MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael D. Foster,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 19, 2022

Court of Appeals Case No. 21A-CR-1457

Appeal from the Allen Superior Court

The Honorable Frances C. Gull, Judge

Trial Court Cause No. 02D05-2001-MR-3

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Michael Foster (Foster), appeals following his conviction for voluntary manslaughter, a Level 2 felony, Ind. Code § 35-42-1-3(a).

[2] We affirm.

ISSUES

[3] Foster presents this court with two issues, which we restate as:

> (1) Whether the trial court abused its discretion when it declined to give his proffered final jury instructions on self-defense and involuntary manslaughter; and
>
> (2) Whether his sentence is inappropriate given the nature of his offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] Foster, Sonya Boyd (Boyd), and Warrell Booher (Booher) all lived at an apartment building, commonly known as the Towers, located at 915 East Washington Boulevard in Fort Wayne. Foster and Boyd were in a romantic relationship. Prior to January 24, 2020, Foster became aware that Boyd and Booher had been conversing when Foster was not present. Foster raised the issue with Boyd, who assured Foster that there was nothing romantic occurring between herself and Booher and that she would cease talking to Booher.

[5] On January 24, 2020, surveillance cameras inside and outside the common areas of the Towers recorded the following events. Shortly before 6:00 p.m.,

Booher was outside the front of the building by himself pacing back and forth. Foster approached Booher, who continued to pace and who avoided eye contact with Foster. Foster and Booher exchanged words, and Booher walked into the apartment building. Foster followed Booher inside the building to the first-floor elevator doors. Booher took the elevator to his apartment on the third floor. At the same time, Foster entered Boyd's apartment on the first floor, changed his shirt and shoes, and returned to the elevator doors. Shortly thereafter, Booher went back downstairs, exited the elevator on the first floor, and walked past Foster with his hands clasped around the back of his neck. Foster followed Booher as Booher walked to the door of Boyd's apartment and turned around. After Booher and Foster were face to face, Foster threw a punch at Booher. Booher was either thrown or stepped away from Foster, and Foster followed Booher. Booher lunged toward Foster, and the men made contact, falling to the ground. An exit sign situated close to the surveillance camera partially obscured the ensuing events for approximately thirty seconds, however, the visibility of Foster's white shirt over the exit sign as the two scuffle indicates that Foster was on top of Booher. Foster made a punching motion with his right arm and hand. Immediately thereafter, Foster stood up, stepped backwards, and entered Boyd's apartment. Booher also stood, walked the few steps to Boyd's threshold, and collapsed on the floor. Approximately thirty seconds later, Boyd exited her apartment and sought assistance from a neighbor. 911 was alerted. Foster is seen on the surveillance video stepping over Booher's body and fleeing the building. Foster was driven by his cousin to South Bend, where several of Foster's other relatives lived. Despite receiving

emergency medical care, Booher died shortly after arriving at Lutheran Hospital. Booher's cause of death was later determined to be a stab wound to his left upper chest that had punctured his lung and caused internal bleeding. Booher had also sustained wounds on his hands consistent with defending himself from a knife attack, and he had a wound above his right eye that had been caused by a sharp object, not a punch. A knife sheath was found on the waistband of Booher's pants, but the knife used to stab Booher was never recovered.

[6] The Towers' property manager quickly identified Foster after accessing the building's surveillance footage. During the evening of January 24, 2020, local Fort Wayne news media reported that the Fort Wayne Police Department (FWPD) considered Foster a person of interest in Booher's death. On January 25, 2020, Foster returned to Fort Wayne and gave a recorded statement to the FWPD. Foster related that he knew that Booher's oldest son had been stabbed to death three months prior and that Booher had been agitated and upset before Foster approached him outside the Towers. According to Foster, he told Booher, "I need you to stay off my bitch's line" and that Booher had told him that Boyd would have to be the one to tell him to stay away, not Foster. (Exh. 2). Foster stated that he and Booher agreed to fight but that he had told Booher not to bring any weapons to the fight. Nevertheless, according to Foster, after the initial tussle, Booher had pulled out a knife. Foster maintained that, after they fell to the floor, he somehow took the knife from Booher. Foster repeatedly denied that he had stabbed Booher and denied even knowing how

Booher had been stabbed. Foster further denied knowing what happened to the knife. Foster told the interviewer that Booher's death could have been avoided if Boyd had told Booher to "back off." (Exh. 2). The FWPD detective who took Foster's statement estimated Foster's height to be six feet and his weight to be 210 pounds.

