

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Adam G. Forrest
Richmond, 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

Jacob Rasner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2022

Court of Appeals Case No.
21A-CR-1989

Appeal from the Wayne Superior
Court

The Honorable Charles K. Todd,
Jr., Judge

Trial Court Cause No.
89D01-1806-MR-3

Altice, Judge.

Case Summary

- [1] Jacob Rasner appeals his sixty-two-year sentence for two counts of felony murder, robbery, criminal confinement, battery, and kidnapping, asserting that it is inappropriate in light of the nature of the offenses and his character. *Sua sponte*, we address whether certain convictions violate the prohibition against double jeopardy.
- [2] We affirm in part and remand in part with instructions.

Facts & Procedural History

- [3] In September 2017, Rasner was using methamphetamine and dealing it out of his father and stepmother's home, where he lived. James Lee Herbolt II (James) was a friend of Rasner's. James was described as "a big gentle giant" with a willingness to help others. *Transcript Vol. III* at 72.
- [4] On September 27, 2017, Rasner was angry with James, believing – incorrectly – that he was a confidential informant. That day, Rasner sent a friend named Jesse Boggs (Jesse) to the store to buy bullets and instructed Jesse to take James with him. Jesse and James did so and returned to the house around 7:15 p.m. James walked up the stairs to Rasner's bedroom, with Jesse following behind him. Rasner's door was closed, and James knocked. Rasner then exited from another bedroom behind James and Jesse, pointing a gun and instructing them to proceed into his room. James opened Rasner's bedroom door, and one of Rasner's friends, Donald Bailey Jr. (Donnie), was waiting in Rasner's room

with a semi-automatic pistol aimed at James. Rasner followed them into the room while keeping his gun pointed at James.

- [5] Rasner pistol-whipped James in the head, and then Donnie and Rasner tied up James, who was on the floor. Rasner duct taped James's hands behind his back, while Donnie tied James's feet together, then they "hog tied" James such that his hands and feet were tied together behind his back with a rope.

Transcript Vol. IV at 116. Rasner again pistol-whipped James and, after that, stomped on his temple. During this time, Rasner was "ranting and raving," and James was telling Rasner "that he loves him and he forgives him." *Id.* at 207. Rasner "got tired of listening to [James]," and taped his mouth shut. *Id.* at 121. At some point, Rasner pulled James off the floor, poured a shot of alcohol in his mouth, and made James snort methamphetamine.

- [6] James remained tied on the floor for hours, while Rasner, Donnie, and Jesse stayed in Rasner's room talking and doing drugs. During this time, Donnie left and returned with another man, William "Butch" Mathews (Butch). Rasner took James's wallet and cell phone out of his pocket or backpack. He smashed the phone and gave James's bank card and PIN to Donnie.

- [7] At some point, Rasner and Donnie removed the duct tape and rope and led James down the stairs. The five of them – Rasner, Donnie, Jesse, Butch, and James – walked outside and Rasner, still with his gun out, instructed James to get in the back cargo area of James's Honda CRV. Rasner asked Donnie "if it'd be easier if [James] was awake or asleep," and Donnie replied "asleep," so

Rasner pistol-whipped James again, such that James was “knocked out” but still breathing, and they pushed him into the back of the CRV. *Transcript Vol. IV* at 126-27. Donnie and Butch left in the CRV, and Rasner and Jesse went back to Rasner’s room.

[8] Donnie and Butch were gone for some hours. During that time, the CRV ran out of gas so they left it for a while, with Butch and Donnie separating, but they reconnected later and drove around while “smoking a joint.” *Id.* at 233-34. Eventually they stopped, walked to the back of the CRV and opened the door, where James, under some blankets, was dead. Donnie pulled James’s body out, dragged it to the side of the road, and Donnie rolled it down the hill. Donnie and Butch then drove back to Rasner’s house. On the way, Donnie told Butch that he had shot James.

[9] Meanwhile, Jesse and Rasner had been working to clean up James’s blood in Rasner’s room and burn things that they thought James might have touched. Around 7:30 a.m. on September 28, Rasner went to his stepmother (Stepmother), and told her that “we killed” James. *Transcript Vol. III* at 214. As Rasner spoke, he was waving his gun around and said he had used it to pistol whip James. Rasner told Stepmother that Donnie was dumping James’s body and taking James’s CRV to a chop shop. When Donnie and Butch arrived back at the house, Rasner gave Stepmother a thumbs-up gesture as he walked upstairs with them. Stepmother thought perhaps Rasner was hallucinating from the drugs. Rasner, Donnie, Jesse, and Butch continued to clean up and threw items from the CRV in the fire pit. Jesse overheard Rasner

discussing with Donnie where James's body "was dumped." *Transcript Vol. IV* at 142.

