MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Taiveon Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 17, 2023

Court of Appeals Case No. 22A-CR-2443

Appeal from the Johnson Superior Court

The Honorable Peter D. Nugent, Judge

Trial Court Cause No. 41D02-1910-F3-78

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Taiveon Taylor appeals his seventeen-year sentence after he pleaded guilty to one count of armed robbery, as a Level 3 felony;[1] one count of resisting law enforcement, as a Level 6 felony,[2] and admitted to being a habitual offender.[3] We affirm.

Issues

[2] Taylor raises two issues for our review:

1. Whether the court erred when it sentenced him on the habitual offender adjudication.

2. Whether the court abused its discretion when it ordered his sentences for armed robbery and resisting law enforcement to run consecutively.

Facts and Procedural History

[3] On October 9, 2019, the State charged Taylor with one count of armed robbery, as a Level 3 felony (Count 1); one count of carrying a handgun without a

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[1] Ind. Code § 35-42-5-1(a).

[2] I.C. § 35-44.1-3-1.

[3] I.C. § 35-50-2-8(d).

license, as a Level 5 felony (Count 2);[4] and one count of resisting law enforcement, as a Level 6 felony (Count 3). Thereafter, the State also alleged that Taylor was a habitual offender. On March 24, 2022, Taylor and the State entered into a plea agreement. Pursuant to that agreement Taylor agreed to plead guilty as charged in exchange for a "[c]ap of 18 years on the executed, non-suspended time in the aggregate[.]" Appellant's App. Vol. 2 at 210. The court accepted Taylor's plea agreement.

[4] The court then held a sentencing hearing, at which the court stated as follows:

> Okay. Mr. Taylor, as you know, I have to consider several factors. I have to consider many things. Criminal history, your background. I have reviewed the Presentence Investigation. You do have a fairly lengthy criminal history. There are some other things that I see in your background that aren't as concerning. Um, but I have to weigh aggravators and mitigators. The biggest aggravator to me, of course, is your criminal history. And you did come in here and eventually own it. I don't give that a ton of weight, but I'm also not gonna seriously aggravate your sentence under the circumstances. I do find the aggravators outweigh the mitigators. I'm gonna sentence you as follows: I would agree . . .that Count II merges into Count I for purposes of sentencing.[5] I'm going to sentence you on Count I to a term of 10 years executed. . . . I'm going to enhance that charge by 6 years on that Habitual – with the Habitual Offender Enhancement. With regards to Count III, Resisting Law Enforcement, I'm going to find the aggravators outweigh the

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[4] I.C. § 35-47-2-1

[5] It is not clear from the record whether the court actually entered judgment of conviction against Taylor on Count 2.

> mitigators, but I'm going to sentence you to a term of 1 year on that Level 6 Felony. That will be consecutive to Count I and the Habitual Offender. So I've just sentenced you to 10 on the Level 3, 1 on the Level 6, 6 on the Habitual Offender, for a total executed sentence of 17 years. None of that will be suspended based on your criminal history

Tr. at 9-10. This appeal ensued.

Discussion and Decision

Issue One: Sentence Enhancement

[5] Taylor first contends that the trial court erred when it sentenced him on the habitual offender adjudication. According to Taylor, the court improperly imposed a separate six-year sentence for that adjudication. It is well settled that a "habitual offender finding does not constitute a separate crime nor does it result in a separate sentence. Rather it results in a sentence enhancement imposed upon the conviction of a subsequent felony." *Howard v. State*, 873 N.E.2d 685, 689 (Ind. Ct. App. 2007) (citations omitted). Further, the court "shall attach the habitual offender enhancement to the felony conviction with the highest sentence imposed and specify which felony count is being enhanced." Ind. Code § 35-50-2-8(j).

[6] On appeal, Taylor contends that his sentence is erroneous because the court did not identify which felony count was being enhanced but instead entered a separate sentence on the habitual offender adjudication. We acknowledge Taylor's confusion. At the end of its oral sentencing statement and in its

written sentencing order, the court indicated that it was sentencing Taylor to consecutive terms of ten years on Count 1 and six years for the habitual offender adjudication. *See* Tr. at 10; *see also* Appellant's App. Vol 3 at 93.

[7] However, despite those statements, it is clear that the court attached the six-year enhancement to the armed robbery conviction. During its oral sentencing statement, the court specifically stated that it was sentencing Taylor to ten years on Count 1, to be "enhance[d] . . . by 6 years" for the habitual offender adjudication. Tr. at 10. Further, the abstract of judgment explicitly provided that Taylor had received a sentence of "16 Years" for the armed robbery conviction, which included a six-year enhancement for the habitual offender adjudication. Appellant's App. Vol. 2 at 74. As such, we hold that the court adequately identified which felony count was being enhanced and properly attached the enhancement to that felony. We cannot say that Taylor's sentence is erroneous.

Issue Two: Consecutive Sentences

[8] Taylor next contends that the court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind.), *clarified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*.

[9] On appeal, Taylor contends that the court abused its discretion when it ordered his sentences on Counts 1 and 3 to run consecutively. "'[T]o impose consecutive sentences, a trial court must find at least one aggravating circumstance.'" *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003) (quoting *Ortiz v. State*, 766 N.E.2d 370, 377 (Ind. 2002)), *trans. denied*. Moreover, if a trial court imposes consecutive sentences when not required to do so by statute, the trial court must explain its reasons for selecting the sentence imposed, including: (1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence. *Id*. (citing *Ortiz*, 766 N.E.2d at 377).

[10] Taylor contends that the imposition of consecutive sentences was an abuse of discretion because the court's sentencing order "contains no specific language at all as to how or why consecutive sentences were imposed." Appellant's Br. at 10. Taylor is correct that our Supreme Court has "emphasized that[,] before a trial court can impose a consecutive sentence, it must articulate, explain, and evaluate the aggravating circumstances that support the sentence." *Monroe v. Stat*e, 886 N.E.2d 578, 580 (Ind. 2008). However, we need not decide whether the trial court adequately articulated the reasons that supported the consecutive sentences because we can say with confidence that the trial court would have

imposed the same sentence had it properly considered reasons that enjoy support in the record. *See, e.g., Anglemyer*, 868 N.E.2d at 491.

[11] Here, the criminal history used as an aggravator to support the imposition of consecutive sentences is apparent on the face of the record. At a relatively young age, Taylor had already accumulated an extensive criminal history. Indeed, Taylor's criminal history dates back to 2008, when he was only fourteen years old, and includes three adjudications as a juvenile delinquent, twenty-eight arrests as an adult that culminated in twelve misdemeanor convictions and three felony convictions, and two probation revocations. We hold that this aggravator, found to specifically outweigh any mitigators, was sufficient for the court to impose consecutive sentences. Accordingly, we cannot say that the court abused its discretion when it sentenced Taylor.

Conclusion

[12] Taylor's sentence is not erroneous, and the court did not abuse its discretion when it sentenced him. We therefore affirm his sentence.

[13] Affirmed.

Tavitas, J., and Kenworthy, J., concur.