MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Jerome Matthew Pinckney
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

December 17, 2025

Court of Appeals Case No.
25A-CR-1667

Appeal from the Marion Superior Court

The Honorable Clark Rogers, Judge
The Honorable Steven Rubick, Magistrate

Trial Court Cause No.
49D25-2205-F6-14274

Memorandum Decision by Judge DeBoer
Judges Bradford and Weissmann concur.

DeBoer, Judge.

Case Summary

[1] A jury convicted Jerome Pinckney of Level 6 felony resisting law enforcement and Class A misdemeanor carrying a handgun without a license. At sentencing, the trial court identified several aggravating and mitigating circumstances and found that they balanced each other, yet it gave Pinckney an enhanced sentence on the Level 6 felony. Pinckney appeals, arguing that the evidence was not sufficient to support his misdemeanor conviction and that the trial court abused its discretion when it enhanced his felony sentence. We affirm.

Facts and Procedural History

[2] Prior to April 18, 2022, Pinckney and Ashlen Cooper had "dated briefly" but did not know each other very well. Transcript at 63. On the evening of April 18, Pinckney picked up Cooper in a "dark in color Chevrolet SUV" and the two went to a movie, dinner, and drove around. *Id.* at 72. Pinckney drove, and Cooper did not have a license or any driving experience.

[3] While Pinckney and Cooper were on the road, a patrol officer received information that a license plate reader had identified the "plate of a stolen vehicle for a [black] Chevy Equinox." *Id.* At an intersection, the officer noticed an SUV "dark in color just like the one that was reported stolen." *Id.* at 78. It was the vehicle Pinckney and Cooper were occupying. As they drove by, the officer performed "a U-turn to get behind the vehicle to run the plate[.]" *Id.*

Before the officer could check the license plate, Pinckney made an immediate turn, "rapidly accelerate[d]," and then ran a red light. *Id.* The officer activated his emergency lights and pursued Pinckney. At this point, Cooper, who is deaf, saw Pinckney "talking to himself" and had a "gut feeling that something was wrong" before she noticed the police chasing them. Shortly into the chase, Pinckney lost control of the vehicle and ran off the road and into a rock wall. Having disabled the vehicle, Pinckney "exited [it] and fled" on foot, disobeying the officer's command to stop and leaving Cooper in the car crying and terrified. *Id.*

[4] After communicating with Cooper through pen and paper, the officer ran the vehicle's license plate and discovered it was registered to Pinckney, who had an outstanding warrant for his arrest. When Pinckney's vehicle was inventoried, a black handgun was found in a bag on the floorboard behind the driver's seat. It was a black Smith and Wesson M & P Shield with the serial number JET 0724. Pinckney did not have a license to carry the firearm.

[5] In May 2022, the State charged Pinckney with Count I: Resisting Law Enforcement, as a Level 6 felony;[1] and Count II: Carrying a Handgun Without a License, a Class A misdemeanor.[2] Pinckney was not arrested until November 2024.

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[1] Ind. Code § 35-44.1-3-1(a)(3), (c)(1)(A) (2022).

[2] I.C. § 35-47-2-1(a), (e) (amended July 1, 2022).

[6] At trial, Cooper testified that she did not own a handgun and "[a]nything in that car was not [hers]." *Id.* at 67. Pinckney's former girlfriend, Avayonna Small, testified that she had dated Pinckney for about a year in 2018 or 2019. She later acquired a black Smith and Wesson M & P Shield semi-automatic handgun around July 31, 2020. She did not recall the entire serial number but remembered it started with JET 0. The jury found Pinckney guilty of both counts.

[7] At Pinckney's sentencing, the parties presented argument and the trial court made the following sentencing statement:

> Having reviewed the Pre-Sentence Report, having considered the evidence and argument presented, Court will note in aggravation Defendant's criminal history. Notwithstanding [defense counsel's] efforts to distance her client on this history. He has three felony convictions that we know of. One misdemeanor conviction. He has criminal involvements across two states and one commonwealth. For that obviously I would assess some moderate aggravating weight. The nature and circumstances of the offense . . . are due more aggravating weight. Specifically, th[ough] not designated as a victim of the case, the passenger in this car, during the trial was visibly shaking in recounting the offense – the events of that night. And the body-worn camera of the arresting officer showed her frantic fear following the accident. Although the Defendant may have been himself panicked, it showed a callous disregard for the woman he left in the car. And that does afford some aggravating weight in the Court's consideration. In mitigation, I would note that his period of incarceration well outweighs the hardship on his dependents. And I will give some mitigating weight to his pre-sentencing efforts at rehabilitation as noted by [defense counsel]. I find the aggravating circumstances balance the mitigating

> circumstances. The Defendant will be sentenced to five hundred and forty-five days executed at the Department of Correction on Count 1 with a concurrent three hundred and sixty-five day executed sentenced on Count 2.