[7] On January 30, 2020, the State filed an Information, charging Foster with murder. On May 5, 2021, the trial court convened Foster's three-day jury trial. Boyd testified that Foster had never told her that he was jealous of Booher. Foster's cousin who had been with Foster earlier in the day on January 24, 2020, related to the jury that Foster had mentioned that Booher had been talking to Boyd but that Foster had not seemed particularly angry about the situation. The forensic pathologist who performed Booher's autopsy told the jury that Booher, who was five feet eight inches tall and weighed 148 pounds, had been killed by a wound that had penetrated approximately four and three-quarter inches into Booher's chest cavity. The pathologist characterized this as a very deep wound which would have taken a "fair amount" of force to inflict, as it had penetrated Booher's chest wall, muscle, soft tissue, the space between his ribs, and his lung. (Transcript Vol. II, p. 146).

[8] Prior to final arguments, the trial court held a final instructions conference. The trial court rejected one of Foster's proposed instructions on the duty to retreat as it pertains to a claim of self-defense. The trial court also declined to give Foster's proposed instruction on involuntary manslaughter, finding that it was not a factually included offense of the murder as charged and that no serious

evidentiary dispute existed regarding Foster's intent sufficient to support giving the instruction. The trial court accepted Foster's proposed instruction on voluntary manslaughter and the State's proposed instructions on self-defense. The jury found Foster not-guilty of murder but guilty of voluntary manslaughter.

[9] On June 11, 2021, the Allen County Probation Department filed Foster's presentence investigation report. Foster reported having been committed to the Indiana Boys School as a juvenile. Foster was convicted in 1987 of Class B felony burglary and Class D felony theft. Foster was sentenced to ten years in the Department of Correction (DOC) for those offenses and was discharged from parole in 1997. In addition to his felony record, Foster had three misdemeanor convictions in 2002 in Missouri for operating a motor vehicle with a suspended license (twice) and stealing. Foster had received fines and costs for those offenses. Foster had also been convicted of misdemeanor battery in Georgia in 2007 and was sentenced to fifteen days in jail and eleven months of probation. In 2008 Foster was convicted in Missouri of affray[1] but received no jail time. At the time of the preparation of his presentencing report, Foster had a pending charge for Class A misdemeanor domestic battery. Foster further reported that he had been a daily user of alcohol, cocaine, and marijuana since the age of thirty. Foster had never participated in substance

[1] At Foster's sentencing hearing, the State represented to the trial court that in Missouri, affray is the offense of "creating a violent disturbance in a public place." (Tr. Vol. III, p. 32).

abuse treatment. Foster claimed that he had been intoxicated at the time of the offense.

[10] On June 18, 2021, the trial court held Foster's sentencing hearing. The trial court found Foster's expressions of remorse to be mitigating. The trial court found Foster's criminal record and failed efforts at rehabilitation to be aggravating circumstances. The trial court further found that Foster had attended the Indiana Boys School and had a record of numerous felony and misdemeanor convictions for which he had received DOC and jail sentences, parole, probation, fines and costs, and that Foster had a pending domestic battery charge. The trial court sentenced Foster to thirty years in the DOC.