[10] On September 29, 2017, James's parents reported him as missing to authorities. On September 30, Rasner told his father and Stepmother that he was going to Las Vegas. Rasner was scheduled to fly out on October 1, 2017, but he could not find his ID, so he booked another flight for October 4, 2017. On October 2, 2017, Stepmother saw a post on Facebook that James was missing. Fearing James was dead, Stepmother went to the Wayne County Sheriff's Department and reported that, on September 28, Rasner had told her that James was "gone" and they "got rid of him." *Appellant's Appendix Vol. II* at 27.

[11] Thereafter, multiple search warrants were executed at Rasner's home, with law enforcement finding, among other things, rope, bullet casings, clothing, and methamphetamine pipes in the fire pit. Fabric on the couch in Rasner's room tested positive for James's blood. Rasner was arrested on October 3 on dealing charges. Detective Kyle Weatherly interviewed Rasner for several hours during which Rasner denied any knowledge about James's disappearance.

[12] On October 6, 2017, police found James's body at the bottom of a fifty-foot embankment, and his head, shoulders, and torso had severe decay. At some point, police found James's abandoned CRV, which had blood spatter inside and pools of blood in the rear cargo area. On October 7, 2017, an autopsy was conducted at the Montgomery County Coroner's Office and the forensic

pathologist concluded that the cause of death was two gunshot wounds to the head.

[13] On June 29, 2018, the State charged Rasner with felony murder, Level 2 felony robbery, Level 3 felony criminal confinement, and Level 5 felony battery. The State later amended the charging information to add another count of felony murder and one count of Level 3 felony kidnapping. While Rasner was in jail, he passed a handwritten note to Butch, who was incarcerated at the same facility. His note told Butch “you need to recant” and to claim that he “made some sh*t up.” *Transcript Vol. V* at 197; *State’s Exhibit* 211. Rasner instructed, “Don’t fold and don’t cop a plea.” *Id.*

[14] At the conclusion of the six-day jury trial in June 2021, the jury found Rasner guilty as charged. On August 2, 2021, the court held a sentencing hearing. Donald Miller, a pastor of a local church that led weekly Bible study at the Fayette County jail, testified that he met, taught, and eventually baptized Rasner. Miller described Rasner as being “a different person” than when he first arrived, with Rasner taking the learned materials and messages to heart and sharing them with other inmates at the jail. *Transcript Vol. VI* at 79. Miller stated about Rasner that “his thoughts were always deep [] and from the heart” and “[he] was very . . . sincere and continues to be sincere to this day.” *Id.* at 80.

[15] Rasner’s mother also testified, expressing her sorrow to James’s family for the heartache and pain. She testified that over the past four years of incarceration,

she had observed that Rasner had changed, recognizing that his choices had brought him to his current situation. She also expressed her regret for not getting Rasner the mental help he needed over the years, which led to addiction and his attempts to self-medicate.

[16] Rasner also testified. He conceded that he was the person that put in motion the chain of events that ultimately led to James's death, and he expressed remorse for doing so. He testified that he had spent much of his life being intoxicated with alcohol and drugs as a way to block out emotion stemming from his difficult childhood and his "volatile" household, but clarified, "I don't look to [my childhood and drug addiction] as an excuse or as a reason for the things that I've done" and those "were my actions, my decisions and I take responsibility for all of it." *Id.* at 90, 93. Rasner testified to his participation in, and now leading of, Bible study sessions at the jail, describing that finding God had given him a purpose and changed him "180 degrees" such that he was "not the same person" that he had been. *Id.* at 92.