Tr. at 112-13. Pinckney now appeals.

Discussion and Decision

1. Constructive Possession

[8] Pinckney contends that the State failed to present sufficient evidence to support his conviction for Class A misdemeanor carrying a handgun without a license. When evaluating a sufficiency challenge, "we consider only probative evidence and reasonable inferences that support the judgment of the trier of fact." *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We do not reweigh the evidence or assess witness credibility. *Id.* "We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.*

[9] To support his conviction, the State needed to prove that Pinckney knowingly or intentionally carried a handgun in or upon his vehicle or person without a license. Ind. Code 35-47-2-1(a), (e) (amended July 1, 2022). The element that the accused must have "carried" the handgun contemplates either actual or constructive possession. *Ericksen v. State*, 68 N.E.3d 597, 600-01 (Ind. Ct. App. 2017) (citing *Henderson v. State*, 715 N.E.2d 833, 835 (Ind. 1999)), *trans. denied*. Because Pinckney was not found in direct physical control of the handgun, the State proceeded on a constructive possession theory.

[10] Constructive possession occurs when the defendant had (1) the intent to maintain dominion and control over the item and (2) the capability to maintain dominion and control over it. *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004).

> When constructive possession is asserted, the State must demonstrate the defendant's knowledge of the contraband. This knowledge may be inferred from either the exclusive dominion and control over the premise containing the contraband, or, where as here, the control is non-exclusive, with evidence of additional circumstances pointing to the defendant's knowledge of the presence of the contraband. Proof of dominion and control of contraband has been found through a variety of means: (1) incriminating statements by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.

Ericksen, 68 N.E.3d at 601 (internal citations omitted).

[11] Pinckney asserts that the State failed to prove he constructively possessed the handgun found behind the driver's seat in his car because none of these additional circumstances existed during the events that gave rise to the charge. He contends that his flight from the scene was not evidence of his knowledge of the gun because the "more likely reason for his flight was the existing warrant for his arrest." Appellant's Brief at 11. He even suggests that handgun was "probably" Small's and "he had no knowledge that it was there." *Id.*

[12] In short, Pinckney's arguments are impermissible requests for us to reweigh the evidence, and the State presented sufficient evidence of his constructive possession. At his trial, the State proved that the only other occupant in Pinckney's vehicle did not have any of her possessions in the vehicle and had never owned a handgun. Although it was concealed in a bag, the handgun found on the floorboard behind the driver's seat was in close proximity to Pinckney as the driver. Moreover, while Pinckney claims his flight was unrelated to his knowledge of the presence of the handgun, any conflicting inferences about the purpose of his flight were for the jury to resolve, not this Court. *See Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022) (noting it is the jury's role to resolve any conflicts in the evidence). The same goes for his argument that Small—who seemingly acquired a handgun after her relationship with Pinckney had ended—could have left the handgun in his car and he never discovered it.

[13] Given the facts adduced at trial, a reasonable jury could have found that Pinckney constructively possessed the handgun in his car.

2. Sentence

[14] Pinckney also argues that the trial court abused its discretion by sentencing him to an enhanced sentence on the Level 6 felony despite finding that the aggravating and mitigating circumstances balanced. Sentencing decisions that are within the statutory range fall within the sound discretion of the trial court and are subject to appellate review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875

N.E.2d 218 (Ind. 2007). A trial court abuses its discretion if its "decision is 'clearly against the logic and effect of the facts and circumstances before the court[.]'" *Id.* (quoting *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)).

[15] Pinckney specifically contends that "[i]f a trial court determines that the aggravating and mitigating circumstances balance, it should be required [to] impose the advisory sentence."[3] Appellant's Br. at 14. The State counters that "trial courts should retain discretion even when they find balancing weight of the sentencing factors."[4] Appellee's Br. at 12.

[16] Pinckney's position is inconsistent with our legislature's decision to adopt an advisory sentencing scheme. In April 2005, our legislature amended our sentencing statutes to replace Indiana's "presumptive" sentencing scheme with an "advisory" sentencing scheme. *Anglemyer*, 868 N.E.2d at 487-88 (noting the change was in response to the U.S. Supreme Court's decision in *Blakely v. Washington*, 542 U.S. 296 (2004), *reh'g denied*).[5] Under the current advisory

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[3] The advisory sentence for a Level 6 felony is one year. I.C. § 35-50-2-7(b).