[11] Foster now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Final Instructions*

A. *Standard of Review*

[12] Foster argues that the trial court abused its discretion when it declined to give his proffered instruction on the duty to retreat as it pertains to self-defense and his instruction on involuntary manslaughter. We observe that jury instruction is a matter within the discretion of the trial court, and we will reverse a trial court's instructional decision only upon an abuse of that discretion. *Cardosi v. State*, 128 N.E.3d 1277, 1284 (Ind. 2019). In reviewing a challenge to a jury instruction, we consider: (1) whether the instruction is a correct statement of the law; (2) whether there was evidence supporting the instruction; and (3)

whether the substance of the instruction was covered by other instructions given by the trial court. *Thomas v. State*, 61 N.E.3d 1198, 1201 (Ind. Ct. App. 2016), *trans. denied*. In conducting our review, we assess the trial court's instructions to the jury as a whole and in reference to each other, and we will not reverse unless the instructions as a whole misled the jury as to the law. *McCowan v. State*, 27 N.E.3d 760, 764 (Ind. 2015). In addition, a defendant will not be entitled to reversal of his conviction based on instructional error unless he demonstrates that the claimed error prejudiced his substantial rights. *Treadway v. State*, 924 N.E.2d 621, 636 (Ind. 2010).

B. *Self-Defense*

[13] Foster proffered the following instruction regarding the duty to retreat as it pertains to self-defense:

> If you find from the evidence and the reasonable inferences to be drawn therefrom, that the Accused started the fight with the victim, then the Accused has a duty to retreat or attempt to retreat.
>
> If you find that the Accused had no opportunity to retreat, or if he or she has attempted unsuccessfully to withdraw from the conflict, then he or she may be justified in killing in self-defense if you find that the State has failed to disprove the defense … beyond a reasonable doubt.

(Appellant's App. Vol. II, p. 87). Foster argues that his proffered instruction was a correct statement of the law, was supported by the evidence, and was not covered by the instructions given by the trial court. The State apparently

concedes that the proffered instruction was a correct statement of the law and was supported by the evidence, as its only response is that Foster's proffered instruction was adequately covered by the trial court's other instructions.

[14] We agree with the State. Foster bases his argument regarding the inadequacy of the trial court's instructions on a comparison of his proffered instruction to the given final Court's Instruction No. 6, which provided as follows:

> A claim of self-defense requires that the Defendant acted without fault, which means that the Defendant did not provoke, instigate, or participate willingly in the violence.

(Appellant's App. Vol. II, p. 119). Looking only to this instruction, Foster argues that it "failed to apprise the jury that even as the initial aggressor self-defense may still be used as a defense by Mr. Foster if he had no opportunity to retreat or attempted to retreat but was unsuccessful" and that, thus, the jury was not provided with adequate instruction to make a fully-informed decision. (Appellant's Br. p. 15). However, the trial court also instructed the jury as follows:

> COURT'S INSTRUCTION NO. 5
>
> The defense of self-defense is defined by law as follows:
>
> A person may use reasonable force against another person to protect himself from what he reasonably believes to be the imminent use of unlawful force.

> *A person is justified in using deadly force, and does not have duty to retreat, only if he reasonably believes that deadly force is necessary to prevent serious bodily injury to himself.*
>
> *However, person may not use force if*:
>
> He is committing a crime that is directly and immediately connected to the confrontation or he is escaping after the commission of a crime that is directly and immediately connected to the confrontation or *he provokes a fight with another person with intent to cause bodily injury to that person or he willing entered into a fight with another person or started the fight, unless he withdraws from the fight and communicates to the other person his intent to withdraw and the other person nevertheless continues or threatens to continue the fight*.
>
> The State has the burden of proving beyond a reasonable doubt that the Defendant did not act in self-defense.

(Appellant's App. Vol. II, p. 118) (emphasis added). The Court's Instruction No. 5 directly addresses the law pertaining to the duty to retreat by the instigator of a fight or by a mutual combatant, and it specifically instructed the jury that a defendant claiming self-defense has no duty to retreat if he reasonably believes that deadly force is necessary to prevent serious bodily injury, as would be the case if the defendant had no opportunity to retreat or had attempted to retreat unsuccessfully. As noted above, we are charged with assessing the trial court's instructions as a whole. *See McCowan*, 27 N.E.3d at 764. Foster does not address the Court's Instruction No. 5, let alone explain how it inadequately informed or somehow misled the jury regarding his duty to retreat. Therefore, he has failed to persuade us that his proffered instruction

was not adequately covered by the given self-defense instructions. *See Thomas*, 61 N.E.3d at 1201.