[17] The State presented the testimony of lead detective Kyle Weatherly, who testified that, contrary to the PSI's statement that Rasner "cooperated with authorities after his arrest and voluntarily provided a three-hour statement," the majority of said interview consisted of Rasner stating that he knew the people involved but had not seen them, "deflecting basically all the questions that [Detective Weatherly] asked" and "deny[ing] any involvement." *Id.* at 101. Detective Weatherly testified that Rasner referred to James as "weird" and "said he didn't know [James] all that well." *Id.* at 102. Rasner also "placed

blame on Jesse.” *Id.* Detective Weatherly stated that Rasner’s phone calls while in jail had been monitored and Rasner threatened someone’s life “several” times during phone calls. *Id.* at 103. Detective Weatherly noted that he had “interviewed many, many people” during his investigation of this case, and “everybody had nothing but good things to say about James” and “nobody had anything good to say about [Rasner].” *Id.* at 104. Directing his testimony to Rasner, Detective Weatherly said, “[James] considered you a friend” and “you did the unthinkable.” *Id.*

[18] Rasner gave a statement of allocution apologizing for the hurt that he caused and “for how cruel I was to [James].” *Id.* at 111. To James’s family, Rasner acknowledged, “I don’t expect or even think to receive your forgiveness” as “I know I don’t deserve it” but offered that he was sorry “for taking such a wonderful soul” and had “deep regret, sorrow and pain and compassion” for James’s family. *Id.* at 111, 113. He also apologized to his own family for letting them down and getting addicted to drugs, which turned him into “a monster.” *Id.* at 112.

[19] Defense counsel asked the court to impose a sentence of fifty-seven and one-half years with ten years suspended, urging that Rasner was remorseful and that he cooperated with authorities by voluntarily giving a statement to police, which confirmed to police that they “were on the right track.” *Id.* at 115. The State argued that aggravating circumstances existed including that James’s injuries were greater and more significant than what was needed to prove the offense, Rasner forced drugs and alcohol on James while he was tied up, and

Rasner had a pattern of continuous criminal behavior. The State also noted that Rasner “wasn’t helpful with authorities” and could have assisted them in finding James’s body but did not. *Id.* at 119. The State asked the trial court to impose sixty-three years of incarceration.

[20] In a subsequent written sentencing statement, the trial court sentenced Rasner to sixty-two years on each of the two felony murder counts (Counts I and V), to twenty-four years on the robbery conviction (Count II), to twelve years each on the criminal confinement and kidnapping convictions (Counts III and VI), and to four years on the battery conviction (Count IV), all to run concurrently and with no time suspended, for an aggregate term of sixty-two years in the Indiana Department of Correction. The trial court ordered that sentence to be served consecutive to Rasner’s sentences in two other cause numbers. In making its decision, the court found as aggravating Rasner’s juvenile and adult criminal history, the “heinous nature” of the offense, and a disdain for court authority as reflected by contempt sentences for violating no contact orders in 2018 in another cause number. *Appellant’s Appendix Vol. III* at 160. The court considered Rasner’s expression of remorse as a mitigating factor.

[21] Rasner now appeals.

Discussion & Decision

Sentencing

[22] Rasner contends that his sentence is inappropriate. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due

consideration of the trial court’s decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana’s flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court “prevail[s] 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). The question under App. R. 7(B) is not whether another sentence is more appropriate; rather, the test is whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018). Our Supreme Court has directed that revision of a defendant’s sentence under App. R. 7(B) is only for “exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). Rasner bears the burden of persuading us that his sentence is inappropriate. *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*.

[23] 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. *Childress v. State*, 848 N.E.2d 1072, 1081 (Ind. 2006). Here, Rasner was convicted of two counts of felony murder and one count each of Level 2 felony robbery, Level 3 felony criminal confinement, Level 3 felony kidnapping, and Level 5 felony battery. The sentencing range for felony murder is forty-five to sixty-five years, with the advisory being fifty-five years. Ind. Code § 35-50-2-3. The sentencing range for a Level 2 felony is between ten

and thirty years, with the advisory being seventeen and one-half years. Ind. Code § 35-50-2-4.5. The sentencing range for a Level 3 felony is between six and twenty years with an advisory of ten years. § 35-50-2-5. The sentencing range for a Level 5 felony is between one and six years with the advisory sentence being three years. I.C. § 35-50-2-6. Rasner suggests that the imposition of the advisory sentence for murder of fifty-five years “or one less aggravated than that imposed upon him” would be appropriate. *Appellant’s Brief* at 7.

