MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lindsay C. Hunt,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2022

Court of Appeals Case No. 22A-CR-1036

Appeal from the Rush Superior Court

The Honorable Brian D. Hill, Judge

Trial Court Cause No. 70D01-2008-F5-478

Tavitas, Judge.

Case Summary

[1] Lindsay Clare Hunt appeals her sentence of four years in the Department of Correction ("DOC") for trafficking a controlled substance with an inmate, a Level 5 felony. Hunt argues her sentence is inappropriate in light of the nature of the offense and her character. Finding her sentence is not inappropriate, we affirm.

Issues

[2] Hunt raises a single issue on appeal, which we restate as whether her four-year sentence was inappropriate in light of the nature of the offense and her character.

Facts

[3] On November 29, 2020, Hunt sent at least two greeting card-style letters to Ericka McNicholas, who was an inmate in the Rush County Jail for narcotics charges. The letters "had a double-sided cardstock on the front of them . . . and they felt lumpy underneath." Tr. Vol. II p. 32. In between the cardstock of one of the letters, Rush County Jail Matron Megan Tate found a picture of Hunt with a plastic baggie of a gray powder taped to the back of the photo. Tate found another plastic baggie of a gray powder in the second letter. The return address on one of the letters was from Hunt, and the return address on the second was from "Aunt Bell and Uncle Tom." *Id.* at 32. The handwriting on the second letter "looked exactly the same" as the first letter. *Id.* at 35.

[4] Testing revealed that both baggies were positive for heroin and fentanyl, and DNA testing of the envelopes "provide[d] very strong support for the inclusion of [Hunt]" as the sender. *Id*. at 72.

[5] The State charged Hunt with: Count I, trafficking a controlled substance with an inmate, a Level 5 felony; Counts II and III, possession of a narcotic drug, a Level 6 felony; and Count IV, attempted trafficking a controlled substance with an inmate, a Level 5 felony. The State voluntarily dismissed Counts II and III before trial. A jury trial was held in February 2022, and the jury found Hunt guilty on Counts I and IV. Hunt did not appear at the trial due to an alleged family matter.

[6] At the sentencing hearing in April 2022, the trial court entered judgment of conviction on Count I.[1] The trial court found two aggravators: (1) Hunt failed to appear for trial, which was a violation of the terms of her pretrial release; and (2) Hunt's criminal history, which included several then-pending criminal cases. The trial court explained that Hunt's criminal history was "the main aggravator." *Id*. at 125. The trial court found as the sole mitigator that incarceration would create a hardship for Hunt's child who lived with her.[2] The trial court found the aggravators outweighed the mitigators and sentenced Hunt to four years in the DOC. Hunt now appeals.

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[1] Count IV was dismissed due to double jeopardy concerns.

[2] Hunt has a second minor child who does not live with her.

Discussion and Decision

[7] Hunt argues her four-year sentence in the DOC is inappropriate in light of the nature of the offense and her character. Specifically, Hunt argues "either the length of [her] prison term should be reduced, or her placement [in the DOC] should be changed." Appellant's Br. p. 9. We disagree.

[8] The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[3] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[3] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

[9] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[10] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, trafficking a controlled substance with an inmate is a Level 5 felony. Ind. Code § 35-44.1-3-5. Level 5 felonies carry a sentencing range of one to six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). Hunt was sentenced to four years in the DOC.

[11] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Hunt argues "[t]here is nothing particularly remarkable about [her] offense that warrants an aggravated sentence" and

describes her offense as "innocuous." Appellant's Br. p. 9. Hunt's offense was clearly not innocuous. By trafficking in heroin and fentanyl, Hunt endangered McNicholas, other inmates, and the prison staff. For us to find Hunt's sentence inappropriate based on the nature of the offense, Hunt must point to compelling evidence that portrays her offense in a positive light, which she fails to do. *See Stephenson*, 29 N.E.3d at 122. Thus, we decline to revise Hunt's sentence or her placement based on the nature of her offense.

[12] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[13] Hunt argues her sentence of four years in the DOC is inappropriate in light of her character because: (1) she was preapproved for home detention in another case; (2) she has previously successfully served a sentence of home detention; and (3) a sentence of home detention would allow her to care for her children.

Appellant's Br. p. 10. "The place that a sentence is to be served is an appropriate focus for application of our review and revise authority." *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007) (quoting *Hole v. State*, 851 N.E.2d 302, 304 n.4 (Ind. 2006)). "Nonetheless, we note that it will be quite difficult for a defendant to prevail on a claim that the placement of his or her sentence is inappropriate. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities." *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). "Additionally, the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate." *Id.* at 344.

[14] Here, Hunt has failed to demonstrate that her sentence, including her placement in the DOC, is inappropriate. Hunt has an extensive criminal record complete with three felonies and three misdemeanors. Her record includes a previous conviction for attempted trafficking with an inmate—nearly the same offense for which she was sentenced here. Hunt also served six years in the DOC for a prior burglary conviction but was given home detention in a subsequent case. Additionally, Hunt has violated probation in the past. Hunt's criminal history suggests that Hunt is at risk of reoffending and that a more lenient sentence would not be effective. *See Fonner*, 876 N.E.2d at 344 (declining to revise placement in the DOC to supervised day reporting based on sentencing court's recognition of defendant's "continuous record of vehicle-

related misdemeanor and felony convictions over a fourteen-year period and the failure of a previous community corrections placement"). Hunt has not persuaded us that her sentence is inappropriate.

[15] We recognize that placement in the DOC would create a hardship for Hunt's children. But the sentencing court was in the best position to consider this factor along with Hunt's criminal history. We do not find that the sentence is inappropriate. *See Dowdell v. State*, 720 N.E.2d 1146, 1154 (Ind. 1999) ("Many persons convicted of serious crimes have one or more children and, absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship."). Thus, we decline to revise Hunt's sentence in light of the nature of the offense or her character.

Conclusion

[16] Hunt's sentence was not inappropriate in light of the nature of the offense and her character. Accordingly, we affirm.

[17] Affirmed.

Brown, J., and Altice, J., concur.