[15] However, even if Foster had established that the trial court erred in declining his instruction, we would not reverse his conviction. "Errors in the giving or refusing of instructions are harmless where a conviction is clearly sustained by the evidence and the instruction would not likely have impacted the jury's verdict." *Patton v. State*, 837 N.E.2d 576, 581 (Ind. Ct. App. 2005). Although Foster claims that the jury was inadequately informed by the instructions given in this case, he offers no specific argument related to the strength of the evidence against him or detailing specifically how the claimed error impacted the jury's ability to parse the evidence of this case. In addition, in *Henderson v. State*, 795 N.E.2d 473, 475-77 (Ind. Ct. App. 2003), *trans. denied*, Henderson was charged with two counts of murder, among other charges, after he shot two people while he was dealing marijuana. Henderson claimed self-defense but was ultimately convicted. *Id*. at 476-77. On appeal, Henderson argued that the trial court's instructions on self-defense were inadequate because the jury should have been informed that the criminal activity precluding the use of self-defense must have produced the confrontation where the force was used. *Id*. at 478. This court held that the trial court had erred when it declined to so instruct the jury because its final instructions were an incomplete statement of the law. *Id*. at 479-80. However, the court further determined that reversal was not required because the instructions as a whole did not mislead the jury in light of defense counsel's final argument explaining to the jury that Henderson's act

of dealing marijuana did not automatically preclude him from claiming self-defense. *Id*. at 480. Given this closing argument, we concluded that "[w]hile the instruction given to the jury may not have included a complete statement of the law, counsel's remarks were sufficient to dilute or dispel a concern that the jury would have been misled by the instructions." *Id*. at 480.

[16] Here, Foster essentially contends that the trial court's instructions, while correct, were an incomplete statement of the law. Although the trial court did not give his desired instruction on the duty to retreat, Foster's counsel told the jury during closing argument that Foster "threw the first punch" but that "after that first blow, the rules of engagement completely changed." (Tr. Vol. II, pp. 243, 244). Regarding Foster's duty to retreat, counsel informed the jury that Foster

> didn't have an opportunity to run. [Booher] was on him instantaneously. He defends himself. He tries to control the situation. And he does that by taking him to the ground. When does [] Foster have an opportunity to leave this situation? I don't care if he's sixty (60) pounds bigger than [] Booher. He doesn't have a knife. If he would've turned and run, that's a knife in the back. Never had an opportunity to flee. Not once. Because he has an armed assailant coming at him.

(Tr. Vol. II, p. 245). As in *Henderson*, we conclude that, even if the trial court had erred in declining the proffered instruction, Foster's closing argument informed the jury of Foster's legal theory and dispelled any concern that the jury was misled by the trial court's instructions. Thus, given Foster's failure to develop any argument as to how he was specifically prejudiced by his claimed

instructional error, the instructions on self-defense which the jury received, and Foster's closing argument, we conclude that any abuse of the trial court's discretion would not have been reversible error. *See id*. at 480.

C. *Involuntary Manslaughter*

[17] Foster also argues that the trial court abused its discretion when it failed to give an instruction on involuntary manslaughter as a lesser included offense of murder. In *Wright v. State*, 658 N.E.2d 563 (Ind. 1995), our supreme court enunciated a three-part test for determining when a jury should be instructed on a lesser included offense:

> Part one requires the trial court to determine whether the lesser offense is "inherently" included in the offense charged by comparing the statute defining the crime charged with the statute defining the alleged lesser included offense. If necessary, part two of the *Wright* test alternatively requires the trial court to determine whether the lesser offense is "factually" included in the offense charged by comparing the charging instrument with the statute defining the alleged lesser included offense.
>
> Finally, if the court concludes that the lesser offense is either inherently or factually included in the offense charged, then part three requires the court to determine whether a serious evidentiary dispute exists as to which offense was committed by the defendant, given all the evidence presented by both parties. If a serious evidentiary dispute does exist, it is reversible error not to give the instruction on the inherently or factually included lesser offense.

Evans v. State, 727 N.E.2d 1072, 1080-81 (Ind. 2000) (cleaned up).

