MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian D. Minnick,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No. 23A-CR-2024

Appeal from the Monroe Circuit Court

The Honorable Darcie L. Fawcett, Judge

Trial Court Cause No. 53C09-2204-F5-230

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

[1] Brian Minnick appeals his sentence for intimidation, a Level 5 felony. Minnick argues that: (1) the trial court abused its discretion by entering an inadequate sentencing statement and failing to consider Minnick's mental health and guilty plea as mitigating factors; and (2) Minnick's sentence is inappropriate. We are not persuaded by Minnick's arguments, and accordingly, we affirm.

Issues

[2] Minnick raises two issues, which we revise and restate as follows:

I. Whether the trial court abused its discretion by entering an inadequate sentencing statement and by failing to consider Minnick's mental health and guilty plea as mitigating factors.

II. Whether Minnick's sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

[3] On April 2, 2022, in Bloomington, Minnick broke windows in vehicles and a restaurant, threatened a man with a crowbar, and resisted arrest. The State charged Minnick with intimidation, a Level 5 felony; resisting law enforcement, a Class A misdemeanor; and three counts of criminal mischief, Class B misdemeanors. Minnick was later found to be incompetent to stand trial, and the trial court committed Minnick to the Division of Mental Health. After his release from the Division of Mental Health, Minnick pleaded guilty to

intimidation, a Level 5 felony. The State agreed to dismiss the remaining charges and the charges in two other cases, which included resisting law enforcement, a Level 6 felony; disorderly conduct, a Class B misdemeanor; intimidation, a Level 6 felony; and criminal mischief, a Class B misdemeanor. Minnick agreed to a sentence of "6 years, with executed and/or suspended terms to be determined by the Court." Appellant's App. Vol. II p. 67.

[4] At the guilty plea hearing, the trial court questioned Minnick regarding his intended residence if released on home detention. The trial court stated: "I am not comfortable just straight releasing you to probation at this point in time. I'm just not. So I am then left with the alternative of either having you find a place [ ] to be placed on home detention [ ] to serve out an executed sentence, or send you to the department of corrections." Tr. Vol. II pp. 13-14. The trial court continued the sentencing hearing several times to allow Minnick to contact a woman that Minnick claimed managed his money and to find a place to live for home detention.

[5] When Minnick was unsuccessful in locating the woman or a place to live, the trial court held the sentencing hearing. The trial court noted that it was concerned with Minnick's criminal history and "escalation in terms of the level of violence . . . ." *Id*. at 29. The trial court had been hopeful that home detention could be structured so Minnick could be "engaged in the mental health support that [he] obviously need[s]." *Id*. The trial court also noted that mental health treatment facilities in the area were unwilling to work with Minnick due to concerns "for staff safety and other[']s safety." *Id*. Thus, the

trial court stated that it did not have a better alternative than the Department of Correction ("DOC") due to concerns for the safety of the community and the "high risk level of re-offense." *Id.* at 30. The trial court then sentenced Minnick to six years in the DOC. Minnick now appeals.

Discussion and Decision

I. Sentencing Statement

[6] Minnick first argues that the trial court's sentencing statement was inadequate because it failed to adequately identify mitigating circumstances and that the trial court abused its discretion by failing to consider certain mitigators. Sentencing decisions, like the adequacy of a sentencing statement or consideration of mitigators, 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. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

[7] We begin by noting that Minnick pleaded guilty and agreed to a sentence of "6 years, with executed and/or suspended terms to be determined by the Court." Appellant's App. Vol. II p. 67. "A plea agreement is contractual in nature, binding the defendant, the state, and the trial court, once the judge accepts it." *St. Clair v. State*, 901 N.E.2d 490, 492 (Ind. 2009). "Thus, once a sentencing court accepts a plea agreement, it possesses only that degree of sentencing discretion provided in the agreement." *Id.* Under the plea agreement here, the

trial court only had discretion as to Minnick's placement for his six-year sentence.

[8] In Minnick's Appellant's Brief, he seems to be appealing the six-year sentence. In his Reply Brief, however, Minnick clarifies that he is not appealing the length of his sentence; rather, he is appealing "only the length of the executed portion of his sentence." Appellant's Reply Br. p. 3. Thus, Minnick is appealing only his placement for the six-year sentence.

