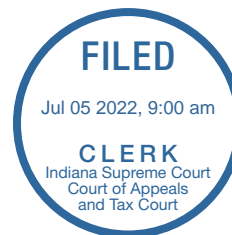


MEMORANDUM DECISION

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

Andrew Scott Alcorns,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 5, 2022

Court of Appeals Case No.
21A-CR-2755

Appeal from the Tippecanoe Circuit
Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-1912-MR-3

Darden, Senior Judge.

Statement of the Case

- [1] Andrew Alcorns appeals the sentence he received for his convictions of murder and aggravated battery. We affirm.

Issue

- [2] Alcorns presents one issue, which we restate as: whether his sentence is inappropriate in light of the nature of his offenses and his character.

Facts and Procedural History

- [3] In Lafayette at approximately 6:12 a.m. on April 7, 2019, a man called 911 to report that he had been cut and stabbed and that the house where he was residing was on fire. When police officers arrived at the residence, they found a man, later identified as Thomas Day, outside the burning residence with multiple stab wounds and cuts to his abdomen. Day informed the police that he rents a room at the residence from the owner, Ronald Whiles. Day stated that he was awakened by the sound of gunshots. When he emerged from his room, he observed a man pointing a gun at Whiles. Day grabbed the man, causing the man to drop the gun to the floor. The two men then engaged in a struggle, during which Day was cut and stabbed several times. Day managed to break free, run into his room, and call 911. Thereafter, he heard more shots and then saw fire at the front of the house. Day escaped through his bedroom window.
- [4] Meanwhile, firefighters extinguished the fire and found a deceased male body, later identified as Whiles, in a back room of the house. Whiles' pants pockets were turned inside-out, his wallet laid empty on the bed, and the dresser drawers were open. The police collected several spent .40 caliber shell casings from inside the residence. Following an autopsy, Whiles' cause of death was

determined to be a result of multiple gunshot wounds to the body. In addition, the fire department determined that the cause of the fire was incendiary.

- [5] During their investigation of the case, police discovered that several vehicles also had been broken into in front of Whiles' and several of his neighbors' residences. The police also learned that two handguns and items of personal property were stolen from the neighbors' trucks.
- [6] The police later spoke with Tonya Goris, whose sister had been the estranged wife of Andrew Alcorns. Goris informed the police that her sister had recently passed away on April 4 and suggested that Alcorns may have been involved in Whiles' murder because he had said that he would rob people until he got enough money to post his girlfriend's bail bond. She said that Alcorns had stated or hinted on several occasions in reference to Whiles that he needed to "hit a lick" (i.e., rob) because Whiles always carried cash and would be a good target. Appellant's App. Vol. 2, p. 103.
- [7] On April 11, Alcorns was located in a house in Dayton, Ohio. After Alcorns fired a gun several times, including shooting himself, officers were able to enter the house and take him into custody. Inside the house, the police found a .40 caliber handgun that was later identified as one of the handguns stolen from one of Alcorns' neighbors. Subsequent testing on the handgun revealed that the .40 caliber casings recovered from Whiles' house were fired from that gun.
- [8] Paige Millikan, Alcorns' girlfriend who was in the house in Dayton at the time, was also taken into custody. When questioned, she told police that she and

Alcorns were stopped in Madison County on April 1, but Alcorns had escaped. After being arrested, she spoke with Alcorns by phone from jail, giving him the names of people to contact in order to acquire money to post her bond.

Millikan further stated that she told Alcorns to go to Whiles on the weekend when Whiles would have rent money from his tenants and that she believed Whiles would provide the money for her bond because he liked her.

- [9] The State charged Alcorns with murder; attempted murder as a Level 1 felony; aggravated battery as a Level 3 felony; arson as a Level 4 felony; felony murder; attempted felony murder as a Level 1 felony; and robbery as a Level 3 felony. The State also filed a felony firearm enhancement and a habitual offender enhancement. Pursuant to a plea agreement, Alcorns pleaded guilty to murder¹ and aggravated battery² on September 14, 2021. In exchange for Alcorns' plea, the State agreed to dismiss all remaining charges. Alcorns' sentence was left to the discretion of the trial court with the following parameters: the minimum executed portion of his sentence must be at least forty-eight years; any sentence beyond forty-eight years and up to seventy years may be executed or may be suspended to probation; and any sentence above seventy years shall be suspended to probation.

¹ Ind. Code § 35-42-1-1 (2018).

² Ind. Code § 35-42-2-1.5 (2014).

[10] On November 12, the trial court sentenced Alcorns to sixty years for his conviction of murder and to fifteen years for his aggravated battery conviction, to be served consecutively to one another, with seventy years to be executed and five years suspended to probation. Alcorns now appeals his sentence.

Discussion and Decision

[11] In this appeal, Alcorns challenges his sentence as inappropriate in light of the nature of the offenses and his character.