[18] Murder, for our present purposes, is the knowing or intentional killing of another human being. I.C. § 35-42-1-1(1). Involuntary manslaughter occurs when a person kills another human being while committing or attempting to commit a battery or a Level 5 felony, a Level 6 felony, or a Class A misdemeanor, any of which inherently poses a risk of serious bodily injury. I.C. § 35-42-1-4(b). It is well-settled that involuntary manslaughter is not an inherently included lesser offense of murder. *See Evans,* 727 N.E.2d at 1081 (citing *Wright*, 658 N.E.2d at 569, and *Champlain v. State*, 681 N.E.2d 696, 702 (Ind. 1997)). However, involuntary manslaughter may be a factually included lesser offense "if the charging instrument alleges that a battery accomplished the killing." *Id*.

[19] Here, the State charged Foster with murder by alleging in relevant part that "Foster … did knowingly or intentionally kill another human being, to wit: [Booher.]" (Appellant's App. Vol. II, p. 18). Because the State did not allege a battery as part of its murder charge, involuntary manslaughter was not a factually included lesser offense as charged in this case. *See Atkinson v. State*, 151 N.E.3d 311, 319-20 (Ind. Ct. App. 2020) (holding that no instruction on involuntary manslaughter was justified as a lesser included offense of murder where the State did not mention a battery in the murder charge, alleging simply that "[Atkinson] did knowingly kill another human being, to wit: [J.S.]"), *trans. denied*. We agree with the State that it was permitted to draft the charging instrument in such a manner so as to foreclose the possibility of an instruction on a lesser included offense. *See Wright*, 658 N.E.2d at 570 (acknowledging that

the State may foreclose an instruction on a lesser offense "by omitting from a charging instrument factual allegations sufficient to charge the lesser offense."). Because involuntary manslaughter is not an inherently included offense of murder and was not factually included in the murder as charged in this case, we conclude that Foster was not entitled to an instruction on involuntary manslaughter.[2]

II. *Appropriateness of Sentence*

A. *Standard of Review*

[20] Foster also contends that his sentence is inappropriately severe and requests that we revise it. "Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of this sentencing decision." *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019). Thus, we may revise a 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 offenses and the character of the offender. *Id*. The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Our supreme court has held that we should leave a trial court's sentence intact "unless overcome by compelling evidence portraying in a

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[2] Given our conclusion, we do not consider Foster's argument that a serious evidentiary dispute existed regarding his intent sufficient to justify an involuntary manslaughter instruction. *See Roberts v. State*, 894 N.E.2d 1018, 1029 (Ind. Ct. App. 2008) (ending a *Wright* analysis after concluding that involuntary manslaughter was neither an inherently nor a factually included lesser offense of the murder charged), *trans. denied*.

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). The defendant bears the burden to persuade the reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018).

[21] Foster was convicted of voluntary manslaughter, a Level 2 felony. I.C. § 35-42-1-3(a). The sentencing range for a Level 2 felony is between ten and thirty years, with an advisory sentence of seventeen and one-half years. I.C. § 35-50-2-4.5. The trial court sentenced Foster to the maximum sentence, thirty years in the DOC.

B. *Nature of the Offense*

[22] When reviewing the nature of the offense, we look to the "the details and circumstances of the commission of the offense and the defendant's participation." *Perry v. State*, 78 N.E.3d 1,13 (Ind. Ct. App 2017). Regarding the nature of his offenses, Foster argues that "[w]hile the nature of voluntary manslaughter is certainly a serious felony and the loss of life tragic," nothing about his offense renders it more egregious than the typical voluntary manslaughter. (Appellant's Br. p. 21).

