultuous conduct; Class A misdemeanor intimidation; four counts of Class A misdemeanor battery resulting in bodily injury; two counts of Class B misdemeanor battery; two counts of Level 6 felony resisting law enforcement where the person draws or uses a deadly weapon; and Class A misdemeanor dangerous possession of a firearm. As an adult, Moore was convicted of Level 3 felony attempted robbery by taking property by force or threatening the use of force while armed, Level 5 felony battery by means of a deadly weapon, and Level 6 felony criminal recklessness committed with a deadly weapon. When he committed the present crime, Moore was on probation for these convictions, and a probation violation was filed due to his new offenses. Additionally, at the time of sentencing, Moore had two pending charges of Class A misdemeanor battery, which stemmed from his conduct while incarcerated in the Wells County Jail pending the outcome of this case. Therefore, Moore has an extensive criminal history riddled with violent conduct that has gotten more violent as time went on. Most of his crimes involved physical harm to victims and many also involved the use of a firearm.

[23] Additionally, although Moore was employed at Berne Apparel until the day of the crime, the evidence shows that he had only been employed there for about

five months prior to the crime, and before that, he did not have any significant employment. It is true that Moore pleaded guilty, but the evidence indicates that it was a pragmatic choice given the overwhelming evidence of Moore's guilt and was not done out of an acceptance of responsibility, especially since he did not plead guilty until the second day of trial. Further, his background of growing up in a violent community does not demonstrate Moore's good character, and instead, strikes us as an attempt to justify his actions.

Consequently, Moore has failed to identify "substantial virtuous traits or persistent examples of good character" to support reducing his sentence.

Stephenson, 29 N.E.3d at 122.

[24] Based on the facts in the record, Moore has not shown that his sixty-year aggregate sentence for attempted murder committed with a firearm is inappropriate in light of the nature of the offense and his character.

[25] Affirmed.

Pyle, J., and Tavitas, J., concur.