[9] Our Supreme Court has held that "[t]he place that a sentence is to be served is an appropriate focus for application of our review and revise authority" under Indiana Appellate Rule 7(B). *Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007); *Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018) ("Aside from revising the length of a sentence, the place where a sentence is to be served is also an appropriate focus for our review under 7(B)."). This Court has held that a placement decision, however, is not "subject to review for abuse of discretion." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008); *see also T.A.D.W. v. State*, 51 N.E.3d 1205, 1210 (Ind. Ct. App. 2016), *as amended* (May 26, 2023). Thus, the State argues that an abuse of discretion analysis is not required.

[10] Regardless, to the extent Minnick is entitled to an abuse of discretion analysis, we are not persuaded by his arguments. Indiana Code Section 35-38-1-1.3 provides: "After a court has pronounced a sentence for a felony conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes unless the court imposes the advisory sentence for the felony." Here,

the trial court did not have discretion regarding the length of the sentence, and the trial court extensively discussed the placement options that it considered. Accordingly, we conclude that the trial court's sentencing statement was adequate.

[11] As for the trial court's failure to identify Minnick's mental health and guilty plea as mitigators, generally a consideration of aggravators and mitigators is used to determine the length of a sentence; here, the trial court did not have discretion regarding the length of the sentence. We note, however, that under Indiana Code Section 35-38-1-7.1(b), the trial court may consider certain factors "as mitigating circumstances or **as favoring suspending the sentence and imposing probation**. . . ." (emphasis added).

[12] Here, the trial court was well aware of Minnick's mental health issues and extensively discussed placement options with Minnick's mental health in mind. Under the circumstances, however, the trial court was left with less than ideal options. Thus, we cannot conclude the trial court abused its discretion when considering Minnick's mental health issues.

[13] As for Minnick's guilty plea, in exchange for his guilty plea, Minnick received a substantial benefit, which included the dismissal of multiple other charges in this case and the dismissal of the charges in two other cases for resisting law enforcement, a Level 6 felony; disorderly conduct, a Class B misdemeanor; intimidation, a Level 6 felony; and criminal mischief, a Class B misdemeanor. "A guilty plea is not necessarily a mitigating factor where the defendant

receives substantial benefit from the plea or where evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic." *Norris v. State*, 113 N.E.3d 1245, 1254 (Ind. Ct. App. 2018), *trans. denied*. Given the substantial benefit Minnick received, the trial court did not abuse its discretion when it did not mention the guilty plea as a mitigator or factor favoring a suspended sentence.

III. Inappropriate Sentence

[14] Next, Minnick argues that his placement in the DOC for six years is inappropriate. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; Jackson v. State, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[1] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective

[1] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g.*, *State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[15] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate '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.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "should prevail 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).

[16] 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. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Indiana Code Section 35-50-2-6(b) provides: "A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." Here, Minnick agreed to a sentence of six years and challenges only the appropriateness of his placement in the DOC. "A defendant faces a challenging task of prevailing on a claim that a placement is

inappropriate, because appellate review under Appellate Rule 7(B) requires us to consider not whether another sentence is more appropriate, but whether the sentence imposed is inappropriate." *T.A.D.W.*, 51 N.E.3d at 1210.

[17] Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). The nature of the offense here is that Minnick broke windows in vehicles and a restaurant with a crowbar and threatened a man with the crowbar. He then resisted arrest.

[18] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence vary based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). "Even a minor criminal history is a poor reflection of a defendant's character." *Id*. Here, Minnick has an extensive criminal history that includes seven felony convictions and three misdemeanor convictions. Minnick has violated his probation at least six times. Moreover, Minnick was on pre-trial release at the time of the instant offense. The trial court noted that Minnick's offenses were escalating "in terms of the level of violence." Tr. Vol. II p. 29.

[19] Minnick has mental health issues, of which the trial court was well aware. The trial court considered home detention, but Minnick did not have a place to live, which eliminated home detention as a possibility. The trial court noted that it was uncomfortable placing Minnick on probation, which is understandable given Minnick's multiple past probation violations and danger to the community. Further, the trial court noted that local treatment facilities were unwilling to work with Minnick given concerns for the safety of their staff and others. Under these circumstances, Minnick has failed to demonstrate that his placement in the DOC is inappropriate.

Conclusion

[20] To the extent Minnick's arguments are available for an abuse of discretion analysis, we find the trial court did not abuse its discretion in sentencing him. Further, Minnick's placement in the DOC is not inappropriate. Accordingly, we affirm.

[21] Affirmed.

Pyle, J., and Foley, J., concur.