MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin M. Henderson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 21, 2023

Court of Appeals Case No. 22A-CR-2141

Appeal from the Tippecanoe Superior Court

The Honorable Kristen E. McVey, Judge

Trial Court Cause Nos. 79D05-2203-F6-235 & 79D05-1908-F6-962

Memorandum Decision by Judge Riley

Chief Judge Altice and Judge Pyle concur

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Justin Michael Henderson (Henderson), appeals the trial court's denial of his oral motion to withdraw his guilty plea and the imposition of his sentence following his plea agreement.

[2] We affirm.

ISSUES

[3] Henderson presents this court with two issues on appeal, which we restate as:

(1) Whether the trial court abused its discretion when it denied Henderson's motion to withdraw his guilty plea after the court had accepted the plea agreement; and

(2) Whether his sentence is inappropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] On August 28, 2019, under cause number 79D05-1908-F6-962 (Cause 962), Henderson was charged with Level 6 felony residential entry, Class A misdemeanor invasion of privacy, and Class A misdemeanor criminal mischief. On November 18, 2020, Henderson pleaded guilty to Level 6 felony residential entry and Class A misdemeanor invasion of privacy pursuant to a plea agreement. He was sentenced to 545 days for residential entry and 365 days for invasion of privacy, to be served concurrently, with the entirety of his sentence

suspended to supervised probation. As a term of probation, he was ordered not to have contact with E.L., with whom Henderson has one child. On September 28, 2021, the State filed a petition to revoke Henderson's probation, to which Henderson admitted during a hearing on November 17, 2021. The trial court revoked a portion of Henderson's suspended sentence.

[5] While on probation under Cause 962, a no contact order was issued prohibiting Henderson from having contact with K.L., who is E.L.'s sister. K.L. was never romantically involved with Henderson. On February 2, 2022, one day after being served with the no contact order for K.L. and while on probation under Cause 962, Henderson arrived at the residence of K.L. and E.L.'s parents and delivered an envelope addressed to K.L. The envelope contained Henderson's phone number. On March 11, 2022, under cause number 79D05-2203-F6-235 (Cause 235), the State filed an Information, charging Henderson with two Counts of Level 6 felony invasion of privacy and two Counts of Class A misdemeanor invasion of privacy. That same day, the State also filed a petition to revoke Henderson's probation under Cause 962.

[6] At a status hearing on March 28, 2022, Henderson insisted on waiving his constitutional right to a jury trial and instead requested a bench trial because it was "the quickest method" for "the victims to show up." (Transcript Vol. II, pp. 3, 4). He stated that he "want[ed] the victims to show up and [] testify." (Tr. Vol. II, p. 4). He insisted that he had spoken with K.L. and that she had changed her surname to 'Henderson.'

[7] Henderson subsequently entered into a plea agreement with the State in which he pleaded guilty to Level 6 felony invasion of privacy under Cause 235 and admitted to violating his probation under Cause 962. The agreement specified that he would not receive a sanction for violating his probation but left sentencing for invasion of privacy to the trial court's discretion. Accompanying the plea agreement, Henderson had executed an advisement of rights form, indicating that Henderson "freely, knowingly and voluntarily waive[d] [his] rights and want[ed] to plead guilty" and that the plea was based on his "own free and voluntary decision." (Appellant's App. Vol. II, p. 78).

[8] At the guilty plea hearing on August 1, 2022, Henderson admitted to violating his probation and to committing invasion of privacy. The trial court questioned if Henderson admitted to the truth of the allegations, to which Henderson replied affirmatively. The trial court then reviewed the rights Henderson forfeited by pleading guilty and repeated the terms of the plea agreement. The trial court reiterated that Henderson was entering into an open plea for Level 6 felony invasion of privacy and that he would not receive a sanction for violating his probation in Cause 962. The trial court asked Henderson, "is this what you understand the terms of this plea agreement to be and that you're asking me to accept?" (Tr. Vol. II, p. 11). Henderson affirmed. Finding a sufficient factual basis to support the charges, the trial court entered judgment of conviction for the invasion of privacy charge and returned Henderson to probation as originally ordered. After accepting the guilty plea and entering judgment of conviction, the trial court set the matter for sentencing and Henderson became