[23] We disagree. Foster picked a fight with Booher and pursued him when Foster knew that Booher was distraught about the death of his son and was apparently attempting to process that grief by pacing outside and minding his own

business. Foster's claimed motivation for the fight belies the senselessness of the offense—there is no indication in the record that anything romantic occurred between Boyd and Booher, and, according to Boyd and Foster's cousin, Foster was not even particularly upset about Booher talking to Boyd. Foster enjoyed a considerable height and weight advantage over his victim, and Foster had many opportunities to disengage from the conflict, but did not. Instead, Foster overwhelmed his victim and stabbed Booher with such force that the knife penetrated four and three-quarter inches through Booher's skin, chest tissue, and lung. Booher sustained other injuries to his right eye and hands, so the injury Foster inflicted was greater than that necessary to accomplish the offense. Foster did not attempt to render aid to Booher but stepped over his body on his way out of the apartment building. In addition, we cannot overlook the fact that Foster killed Booher inside an apartment building where, as the video surveillance tape revealed, many other citizens were present and attempting to go about their business in their apartments undisturbed by violence.

[24] Foster urges us that our "analysis should not be overly influenced by the nature of the offense." (Appellant's Br. p. 21). However, this was a brutal crime. In short, Foster has not presented any compelling evidence portraying his offense in such a positive light so as to merit a revision of his sentence. *See Stephensen*, 29 N.E.3d at 122.

B. *Character of the Offender*

[25] Foster also contends that his sentence is inappropriate in light of his character. Upon reviewing a sentence for inappropriateness in light of the character of the offender, we look to a defendant's life and conduct. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. Foster has a criminal record spanning some thirty-four years and three states, consisting of two felonies and five misdemeanors. He has been convicted of battery and had a pending charge of domestic battery at the time of sentencing, both violent offenses. Foster has had the benefit of the Indiana Boys School, long and short terms of incarceration, parole, probation, and fines but has not been deterred from criminality. Foster stepped over Booher's dying body and fled Fort Wayne immediately after the offense, only returning after he was publicly identified as a person of interest in Booher's death. Foster blamed the offense on Boyd for not telling Booher to stay away, and he blamed Booher for his own death. Foster has abused alcohol, cocaine, and marijuana on a daily basis for over twenty years without seeking treatment, and he claimed to have been intoxicated at the time of the offense.

[26] Foster's principal argument regarding his character is that maximum sentences are reserved for the worst offenders and that he is not "the worst of the worst[.]" (Appellant's Br. p. 24). Although our supreme court has acknowledged that maximum sentences are most generally appropriate for the worst offenders, it has also held that

> [t]his is not however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the *class* of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

[27] *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002). Therefore, Foster cannot persuade us that his sentence is inappropriate by simply arguing that he is not the worst of the worst.

[28] Foster likens his case to *Prickett v. State*, 856 N.E.2d 1203 (Ind. 2006), and *Hamilton v. State*, 955 N.E.2d 723 (Ind. 2011), wherein our supreme court revised the defendants' sentences partially based on their criminal records. However, we agree with the State that these cases are factually distinguishable. In *Prickett*, the court found that Prickett's criminal record of juvenile adjudications for incorrigibility, burglary, and theft, and his adult record consisting of only misdemeanors for illegal consumption of alcohol as a minor, mischief, and conversion bore no relation in terms of gravity or nature to his sentencing for Class A felony child molesting. *Id*. at 1208-09. Here, Foster had two felony convictions, a conviction for battery, and a pending charge of domestic violence, making his criminal record more relevant for sentencing for Level 2 felony voluntary manslaughter than Prickett's was for child molesting. The criminal record at issue in *Hamilton*, consisting of a misdemeanor DUI and a felony robbery conviction, was found by our supreme court to be both far

removed in time and unrelated to Hamilton's offense of Class A felony child molesting. *Hamilton*, 955 N.E.2d at 725, 728. Unlike Hamilton, Foster has a total of seven criminal convictions, one of which was also a violent crime, as is the instant offense. In sum, after due consideration, we conclude that Foster has also failed to meet his burden to present such overwhelming evidence of his good character sufficient to persuade us to disturb the trial court's sentence. *See Stephenson*, 29 N.E.3d at 122; *Robinson*, 91 N.E.3d at 577.

CONCLUSION

[29] Based on the foregoing, we conclude that the trial court did not abuse its discretion when it declined to give Foster's proposed instructions on self-defense and involuntary manslaughter. We further conclude that Foster has failed to demonstrate that his sentence is inappropriate given the nature of his offense and his character.

[30] Affirmed.

[31] Robb, J. and Molter, J. concur