

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Kevin W. Shuffitt,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2023

Court of Appeals Case No.
22A-CR-1925

Appeal from the Bartholomew
Superior Court

The Honorable James D. Worton,
Judge

Trial Court Cause Nos.
03D01-2108-F3-4297
03D01-2111-F5-5925

Pyle, Judge.

Statement of the Case

- [1] Kevin Shuffitt (“Shuffitt”) appeals, following his guilty plea, his aggregate sentence for Level 5 felony robbery¹ and Level 5 felony criminal recklessness.² Shuffitt argues that his sentence is inappropriate. Concluding that Shuffitt has failed to show that his sentence is inappropriate, we affirm his sentence.
- [2] We affirm.

Issue

Whether Shuffitt’s sentence is inappropriate.

Facts

- [3] In November 2020, the State charged Shuffitt with Level 6 felony unlawful possession of a syringe and Class C misdemeanor possession of paraphernalia in Cause 03D01-2011-F6-5432 (“Cause 5432”). In December 2020, the State charged Shuffitt with Class A misdemeanor conversion in Cause 36D01-2012-CM-1136 (“Cause 1136”). In May 2021, Shuffitt plead guilty to the charge, and the trial court placed Shuffitt on probation.
- [4] In July 2021, while Shuffitt was on probation, he took a bicycle from another person by using force or threatening force. Thereafter, in August 2021, the

¹ IND. CODE § 35-42-5-1.

² I. C. § 35-42-2-2.

State charged Shuffitt with Level 3 felony robbery resulting in bodily injury in Cause 03D01-2108-F3-4297 (“Cause 4297”). The probable cause affidavit indicated that Shuffitt pointed a gun at the victim’s head, threatened to kill him if he did not get off the bicycle, and struck the victim in the head with the gun several times. The trial court released Shuffitt on bond in Cause 4297.

[5] In November 2021, Shuffitt, who was out on bond and had a suspended license, engaged in aggressive driving that created a substantial risk of bodily injury to Jeremy Stillabower (“Stillabower”) and that resulted in Stillabower’s death. Thereafter, the State, in Cause 03D01-2111-F5-5925 (“Cause 5925”), charged Shuffitt with: Count 1, Level 5 felony criminal recklessness based on his aggressive driving that resulted in Stillabower’s death; Count 2, Level 6 felony criminal recklessness; Count 3, Level 6 felony criminal recklessness; Count 4, Class A misdemeanor reckless driving causing bodily injury; and Count 5, Class A misdemeanor driving while suspended. The probable cause affidavit indicated that Shuffitt followed his former girlfriend’s vehicle at a high rate of speed and then drove his truck into the rear of her vehicle. She continued to drive, and Shuffitt followed her. When she stopped at a traffic signal, Shuffitt again drove his truck into the rear of her vehicle. Shuffitt then drove into oncoming traffic and struck two more vehicles, one in which Stillabower was a passenger and the other in which Shannon Richards (“Richards”) was a passenger. Stillabower died in the hospital approximately one week later, and Richards suffered head pain. The State filed a petition to revoke Shuffitt’s pretrial release, and the trial court granted the petition.

- [6] In March 2022, while Shuffitt was incarcerated in the jail, he was charged with disorderly conduct for “exhibiting disruptive and/or violent conduct [that] disrupt[ed] the security of the facility or other areas in which [Shuffitt] [wa]s located.” (App. Vol. 2 at 50). Shuffitt was “found guilty” of violating the jail rules and placed on lockdown. (App. Vol. 2 at 50).
- [7] In June 2022, Shuffitt entered a guilty plea to a reduced charge of Level 5 felony robbery in Cause 4297 and to Level 5 felony criminal recklessness charge in Cause 5925 in exchange for the State’s dismissal of the remaining charges in Cause 5925 and the charges in Cause 5432. The State also agreed not to file any charges based on an incident that resulted in Shuffitt’s arrest on February 4, 2021. Sentencing was left open to the trial court’s discretion.
- [8] During Shuffitt’s sentencing hearing, some of Stillabower’s family and friends, including Stillabower’s wife and sister, appeared at the sentencing hearing to give in-person victim impact statements. These witnesses also read written victim impact statements from Stillabower’s two children.
- [9] During the hearing, Shuffitt acknowledged that he had used drugs since he was sixteen years old and that he had refused to complete a court-ordered drug treatment program in 2019. Shuffitt also admitted that, when he committed the robbery offense in Cause 4297, he had pointed a gun at the victim, threatened him, and hit him. Additionally, he admitted that, on the day of the offenses in Cause 5925, he drove his truck in an angry manner after he had used drugs and while knowing that his brakes were bad.

