

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Deborah Markisohn
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Allen C. Fender,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 16, 2023

Court of Appeals Case No.
22A-CR-940

Appeal from the
Marion Superior Court

The Honorable
Shatrese M. Flowers, Judge

Trial Court Cause No.
49D28-1901-MR-932

Memorandum Decision by Judge Vaidik
Judges Bradford and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Allen C. Fender appeals his conviction and fifty-eight-year sentence for murder, arguing the evidence is insufficient to support the conviction and that the sentence is inappropriate. We disagree and affirm.

Facts and Procedural History

- [2] The evidence most favorable to the judgment is as follows. Fender and Cody Edgecombe were friends. On December 9, 2018, Edgecombe was at a house in Indianapolis with his girlfriend, Barbara Scott, and several other people: Mariah Manley, Eric Kirby, and David Smith. All five were drug users. At some point, Edgecombe texted Fender a picture of Smith and said Smith was holding him against his will. Fender and his girlfriend, Stefani Middleton, had been using methamphetamine. Middleton thought Edgecombe was joking about being held captive, but Fender seemed to think he was serious, so they drove to the house. Fender, who was armed with a pistol, met with Edgecombe outside the house and then went inside. He ran up the stairs and entered a bedroom where Scott, Manley, Kirby, and Smith were located. Fender asked which one was Smith, and when Smith identified himself, Fender shot him several times, killing him. Fender ran out of the house, re-entered the car, and sped away. He told Middleton he had shot someone, and later he gave his gun to a friend. During the ensuing investigation, Scott identified Fender as the shooter.

- [3] The State charged Fender with murder. (The State also charged Fender with Level 4 felony unlawful possession of a firearm by a serious violent felon but later dismissed that count.) The case proceeded to a jury trial. Fender did not dispute he was at the house at the time of the shooting but argued he wasn't the shooter. Edgecombe, Scott, Manley, and Middleton all testified for the State, and the jury found Fender guilty.
- [4] The trial court sentenced Fender to fifty-eight years in the Department of Correction. In doing so, the court found as aggravating circumstances that Fender (1) has a history of criminal convictions and juvenile adjudications (four felony convictions, four misdemeanor convictions, and two juvenile adjudications), (2) violated probation and community corrections in the past, (3) was on community corrections when he committed this offense, and (4) presents a high risk of reoffending, according to his IRAS assessment. The court also found as mitigating circumstances that Fender (1) was abused as a child, (2) has mental-health issues, and (3) has a history of substance-abuse problems.
- [5] Fender now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

- [6] Fender first contends the evidence is insufficient to prove he was the shooter. He acknowledges that shortly after the shooting Scott identified him as the shooter, but he argues this identification "was not beyond a reasonable doubt"

because Scott was on drugs, going through a “tough time personally,” and worried about her kids. Appellant’s Br. pp. 24-25. Fender also acknowledges Middleton testified that Fender told her he had shot someone in the house, but he notes that Middleton used meth on the day of the shooting and asserts that her testimony “must be considered in light of her impairment due to drug use that day.” *Id.* at 25-26. Fender is asking us to judge the credibility of witnesses, which is not part of our sufficiency review. *See Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). That task belongs to the trier of fact. And here, the jury clearly found at least some of the State’s identification evidence to be credible. We will not second guess that determination.

II. Sentence

[7] Fender also contends his sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing

matters, defendants must persuade us that their sentences are inappropriate.

Schaaf v. State, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[8] The sentencing range for murder is forty-five to sixty-five years, with an advisory sentence of fifty-five years. Ind. Code § 35-50-2-3. Here, the trial court imposed an above-advisory term of fifty-eight years. Fender argues the sentence should be reduced to the advisory term of fifty-five years.

[9] Fender has not persuaded us his sentence is an outlier. Fender notes that Smith “did not suffer for an extended period of time” and argues that the facts “are no more egregious than similar murders this Court has seen.” Appellant’s Br. p. 29. He also emphasizes his rough upbringing, his mental-health issues, and his history of substance abuse. But he fails to even mention his four prior felony convictions (Level 4 felony unlawful possession of a firearm by a serious violent felon in 2018, Class B felony burglary and Class D felony theft in 2009, and Class D felony theft in 2007). Fender also has several misdemeanor convictions, has a history of probation and community-corrections violations, and was on community corrections when he committed this offense. This history is more than sufficient to support a sentence three years above the advisory.

[10] Affirmed.

Bradford, J., and Pyle, J., concur.