[4] The State does not challenge Pinckney's framing of the issue that the trial court weighed the aggravating and mitigating circumstances and found they balanced each other. The court's oral sentencing statement shows it (1) considered Pinckney's criminal history and the nature and circumstances of the crime aggravating circumstances, (2) seemingly rejected his proposed mitigator of hardship to dependents, and (3) considered his pre-sentencing rehabilitative efforts in mitigation. This could be viewed as somewhat inconsistent with a finding that the aggravating circumstances were offset by the mitigating circumstances, and it could be argued the trial court used imprecise language and intended something different. However, the State apparently agrees with Pinckney's reading of the sentencing statement, and "it is not this Court's place to make arguments for a party on appeal." *Snow v. State*, 137 N.E.3d 965, 970 (Ind. Ct. App. 2019), *reh'g denied*, *trans. denied*, *cert. denied.*

[5] In *Blakely*, the U.S. Supreme Court applied the rule that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to the jury, and proved beyond a reasonable doubt." 542 U.S. at 301 (quoting *Apprendi v. New Jersey*, 530 U.S. 466,

sentencing scheme, the "advisory sentence" is the "guideline sentence that the court *may* voluntarily consider when imposing a sentence." I.C. § 35-50-2-1.3(a) (emphasis added). While the Indiana Supreme court has described the advisory sentence for a given level of offense as a "helpful guidepost for ensuring fairness, proportionality, and transparency in sentencing[,]" its imposition is neither mandatory nor presumptive. *Hamilton v. State*, 955 N.E.2d 723, 726 (Ind. 2011).

[17] When the trial court deviates from the advisory sentence, it "shall issue a statement of [its] reasons for selecting the sentence that it imposes[.]" I.C. § 35-38-1-1.3. Indiana Code section 35-38-1-7.1 sets out various aggravating and mitigating circumstances the court "may consider" in imposing a sentence. I.C. § 35-38-1-7.1(a)-(b). "If the trial court includes aggravating or mitigating circumstances in its sentencing statement, it must identify all of the significant circumstances and 'explain why each circumstance has been determined to be aggravating or mitigating.'" *Gleason v. State*, 965 N.E.2d 702, 710 (Ind. Ct. App. 2012) (quoting *Anglemyer*, 868 N.E.2d at 490). A court is under no obligation to weigh aggravators and mitigators, and if it does, its assignments of value are not subject to appellate review. *Anglemyer*, 868 N.E.2d at 491.

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490 (2000)). In doing so, it held that Washington's sentencing scheme violated the defendant's Sixth Amendment right to trial by jury to the extent that it allowed judges to increase a sentence above the statutory maximum based on the judge's own findings. *Id.* at 302-05. In response to *Blakely*, the Indiana Supreme Court held that Indiana's presumptive sentencing system was unconstitutional. *Smylie v. State*, 823 N.E.2d 679, 682-84 (Ind. 2005), *cert. denied*. Thereafter, the General Assembly amended Indiana's sentencing statutes to "eliminate[] fixed presumptive terms in favor of 'advisory sentences' that are between the minimum and maximum terms." *Anglemyer*, 868 N.E.2d at 487-88.

Ultimately, a sentencing statement is adequate if it includes a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." *Id.* at 490.

[18] If we were to hold that a trial court's finding of equal weight between the aggravators and mitigators *requires* it to impose the advisory sentence, that would effectively reinstate the advisory sentence as a presumptive sentence. Pinckney's position is also contrary to Indiana Code section 35-38-1-7.1(d), which allows a court to impose any statutorily and constitutionally authorized sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Furthermore, we note that a finding that the trial court erred by failing to impose the advisory sentence under the circumstances would be equivalent to a finding that it abused its discretion in its weighing of the aggravating and mitigating circumstances, the relative weight of which are not subject to appellate review. *Anglemyer*, 868 N.E.2d at 491. Instead, our abuse of discretion review is narrow and limited to whether the trial court entered a reasonably detailed sentencing statement and identified aggravating circumstances that are supported by the record as well as all significant mitigating circumstances. *See id.* at 490-91.

[19] In short, because the trial court provided a reasonably detailed statement outlining its reasons for Pinckney's sentence, it had discretion to "impose any sentence . . . authorized by statute[] and . . . permissible under the Constitution of the State of Indiana[,]" regardless of the presence or relative weight of aggravating or mitigating factors. *Id.* at 491 (quoting I.C. § 35-38-1-7.1(d)).

Thus, the court did not abuse its discretion when it enhanced Pinckney's Level 6 felony sentence six months above the advisory sentence but below the statutory maximum.[6]

Conclusion

[20] We conclude there was sufficient evidence to support Pinckney's conviction for Class A misdemeanor carrying a handgun without a license and the trial court did not abuse its discretion in sentencing him to an enhanced sentence.

[21] Affirmed.

Bradford, J., and Weissmann, J., concur.

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[6] A trial court's sentencing decision is also subject to review for inappropriateness under Appellate Rule 7(B); however, Pinckney has not raised a Rule 7(B) challenge.

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