upset that he would remain incarcerated until his sentencing hearing. After the trial court explained that Henderson would be sentenced for invasion of privacy after both parties presented an argument to the trial court, Henderson made several statements indicating that he no longer wished to plead guilty. He insisted on retracting his plea because the trial court had not "entered it on record" or "hit your gavel." (Tr. Vol. II, pp. 14, 16). He also claimed that the proceeding "isn't even on file you're not even recording it here today." (Tr. Vol. II, p. 18). The trial court reassured Henderson that a judgment of conviction had been entered and that the hearing was being recorded. After he expressed his belief that he would be released once he pleaded guilty, he made threats toward the trial court and his defense attorney. He threatened, "I'm going to have your ass and [the trial court's] ass tonight" and called the trial court judge a "jackass," insisting that "we are going to end this – I've had enough of this shit." (Tr. Vol. II, pp. 17, 18). The trial court adjourned the hearing.

[9] On August 29, 2022, the trial court conducted a sentencing hearing. During the hearing, Henderson stated that he had not "done anything wrong" and was "falsely imprisoned." (Tr. Vol. II, p. 22). He reiterated statements indicating that he wanted to dispute the underlying offense of invasion of privacy. The trial court interrupted and explained that it had already accepted the guilty plea and had entered judgment of conviction. The court also emphasized that it had denied Henderson's motion to withdraw his guilty plea and would not grant a renewed motion because it had concluded that Henderson had made his guilty

plea knowingly and voluntarily. The trial court then proceeded to sentencing. As aggravating factors, the trial court identified Henderson's lack of remorse and abusive attitude, the fact that he is unlikely to respond to probation or additional attempts at rehabilitation, his extensive criminal history, and the repetitive nature of the crime. The trial court found Henderson's guilty plea as a mitigating circumstance but awarded it only minimal weight considering his expressed desire to withdraw the plea. Based on these aggravators and mitigator, the trial court imposed two years in the Department of Correction (DOC) and recommended an evaluation by a mental health specialist while at the DOC.

[10] Henderson now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Withdrawal of Guilty Plea*

[11] Henderson contends that the trial court abused its discretion when it denied his motion to withdraw the guilty plea, because withdrawal of the guilty plea was necessary to correct the manifest injustice of Henderson not entering the plea knowingly and voluntarily.

[12] As an initial matter, we address the State's argument that Henderson's motion to withdraw his guilty plea was procedurally defective because it was not in writing in accordance with Indiana Code section 35-35-1-4(b). Although Henderson orally made the motion following the trial court's entry of its judgment of conviction and again at the commencement of the sentencing

hearing, his motion was never reduced to writing. Accordingly, the trial court did not abuse its discretion by denying the procedurally defective motion.

[13] Even if Henderson had not procedurally defaulted his claim, he has not shown that he would have been entitled to any relief on appeal. Withdrawals of pleas are governed by Indiana Code section 35-35-1-4(b), which provides that,

> [a]fter entry of a plea of guilty . . . but before imposition of sentence, the court may allow the defendant by motion to withdraw his plea of guilty . . . for any fair and just reason unless the state has been substantially prejudiced by reliance upon the defendant's plea. The ruling of the court on the motion shall be reviewable on appeal only for an abuse of discretion. However, the court shall allow the defendant to withdraw his plea of guilty . . . whenever the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice.

Our supreme court explained that:

> [t]he court is required to grant [a motion to withdraw guilty plea] only if the defendant proves that withdrawal of the plea is necessary to correct a manifest injustice. The court must deny a motion to withdraw a guilty plea if the withdrawal would result in substantial prejudice to the State. Except under these polar circumstances, disposition of the petition is at the discretion of the court.

Coomer v. State, 652 N.E.2d 60, 61-62 (Ind. 1995) (internal citation and quotation marks omitted). The defendant "has the burden of establishing his grounds for relief by a preponderance of the evidence." I.C. § 35-35-1-4(e). "Trial court rulings on [motions to withdraw guilty plea] are presumptively

valid, and parties appealing an adverse decision must prove that a court has abused its discretion." *Davis v. State*, 770 N.E.2d 319, 327 (Ind. 2002). "A trial court abuses its discretion only 'when the failure of the trial court to grant the motion would result in . . . a manifest injustice.'" *Id*. (quoting *Weatherford v. State,* 697 N.E.2d 32, 34 (Ind. 1998)).