[12] Although a trial court may have acted within its lawful discretion in imposing a sentence, article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). However, "we must and should exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). Thus, 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. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). The defendant bears the burden of

persuading the appellate court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[13] To assess whether a sentence is inappropriate, we look first to the statutory range established for the class of the offenses. Here, Alcorns was convicted of murder and a Level 3 felony. The advisory sentence for murder is fifty-five years, with a minimum sentence of forty-five years and a maximum sentence of sixty-five years. Ind. Code § 35-50-2-3 (2015). The advisory sentence for a Level 3 felony is nine years, with a minimum sentence of three years and a maximum sentence of sixteen years. Ind. Code § 35-50-2-5 (2014). Thus, the trial court sentenced Alcorns to a total sentence of seventy-five years—an aggravated sentence but not the maximum sentence of eighty-one years to which he was potentially exposed.

[14] Next, we look to the nature of the offense. Having alluded arrest and capture by police in another county, Alcorns returned to the Lafayette area with a plan to embark upon a crime spree of robbery and theft that ultimately resulted in Alcorns taking the life of a man in his own home after robbing him to obtain bail money for Alcorns' girlfriend. During this incident, he cut and stabbed victim Day several times, causing severe injuries to his body that were shown on one of the State's sentencing exhibits and which the State described as "his intestines hanging out." Tr. Vol. 2, p. 39. At the sentencing hearing, Day stated to the trial court: "My life is not going to be the same after what he did to me. I'm always going to be in pain and there is nothing that I can do about it." *Id.* at 32. After killing one man and almost killing a second man, Alcorns

then proceeded to set the home on fire while the men were still inside it. Finally, Alcorns engaged in a gun stand-off with police in another state before being taken into custody.

[15] We turn now to the character of the offender. The trial court found³ three aggravating circumstances, two of which clearly illustrate Alcorns' character. The first is Alcorns' criminal history, which the court determined is "the most significant fact in the court's determination today." Tr. Vol. 2, p. 49. Even a minor criminal history is a poor reflection of a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*. Here, Alcorns' criminal history and behavior are cause for serious concern.

[16] As a juvenile in June 1994, Alcorns committed conversion, a Class A misdemeanor if committed by an adult, and theft, a Class D felony if committed by an adult. At the time of disposition of these offenses in February 1995, he was placed on supervised probation and ordered to complete a treatment program at Gibault School for Boys. In April 1995, the court modified Alcorns' placement to Three Springs Treatment Center in Tennessee where he was to remain until August 1996.

[17] Not long after, in December 1996, his adult criminal activity began. Since then, Alcorns has accumulated eighteen misdemeanor convictions. For most of

³ We commend and thank the trial court for its exceptional order. The thoroughness of the order greatly facilitated our review.

those convictions, his sentence or the bulk of his sentence was suspended, and he was placed on unsupervised probation. Alcorns has also been convicted of nine felonies, including theft, residential entry, felon carrying a handgun with a prior, possession of an altered handgun, and resisting law enforcement using a vehicle. In addition, he has been adjudicated a habitual substance offender and has twice been adjudicated a habitual offender. Alcorns' probation has been revoked at least four times and terminated as unsuccessful more than once, and he has failed to appear approximately sixteen times. He has been ordered to drug and alcohol evaluation and education programs numerous times, a couple of which he completed.

[18] A second aggravator identified by the court that reflects poorly on Alcorns' character is the fact that he was on probation at the time of the instant offenses and had recently violated his probation. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008) (fact that defendant was on probation at time he committed offense is "substantial consideration" in assessment of his character), *trans. denied*; *see also* Ind. Code § 35-38-1-7.1(a)(6) (2015) (in determining defendant's sentence, court may consider fact that defendant recently violated conditions of probation as aggravating circumstance). Indeed, Alcorns' probation violations show an overall pattern of noncompliance with the law.

[19] Additionally, Alcorns has been given numerous opportunities for substance abuse treatment. He admits to a significant substance abuse history, which began in his teen years and includes alcohol, marijuana, cocaine, crack,

methamphetamine, inhalants, heroin, LSD, opium, and oxycontin. He also states that he has overdosed on heroin, methamphetamine, and valium. Alcorns' substance abuse could have been identified as an aggravating circumstance given his record of squandered opportunities and his awareness of the issue. *See Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (trial court did not err in failing to consider defendant's substance abuse as mitigating factor, especially when defendant is aware of substance abuse problem but has not taken appropriate steps to treat it), *trans. denied*; *Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (holding that defendant's alcoholism could properly have been considered aggravating circumstance), *trans. denied*; *Iddings v. State*, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002) ("a history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator"), *trans. denied*. Nevertheless, at sentencing the judge stated:

I'm not going to use substance abuse as an aggravator if anything it's a mitigator because you have this very severe problem. . . . Too many people going through substance abuse or dealing with that issue, they don't focus on their own mental health issues and if they don't do that you can have all of the education classes you want you'll never get better if you don't deal with the mental health issues.

Tr. Vol. 2, pp. 49-50.

[20] The deference shown to the trial court's judgment 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). Alcorns has not met this burden.

Conclusion

[21] Based on the foregoing, we conclude that Alcorns' sentence is not inappropriate.

[22] Affirmed.

Mathias, J., and Molter, J., concur.