MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Roshawnda Gail,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2021

Court of Appeals Case No. 21A-CR-1532

Appeal from the Marion Superior Court

The Honorable Sheila A. Carlisle, Judge

Trial Court Cause No. 49D29-1912-MR-46860

Weissmann, Judge.

[1] After fatally stabbing her girlfriend during a domestic dispute, Roshawnda Gail was sentenced to an advisory term of 17 ½-years in prison for voluntary manslaughter. Gail argues her sentence is inappropriately harsh because she is a remorseful first-time offender with intellectual disabilities who is parenting a young child. She also notes that the nature of the killing was not particularly egregious. Though Gail makes a compelling case that she possesses redemptive character traits, she has not met the burden of showing that her advisory sentence is "inappropriate" in light of both the character of the offender and the nature of the offense.

Facts

[2] Gail and Crystle Hatcher lived together and were engaged in a romance marred by turbulence and violence. On December 6, 2019, Gail went out with her friend Dayjiah Brown and returned home in the early hours of December 7. Hatcher was still awake. She and Gail got into an argument, which escalated into a physical altercation. When things calmed down, Gail called Brown and asked Brown to come get her.

[3] Sometime later, Brown knocked on the apartment door. Hatcher answered, and the two argued. Hatcher then attempted to close the door on Brown, but Brown blocked the door. Brown insisted that she was not leaving without Gail. This led to a physical altercation between Hatcher and Brown, and Gail soon joined the fray. At some point, Gail grabbed a knife and stabbed Hatcher three times in the back and arm.

[4] While Hatcher lay bleeding, Gail and Brown left the building. They waited outside until police—summoned by neighbors—arrived. Gail and Brown approached police and admitted their involvement in the incident. Gail was transported to the police station and admitted to stabbing Hatcher. Meanwhile, Hatcher was rushed to the hospital, where she died two days later.

[5] The State charged Gail with murder, but pursuant to a plea agreement, she pleaded guilty to voluntary manslaughter. The plea agreement left sentencing to the trial court's discretion, and after a hearing, the court sentenced Gail to 17 ½ years in prison. In reaching its sentencing decision, the trial court cited Gail's guilty plea, acceptance of responsibility, expression of remorse, absence of criminal history, and willingness to pay restitution as weighing toward a more lenient sentence. It cited the circumstances of Gail's offense—that she could have walked away, that she failed to render aid to Hatcher after the stabbing, and that she hid the knife—as justifying a harsher one. Gail now appeals her sentence under Indiana Appellate Rule 7(B).

Discussion and Decision

[6] Rule 7(B) allows this court to 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). This Rule implements the authority granted us by Article 7, § 4 of the Indiana Constitution to independently review and revise sentences. *Chambers v. State*, 989 N.E.2d 1257, 1259 (Ind. 2013). Though our appropriateness determination is a discretionary exercise, we conduct this review with

substantial deference to the trial court. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Our principal goal is to "leaven the outliers, and not to achieve a perceived correct sentence." *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021) (citing *Knapp*, 9 N.E.3d at 1292). Gail bears the burden of showing her sentence is inappropriate. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013).

I. Character of the Offender

[7] In arguing her character justifies a lesser sentence, Gail emphasizes her lack of criminal history, her acceptance of responsibility, agreement to pay restitution, intellectual disability, positive character, relative youth, and potential for rehabilitation, as well as the hardship her incarceration will cause her daughter.

[8] Born with an intellectual disability, Gail has also been diagnosed with long-standing mental illness, including ADHD and major depressive disorder. Her disability and disorders impair her impulse control and her emotional functioning is "lower than her peers." *Id.* at 41. Despite her struggles, Gail graduated high school and cared for her daughter, who was born when Gail was 15. Seventeen people submitted letters describing her positive character. App. Vol. II, pp. 190-206.

[9] Since the crime itself, Gail has also shown strong character and growth. Gail promptly admitted to her crime and offered to pay restitution. Gail has demonstrated potential for rehabilitation by participating in various programs while incarcerated and resuming her medication regimen. In a sentencing

memorandum, Gail's social worker asserted that Gail's "risk for recidivism is remarkably low." App. Vol. II, p. 188. Though Gail's character showed redemptive qualities, this does not mean she is automatically entitled to sentencing relief.

II. Nature of the Offense

[10] "When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence." *Johnson*, 986 N.E.2d at 856 (citing *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007)). Gail's 17 ½-year sentence is the advisory sentence for Level 2 felonies like voluntary manslaughter. Ind. Code §§ 35-50-2-4.5; 35-42-1-3. Gail argues that the nature of the offense requires a lesser sentence, pointing to the history of domestic violence in her relationship with Hatcher, their fight earlier that same morning, Hatcher's aggression toward Brown, and Gail's cooperation with the investigation.

[11] Gail draws parallels between her case and two cases in which we found that the advisory sentence was inappropriate because the victim had provoked the defendant: *Griffin v. State*, 963 N.E.2d 685 (Ind. Ct. App. 2012), and *Biehl v. State*, 738 N.E.2d 337 (Ind. Ct. App. 2000). In *Griffin*, the victim sexually assaulted the defendant two days before the defendant stabbed the victim to death. 963 N.E.2d at 692. In *Biehl*, the victim threatened the defendant and threw bricks and boards at him before the defendant retaliated by shooting and killing the victim. *Biehl*, 738 N.E.2d at 339.

[12] Gail's comparison is inapposite. In both *Griffin* and *Biehl*, the defendant was convicted of murder, not voluntary manslaughter. Voluntary manslaughter requires the killer act "under sudden heat." Ind. Code § 35-42-1-3. This element already encompasses the provocation Gail relies on. *See Watts v.* State, 885 N.E.2d 1228, 1232 (Ind. 2008) ("sudden heat is a mitigating factor"); *Horan v. State*, 682 N.E.2d 502, 507 (Ind. 1997) ("Sudden heat is a mitigating factor which reduces murderous activity from Murder to Voluntary Manslaughter."). And because of this element, Gail faced a significantly lower sentence than the defendants in *Griffin* and *Biehl*. Voluntary manslaughter carries a sentence between 10 and 30 years, whereas murder carries a sentence between 45 and 65 years. Ind. Code §§ 35-50-2-3; 35-50-2-4.5. In other words, Gail argues that her sentence for voluntary manslaughter is inappropriate because she did not murder Hatcher; but this is why Gail was sentenced for manslaughter, not murder.

[13] The nature of the crime involved Gail stabbing her romantic partner, declining to provide first aid or call the police, and attempting to hide the knife. Given these facts, we cannot agree that Gail's advisory sentence is inappropriate. Accordingly, we affirm the trial court's sentencing order.

[14] Affirmed.

Najam, J., and Vaidik, J., concur.