[14] Turning to Henderson's claim that a denial to withdraw his guilty plea would amount to a manifest injustice in his case, we note that Indiana Code section 35-35-1-4(c) categorizes instances of manifest injustice as "(1) the convicted person was denied the effective assistance of counsel; (2) the plea was not entered or ratified by the convicted person; (3) the plea was not knowingly and voluntarily made; (4) the prosecuting attorney failed to abide by the terms of a plea agreement; or (5) the plea and judgment of conviction are void or voidable for any other reason." Manifest injustice is a "necessarily imprecise standard . . . [but] concerns about injustice carry greater weight when accompanied by credible evidence of involuntariness, or when the circumstances of the plea reveal that the rights of the accused were violated." *Coomer*, 652 N.E.2d at 62.

[15] Prior to accepting Henderson's plea agreement, the trial court reviewed the terms of the plea with Henderson and confirmed that he was entering into an open plea for Level 6 felony invasion of privacy, with no sanction for the probation violation in an earlier cause. Asking Henderson if "this [is] what you understand the terms of this plea agreement to be[,]" Henderson responded affirmatively. He also affirmed the trial court's statement that pleading guilty meant an admission of the truth of both allegations against him—the level 6

felony invasion of privacy and the probation violation. Prior to the acceptance of the guilty plea, Henderson gave no indication that he wished to withdraw his plea. Even after the acceptance of the guilty plea, many of Henderson's statements regarding the withdrawal of his plea evinced a displeasure with not being released and being subjected to a no-contact order, rather than an involuntariness to enter into the plea. As the trial court remarked:

> I think I accepted the plea of guilty on a knowing basis. [] I'm going to interpret [Henderson's] statements as his feeling disagreeable about having been subject to a protective or no[-]contact order and that's it's frustrating to him but that his admission to knowingly violating it even in his mind it didn't seem that it was severe or uninvited.

(Tr. Vol. II, pp. 23-24).

[16] Henderson focused most of this argument that he did not offer his plea freely and voluntarily on his misunderstanding of the proceedings and the fact that "he was not lucid[.]" (Appellant's Br. p. 15). Henderson described the sentencing hearing as a "court sanctioning hearing" and labeled the contents of the presentence investigation report as "just-it's evil." (Tr. Vol. II, p. 24). According to Henderson, the prosecutor was "very malignant" and "subjugating towards me you know." (Tr. Vol. II, pp. 26-27). He stated that "[i]t just leads me to believe that he's malice [sic] towards the courtroom today and you know I'd like to set up a disposition hearing if that's what we need to do." (Tr. Vol. II, p.27). Henderson clarified that he needed the disposition hearing because "the prosecutor is looking for head today. They're just

chopping off heads today. It's very obvious to me and I don't like it." (Tr. Vol. II, p. 27). However, while his belligerent and threatening behavior throughout the hearings demonstrated an uninformed view of the legal system and proceedings, we agree with the State that this does not diminish the fact that the trial court thoroughly explained the terms of the plea agreement and its consequences to ensure that Henderson understood the plea agreement and entered into it voluntarily.

[17] Henderson's belated assertions of innocence do not transform the trial court's denial of his motion to withdraw the guilty plea into an abuse of discretion. *See, e.g., Johnson v. State*, 734 N.E.2d 242, 246 (Ind. 2000) (finding no abuse of discretion in denial of motion to withdraw guilty plea to murder where Johnson did not protest his innocence until the sentencing hearing). Before claiming that he was innocent, Henderson affirmed the veracity and accuracy of the factual basis of the plea for both charges and he was given opportunities to indicate that he did not wish to enter into the plea. *See Carter v. State,* 739 N.E.2d 126, 131 (Ind. 2000) (holding that the trial court did not abuse its discretion by denying a defendant's motion to withdraw a guilty plea even when the motion was premised on a protestation of innocence as the trial court relied in substantial part on the fact that defendant's admission of guilt had been detailed). Based on the circumstances before us, we conclude that Henderson entered into the plea agreement knowingly and voluntarily. As no manifest injustice occurred, we affirm the trial court's denial of Henderson's motion to withdraw his guilty plea.