[10] The presentence investigation report (“PSI”) showed that Shuffitt, who was twenty-one years old at the time of sentencing, had a criminal history consisting of felony and misdemeanor drug-related offenses, misdemeanor conversion, and juvenile adjudications for theft and auto theft. Shuffitt had been placed on probation multiple times but had violated probation each time. The PSI also indicated that Shuffitt stated that he had a “active addiction” at the time of his offenses, and he acknowledged that he had used methamphetamine and spice everyday since he was sixteen years old until November 2021. (App. Vol. 2 at 65).

[11] When sentencing Shuffitt, the trial court found aggravating circumstances in Shuffitt’s criminal history, his probation revocation history, the fact that he was on probation at the time of the robbery offense in Cause 4297, his commission of the criminal recklessness offense in Cause 5925 while he was out on bond in the Cause 4297 robbery case, and his pre-trial conduct violations while in jail. The trial court also noted that the harm and loss to Stillabower’s family was significant. The trial court found Shuffitt’s guilty plea, young age, and expression of remorse to be mitigating circumstances. Thereafter, the trial court determined that the aggravating circumstances outweighed the mitigating circumstances. The trial court imposed a four (4) year sentence for Shuffitt’s Level 5 felony robbery conviction in Cause 4297 and a six (6) year sentence for his Level 5 felony criminal recklessness conviction in Cause 5925. The trial court ordered these sentences to be served consecutive to each other, resulting in an aggregate sentence of ten (10) years.

[12] Shuffitt now appeals.

Decision

[13] Shuffitt argues that his aggregate ten-year sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[14] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. Shuffitt pled guilty and was convicted of Level 5 felony robbery and Level 5 felony criminal recklessness. A person who commits a Level 5 felony “shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” I.C. § 35-50-2-6(b). Here, the trial court imposed a four (4) year sentence for Shuffitt’s Level 5 felony robbery

conviction and a six (6) year sentence for his Level 5 felony criminal recklessness conviction and ordered that they be consecutively served. Thus, the trial court imposed an aggregate term of ten (10) years, which is less than the maximum sentence that Shuffitt potentially faced.

[15] We turn first to the nature of Shuffitt's offenses. In the robbery cause, Shuffitt, who was on probation, took a bicycle from another person by using force or threatening force. During sentencing, Shuffitt admitted that he pointed a gun at the victim, threatened him, and hit him. In the criminal recklessness cause, Shuffitt, who was out on bond and had a suspended license, engaged in aggressive driving that created a substantial risk of bodily injury to Stillabower and that resulted in Stillabower's death. Shuffitt admitted that he drove his truck in an angry manner after he had used drugs and while knowing that his brakes were bad. Shuffitt also drove his truck into two other vehicles, causing property damage and physical injuries.

[16] In reviewing Shuffitt's character, we note that Shuffitt, who was twenty-one years old at the time of sentencing, had a criminal history that included felony and misdemeanor drug-related offenses, misdemeanor conversion, and juvenile adjudications for theft and auto theft. Shuffitt had been placed on probation multiple times and had violated probation each time. The PSI indicated that Shuffitt acknowledged that he had used methamphetamine and spice everyday since he was sixteen years old until November 2021. Shuffitt, however, failed to seek treatment and even refused to complete a previously court-ordered drug treatment program.

[17] After a full review of the record on appeal, we conclude that Shuffitt has not persuaded us that his aggregate ten-year sentence for his two Level 5 felony convictions is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[18] Affirmed.

Altice, C.J., and Riley, J., concur.