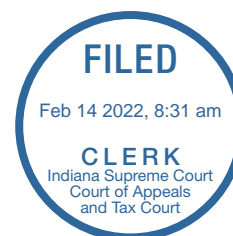


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Marquise Latrell Mance,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 14, 2022

Court of Appeals Case No.
21A-CR-1949

Appeal from the Lake Superior
Court

The Honorable Salvador Vasquez,
Judge

Trial Court Cause No.
45G01-1808-F3-81
45G01-1903-F3-37

Mathias, Judge.

[1] Marquise L. Mance appeals the nine-year sentence imposed by the trial court following his guilty plea to two counts of Level 3 felony armed robbery. He contends that his sentence is inappropriate in light of the nature of the offenses and his character. Concluding that he has not met his burden to establish that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] In April 2018, Mance was sentenced to two years of probation for Level 5 felony robbery. Appellant's App. Vol. II p. 102. Just three months into his probation, Mance committed yet another crime.

[3] On August 13, 2018, Alexandra Pharms was sitting in her parked car in Hammond, Indiana. When she exited her vehicle, eighteen-year-old Mance and three other individuals surrounded Pharms. Mance pointed a gun at Pharms and told her to give him the keys to her car.¹ Pharms acquiesced to Mance's demand and gave him her keys. Mance and his accomplices then drove away in Pharms' car.

[4] The next day, Mance and his accomplices repeated their crime on another victim. *Id.* at 89. Christopher Stewart had just come to a stop while driving his car when Mance approached him. *Id.* Mance then held Stewart at gunpoint.² *Id.* Mance ordered Stewart out of his car and demanded he hand over his cell

¹ The gun was a BB gun, but Pharms did not realize that the weapon was not a handgun.

² Like Pharms, Stewart believed that Mance was armed with a handgun.

phone, and Stewart complied. *Id.* Mance and his accomplices then drove away in Stewart's car. *Id.*

[5] On August 16, 2018, the State charged Mance with Level 3 felony armed robbery and Level 6 felony auto theft for the offenses he committed against Pharms. *Id.* at 24. And on March 12, 2019, the State charged Mance with Level 3 felony armed robbery and Level 6 felony auto theft for the offenses he committed against Stewart.³ *Id.* at 21.

[6] On December 22, 2020, Mance and the State entered into a plea agreement to resolve the charges in both cases. Mance agreed to plead guilty to two counts of Level 3 felony armed robbery in exchange for the State's dismissal of the two counts of Level 6 felony auto theft. Mance agreed to serve four years and six months in the Department of Correction for each conviction. The plea agreement left to the trial court's discretion whether his sentences would be served concurrently or consecutively.

[7] The trial court held Mance's sentencing hearing on January 25, 2021. The trial court considered two mitigating factors and six aggravating factors. Appellant's App. Vol. III pp. 126–27. The two mitigating factors included Mance's guilty plea and that he was eighteen years old when he committed the offenses. *Id.* at

³ Initially, the trial court found Mance incompetent to stand trial. *Id.* at 51. After he received treatment, Mance's competency to stand trial was restored. *Id.* at 57.

126. The six aggravating factors were: Mance was serving probation from a robbery conviction; he was only three months into his probation when he committed these offenses; he had a criminal history; he committed multiple and separate offenses within a short period of time; the offenses involved separate and distinct victims; and he has a dishonest character. *Id.* at 127. After considering the aggravating and mitigating factors, the trial court ordered Mance to serve his four and one-half year sentences consecutively.

[8] Mance now appeals.

Discussion and Decision

[9] Mance argues that his nine-year aggregate sentence is inappropriate under [Indiana Appellate Rule 7\(B\)](#). Under this rule, we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” [App. R. 7\(B\)](#). The defendant bears the burden of persuading this Court that the sentence was inappropriate. [Childress v. State](#), 848 N.E.2d 1073, 1080 (Ind. 2006). This determination “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done others, and myriad of 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*).

[10] 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, we will not modify the court’s sentence unless the defendant produces 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).

[11] Here, Mance pleaded guilty to two counts of Level 3 felony armed robbery, which carries a sentencing range of three to sixteen years with an advisory sentence of nine years. *Ind. Code* § 35-50-2-5(b). He agreed to a sentence of four years and six months for each Level 3 felony count in exchange for the State’s dismissal of the two counts of Level 6 felony auto theft. Appellant’s App. Vol. III p. 87. The trial court ordered the two sentences to be served consecutively for an aggregate nine-year sentence. We now turn to our consideration of whether this sentence is inappropriate in light of the nature of his offenses and his character.

[12] In analyzing the nature of the offenses, we look at the extent and depravity of the defendant’s conduct. *See, e.g., Crabtree v. State*, 152 N.E.3d 687, 704 (Ind. Ct. App. 2020), *trans. denied*. Mance argues that his use of a BB gun in committing his offenses, which posed a lesser danger to the victim than a firearm, warrants revision of the sentence. Although they are not firearms, BB guns can be considered deadly weapons. *Davis v. State*, 835 N.E.2d 1102, 1112–13 (Ind. Ct. App. 2005), *trans. denied*. In addition, Mance stipulated that the weapon he used

to conduct the robberies was a deadly weapon. Appellant’s App. Vol. III p. 89. Further, the distinction that the weapon used was a BB gun rather than a firearm did not diminish the terror caused to both victims. The mere fact that the deadly weapon used to rob two separate victims on two consecutive days was a BB gun does not render the trial court’s sentence inappropriate.

[13] Turning to Mance’s character, Mance first argues that his youth tips the scale in favor of revision of his sentence. Mance relies on our supreme court’s recent opinion in *Wilson v. State*, 157 N.E.3d 1163 (Ind. 2020) to support his argument. In that case, the court revised the 181-year sentence of sixteen-year-old Wilson to 100 years making him eligible for release in his sixties to provide him with an “opportunity and incentive to rehabilitate.” *Id.* at 1184. Mance’s reliance on *Wilson* is unavailing, however, because Mance was not ordered to serve a sentence that is effectively a sentence of life in prison as was the sixteen-year-old defendant in *Wilson*. *See id.* And the trial court considered Mance’s age of eighteen-years-old as a mitigating circumstance for both causes.

[14] Second, Mance argues that his borderline intellectual functioning should warrant revising the sentences to be served concurrently. Mance cites *Weeks v. State*, 697 N.E.2d 28 (Ind. 1998), which articulated four considerations bearing on the weight, *if any*, that should be given to mental illness in sentencing: (1) the extent of the defendant’s inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Id.* at 30 (emphasis added).

Mance's reliance on *Weeks* is similarly unavailing. In *Weeks*, the defendant at the time of the crime had been in and out of hospitals and diagnosed with schizophrenia, schizo-affective disorder, and bipolar disorder. *Id.* at 31.

[15] Mance, by contrast, points to no medical diagnosis of serious mental illness in his briefs. Instead, Mance relies on testimony from his mother about his childhood difficulty, as well as his full scale I.Q. score range of 66 to 70 to argue that the trial court's sentence is inappropriate. These reasons are not sufficient for us to find the trial court's near-minimum sentence as inappropriate, particularly in light of the fact that Mance was serving probation for a felony robbery conviction when he committed two Level 3 felonies against two victims, while armed with a deadly weapon.

[16] In sum, we conclude that Mance's nine-year aggregate sentence is not inappropriate in light of the nature of the offenses and the character of the offender.

[17] Affirmed.

Bailey, J., and Altice, J., concur.