[24] In considering the nature of the offense, we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Rasner concedes that the nature of the offense was, as described by the trial court, “heinous.” *Appellant’s Brief* at 8. Arguably, that might be an understatement. Rasner ambushed his friend James, hog-tied him and left him that way for hours, taped his mouth shut, pistol-whipped him multiple times, stomped on him, drugged him, robbed him, and forced James into his own vehicle to then be shot in the head and dumped down an embankment.

[25] Given the undisputable horrific nature of the offense, Rasner asks us to find that his sentence is inappropriate “[in] comparison . . . to those issued to the other individuals who participated in the events leading to the death of [James].” *Id.* He highlights that there is a disparity between his sentence and that of Donnie, who “executed” James, as well as Jesse, who was “involved in all actions” involving James at Rasner’s residence. *Id.* 8, 10. Our Supreme Court has

instructed that we “need not compare” sentences of codefendants. *Dennis v. State*, 908 N.E.2d 209, 214 (Ind. 2009) (recognizing “we need not compare” the defendant’s sentence to a codefendant but finding that defendant’s was “appropriately longer” because he “led the group”); *Marley v. State*, 17 N.E.3d 335, 339 (Ind. Ct. App. 2014), *trans. denied*. Moreover, the two co-defendants that Rasner refers to entered into plea agreements.¹ ““When a defendant proceeds to trial and his accomplice pleads guilty, the sentences need not be identical[,] and there is no requirement of consistency”” *Herron v. State*, 808 N.E.2d 172, 179 (Ind. Ct. App. 2004) (quoting *Williams v. State*, 631 N.E.2d 485, 488 (Ind. 1994)), *trans. denied*. The nature of the offense, which in Rasner’s own words at sentencing was “cruel,” does not warrant revision of Rasner’s sentence.

[26] We conduct our review of a defendant’s character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. Character is found in what we learn of the offender’s life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). Criminal history is one relevant factor in analyzing character. *Madden*, 162 N.E.3d at 564. Rasner, who was twenty-six at the time of sentencing, had two Level 5 felony convictions for dealing in methamphetamine and cocaine and four misdemeanor convictions. His juvenile history began at age twelve and consisted of six adjudications of what

¹ While Rasner in his brief refers to the length of Donnie and Jesse’s respective sentences, we note that evidence of their plea agreements or sentences is not in the record before us.

would be misdemeanors if committed by an adult. Rasner highlights that in prior cases he successfully completed probation and paid all financial obligations. However, we find that Rasner's disregard for the law does not portray his character in "a positive light," which is his burden under App. R 7(B). *Stephenson*, 29 N.E.3d at 122.

[27] In addressing Rasner's character, we also observe that he was dealing methamphetamine out of his father and Stepmother's home at the time of the offense, he denied any involvement in James's disappearance when interviewed by detectives, despite knowing James was deceased and where the body was located, and he arranged to fly to Las Vegas to avoid authorities. He also lied to the probation officer during the preparation of his presentence report stating that he had not spoken to any of his co-defendants since his incarceration, when in fact he had corresponded with Butch and told him to recant his story. Rasner has not persuaded us that his sentence warrants revision based on his character.

[28] Ultimately, we "do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is inappropriate." *Miller*, 105 N.E.3d at 196. Rasner has failed to carry his burden of establishing that his sentence is inappropriate.

Double Jeopardy

[29] We address, *sua sponte*, certain double jeopardy violations. First, a defendant may not be convicted and sentenced for both felony murder and the underlying

felony because the conviction for felony murder could not be had without proof of the underlying felony. *Glenn v. State*, 884 N.E.2d 347, 357 (Ind. Ct. App. 2008), *trans. denied*. Here, the trial court sentenced and entered judgment of conviction on felony murder based on the underlying felony of kidnapping (Count V) as well as on Level 3 felony kidnapping (Count VI). *Appellant's Appendix Vol.* at 163-64, 166-67. To correct this double jeopardy violation, we remand to the trial court with instructions to vacate the kidnapping conviction and sentence (Count VI).

[30] Second, the trial court sentenced and entered judgment of conviction on two felony murder counts, that is, while committing robbery (Count I) and while committing kidnapping (Count V). *Id.* It is axiomatic that one cannot be convicted of two counts of felony murder for the death of the same victim. We thus remand to the trial court with instructions to vacate the conviction and sentence for felony murder based on the robbery offense (Count I).

[31] Judgment affirmed in part and remanded in part with instructions.

Brown, J. and Tavitas, J., concur.