MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Deshawn M. Vaughn,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 15, 2021

Court of Appeals Case No. 21A-CR-1016

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2005-F4-55

Mathias, Judge.

[1] Deshawn M. Vaughn appeals following his convictions for Level 4 felony possession of a firearm by a serious violent felon, Level 6 felony criminal

recklessness, and Level 6 felony cruelty to an animal. The court ordered Vaughn to serve an aggregate ten-year sentence executed in the Department of Correction. On appeal, Vaughn argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] At approximately 2:00 a.m. on May 23, 2020, in Fort Wayne, Indiana, twenty-seven-year-old Vaughn possessed a loaded firearm and fired multiple rounds of ammunition through the exterior walls of his mother's, Leann Woods's, home. He also shot his mother's dog multiple times, and the dog died as a result of the gunshot wounds. A neighbor called 911 to report the gunshots and that a dog had been shot.

[4] When the dispatched officers arrived, they spoke to Woods and her sister. Both women were visibly upset. Vaughn was inside Woods's home when the officers arrived. Shortly thereafter, Vaughn emerged from the house. He behaved oddly and disobeyed the officers' commands to lie on the ground and show the officers his hands. Vaughn entered and exited the house again and continued to ignore the officers' commands.

[5] After he exited the house for the second time, Vaughn charged at one of the investigating officers. Another officer deployed her taser twice, but Vaughn continued to resist. All three officers at the scene assisted in subduing and handcuffing Vaughn. During the search incident to Vaughn's arrest, officers

found a loaded magazine containing live rounds of ammunition in Vaughn's jacket pocket. Woods allowed the officers to search her home, and officers found several spent shell casings and a handgun inside the home. There was also blood and bullet holes on the outside walls of Woods's home.

[6] On May 29, 2020, the State charged Vaughn with Level 4 felony unlawful possession of a firearm by a serious violent felon,[1] Level 6 felony criminal recklessness, and Level 6 felony cruelty to an animal. Thereafter, Vaughn filed a notice of insanity defense and a motion for a hearing concerning his competency to stand trial. Two disinterested psychologists examined Vaughn. Based on the psychologists' reports, the trial court determined that Vaughn was competent to stand trial.

[7] Vaughn's two-day jury trial commenced on March 30, 2021. The jury found him guilty as charged. Vaughn's sentencing hearing was held on April 30. The trial court found that Vaughn's criminal history "with failed efforts at rehabilitation" was an aggravating circumstance. Tr. p. 245. The trial court ordered Vaughn to serve concurrent terms of ten years for the Level 4 felony possession of a firearm conviction, and two years for each Level 6 felony conviction.

[8] Vaughn now appeals.

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[1] Vaughn was convicted of Level 5 felony battery by means of a deadly weapon in April 2015.

Discussion and Decision

[9] Vaughn argues that his ten-year aggregate sentence is inappropriate pursuant to 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). Making this determination "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." *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, deference to the court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing 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] Initially, we observe that Vaughn did not receive the maximum possible sentence. For his Level 4 felony conviction, Vaughn faced a sentence between

two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. The trial court imposed a ten-year sentence. The trial court also ordered Vaughn to serve two-years for each Level 6 felony conviction. The range of sentence for a Level 6 felony conviction is six months to two and one-half years. I.C. § 35-50-2-7(b). All sentences were ordered to be served concurrent to each other for an aggregate ten-year sentence. We now turn to our consideration of whether this sentence is inappropriate.

[12] Vaughn argues there is nothing aggravating about the nature of his offenses. We disagree.[2] Vaughn, a serious violent felon, not only possessed a firearm, he also fired multiple rounds from the firearm and was in possession of a magazine loaded with live ammunition. Vaughn committed criminal recklessness by firing numerous rounds of ammunition from his loaded handgun. The walls of Woods's home had multiple bullet holes in them. And the home is located in a family neighborhood in close proximity to other homes. After police officers arrived, Vaughn ignored their commands to lie down on the ground and show his hands. He also charged at one of the officers. All three officers had to assist to subdue Vaughn and place him in handcuffs. And finally, Vaughn shot

[2] The trial court specifically declined to find the nature and circumstances of the crime as an aggravating factor. Tr. p. 246. Therefore, Vaughn asserts that the circumstances of his crimes cannot be considered by our court in our Rule 7(B) review of his sentence. Vaughn conflates our analysis under Rule 7(B) with our review of the aggravating factors found at sentencing. *See King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (explaining that whether a trial court has abused its discretion by improperly recognizing aggravators and mitigators when sentencing a defendant and whether a defendant's sentence is inappropriate under Indiana Appellate Rule 7(B) are two distinct analyses).

Woods's twelve-year-old dog multiple times causing numerous and extensive wounds, which resulted in her death.

[13] The character of the offender also supports the sentence imposed. In April 2015, Vaughn was convicted of Level 5 felony battery by means of a deadly weapon.[3] He also has two minor C misdemeanor convictions. Before he began shooting his gun, Vaughn smoked a significant amount of marijuana, which possibly contributed to his manic behavior on the date he committed his offenses. And we are unpersuaded by Vaughn's argument that his sentence is inappropriate because he committed the offenses under the influence of marijuana or that he suffers from drug addiction.[4] Finally, at sentencing Vaughn stated that he believed he was the "victim in this case." Tr. p. 244. He showed no remorse for the death of Woods's dog.[5]

[14] For all of those reasons, we conclude that Vaughn's ten-year aggregate sentence is not inappropriate in light of the nature of the offense and the character of the offender. Quite simply, this is not "a rare and exceptional case" warranting sentence modification under Rule 7(B). *Livingston*, 113 N.E.3d at 612.

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[3] Woods claims that this prior conviction should be afforded minimal weight without any supporting argument. Appellant's Br. at 13.

[4] Vaughn told the psychiatrists who evaluated his competency to stand trial that he smoked a significant amount of marijuana on the date of the offense, but during preparation of the pre-sentence investigation report, Vaughn told the probation department that he used marijuana socially until he was 19-years old and then quit using it. Appellant's Conf. App. p. 135. Vaughn denied the use of any other illegal substance. *Id.*

[5] Defendants often demonstrate remorse for the victims of a crime while still maintaining their innocence.

Conclusion

[15] Vaughn has not met his burden of persuading us that his ten-year aggregate sentence is inappropriate in light of the nature of the offense and the character of the offender.

[16] Affirmed.

Tavitas, J., and Weissmann, J., concur.