II. *Appropriateness of Sentence*

[18] Henderson next contends that the trial court abused its decision by sentencing him to the maximum term allowed by the plea agreement and maintains that considering the nature of the offense and his character a downward revision of the sentence is warranted. Sentencing is primarily "a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Nevertheless, although a trial court may have acted within its lawful discretion in fashioning a sentence, our court may revise the sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225. Ultimately, "whether we regard a sentence as appropriate at the end of the day 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*. at 1224. We focus on "the length of the aggregate sentence and how it is to be served." *Id*. Our court does "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.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Henderson bears the burden of persuading

our court that his sentence is inappropriate. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 111-12 (Ind. 2015).

[19] The advisory sentence is the starting point selected by the General Assembly as a reasonable sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The sentencing range for a Level 6 felony is between six months and two-and-a-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). Here, the trial court imposed a sentence of two years, pursuant to the terms of the plea agreement.

[20] Henderson has failed to persuade us that his two-year sentence is inappropriate. With respect to the nature of the charge, we note that the current invasion of privacy charge is the latest in Henderson's repeated harassment of K.L. and E.L. Henderson was ordered on seven prior occasions not to contact E.L.—all to no avail. When Henderson absconds from community corrections, "the first place the police go looking is [E.L.'s] home. Even the police know he will NOT stay away despite the court ordering him to stay away from [E.L.'s] home." (Appellant's App. Vol. II, p. 129). K.L.'s victim impact statement reveals that Henderson's "presence in [her] life was never by [her] choice." (Appellant's App. Vol. II. p. 131). Although she tried to make it clear to him that she wanted "to be left alone," Henderson did not heed her request and K.L. felt "compelled to pursue" a no-contact order. (Appellant's App. Vol. II,

p. 131). Less than twelve hours after the issuance of the order, Henderson violated it by delivering an envelope addressed to K.L. at her parents' residence. The same day the envelope was hand delivered, a letter from Henderson to K.L. was delivered by UPS. Henderson's behavior escalated to the point where K.L. had to be escorted in and out of work every day, "just in case he was waiting there." (Appellant's App. Vo. II, p. 131). Henderson's statements at the hearing indicate that the current cause has failed to make any impression on him as he "really d[idn]'t care" about the legal proceedings but was focused on forcing E.L. and K.L. to testify in court so he could see them. (Tr. Vol. II, p. 2).

[21] Focusing on Henderson's character, we note that he has an extensive criminal history. *See Rutherford v State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (a defendant's criminal history is relevant in assessing his character). As a juvenile, he was adjudicated a delinquent child for disorderly conduct, arrested on numerous occasions, and detained twelve times. As an adult, he has acquired twelve misdemeanor convictions involving driving while suspended, domestic battery, disorderly conduct, possession of marijuana, furnishing alcohol to a minor, public intoxication, criminal trespass, and invasion of privacy. He also acquired nine felony convictions, including receiving stolen property, battery resulting in bodily injury, residential entry, intimidation, attempt to commit residential entry, and failure to return to lawful detention. He violated probation thirteen times, of which seven were found to be true.

[22] Although he now maintains that his sentence is inappropriate in light of his mental health issues, we note that the trial court recommended a mental health evaluation while in the DOC. As he admits, his mental health history is well-documented and his failure to address these known issues does not make his two-year sentence inappropriate. *See Davis v. State*, 173 N.E.3d 700, 706–07 (Ind. Ct. App. 2021) (stating that defendant's failure to seek mental health treatment for his known issues did not support a sentencing revision). Accordingly, as we find Henderson's sentence not inappropriate in light of the nature of the offense and his character, we affirm the trial court's imposition of the two year sentence.

CONCLUSION

[23] Based on the foregoing, we hold that the trial court did not abuse its discretion in denying Henderson's motion to withdraw his guilty plea and his sentence is not inappropriate in light of the nature of the offense and Henderson's character.

[24] Affirmed.

[25] Altice, C. J. and Pyle, J. concur