# MEMORANDUM DECISION




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IN THE
# COURT OF APPEALS OF INDIANA

Keagan Isaac Johnson,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

February 12, 2021

Court of Appeals Case No. 20A-CR-1140

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause Nos. 79D01-1912-F4-48, 79D01-2001-F1-3

**Altice, Judge.**

## Case Summary

[1] Keagan Johnson was convicted, pursuant to a plea agreement, of Level 4 felony conspiracy to commit dealing in cocaine and two counts of Level 3 felony attempted aggravated battery. The trial court sentenced him to an aggregate of eighteen years, with thirteen years executed in the Indiana Department of Correction (DOC) and five years suspended to probation. On appeal, Johnson argues that his sentence is inappropriate in light of the nature of his offenses and his character.

[2] We affirm.

## Facts & Procedural History

[3] During an on-going drug investigation by the Tippecanoe Drug Task Force, Detective Barthelemy made five controlled drug buys between October 7 and October 16, 2019. He arranged each buy with an individual named Mike, later identified as Nicholas Rodriguez. On October 7, Rodriguez had Diana Roberts deliver 1.1 grams of cocaine to Detective Barthelemy. The following day, Rodriquez himself delivered 4.6 grams of cocaine to the detective. Thereafter, on October 10, Rodriquez informed Detective Barthelemy that he was on his way to the buy location where Detective Barthelemy was waiting. When a vehicle arrived, Johnson exited the passenger side and then went to the detective's vehicle, where Johnson exchanged 3 grams of cocaine for cash. Rodriquez then made the next two deliveries himself on October 15 and 16.

[4] Meanwhile, Johnson and Roberts had a falling out, and he kicked her out of his family's home. On the evening of October 15, 2019, Tammi Hawkins drove

Roberts to the home to pick up a television that was on the front porch. Roberts retrieved the television but then noticed that it was broken, so she threw it back on the porch. Johnson yelled from an upstairs window for her to get off his property, and he fired a warning shot from a rifle into the front yard. As Roberts retreated to Hawkins's vehicle, Johnson fired four more shots into the passenger side and rear of the vehicle. The women sped away, and Hawkins called 911.

[5] On October 17, 2019, the State charged Johnson with Level 5 felony criminal recklessness (Count I) and Class B misdemeanor criminal mischief (Count II). Later, the State filed additional charges: two counts of attempted murder, a felony (Counts III and IV) and two counts of Level 3 felony attempted aggravated battery (Counts V and VI). These six counts were under cause number 79D01-2001-F1-03 (Cause F1-03).

[6] On December 19, 2019, the State charged Johnson under a separate cause number with Level 4 felony conspiracy to commit dealing in cocaine, Level 4 felony dealing in cocaine, and Level 6 felony possession of cocaine. These charges, filed under cause number 79D01-1912-F4-48 (Cause F4-48), related to the controlled drug buys in October.

[7] On April 17, 2020, Johnson entered into a plea agreement with the State pursuant to which he pleaded guilty to Counts V and VI in Cause F1-03 – the two counts of Level 3 felony attempted aggravated battery – and the conspiracy count in Cause F4-48. The State agreed to the dismissal of all other counts in

the two causes. The plea agreement also provided that the sentences for the Level 3 felonies would run concurrent to each other but consecutive to the Level 4 felony. Otherwise, sentencing was left open to the trial court. The trial court took the plea agreement under advisement.

[8] At the sentencing hearing on May 29, 2020, the trial court accepted the plea agreement and Johnson's pleas and entered judgments of conviction accordingly. In Cause F4-48, the trial court sentenced Johnson on the Level 4 felony conspiracy to commit dealing in cocaine conviction to six years, with three years executed in the DOC and three years suspended to probation. In Cause F1-03, the court sentenced Johnson on the two Level 3 felonies to twelve-year concurrent sentences (but consecutive to the sentence in F4-48), with ten years executed in the DOC and two years suspended to probation. Thus, Johnson received an aggregate sentence of eighteen years, with thirteen years executed and five years suspended. He now appeals. Additional information will be provided below as needed.

## Discussion & Decision

[9] Johnson argues that the sentence imposed by the trial court is inappropriate. We may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented and the trial court's judgment "should

receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id*. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of 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. Deference to the trial court "prevail[s] 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). The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[10] Here, the trial court imposed an aggregate sentence of eighteen years, with five of those years suspended, for two Level 3 and one Level 4 felony convictions. The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Johnson received a partially suspended advisory sentence for his drug conviction. Regarding the attempted aggravated batteries, the sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. I.C. § 35-50-2-5(b).[1] Johnson received partially suspended, concurrent twelve-year terms. In

[1] We note that on appeal the State improperly lists the sentencing range for a Class B felony rather than the range for a Level 3 felony. The State is reminded that I.C. § 35-50-2-5 was amended in 2014 and now has two subsections.

sum, Johnson received a rather moderate aggregate sentence considering his sentencing exposure.[2]

[11] We initially observe that Johnson makes no showing that his sentence is inappropriate in light of the nature of his offenses. His drug offense appears to have been rather run-of-the-mill but, as set forth above, he received only the advisory sentence with half suspended. Regarding his attempted aggravated battery offenses, we note that there were two victims whom Johnson shot at with a rifle a total of five times. Additionally, he continued to shoot, in a residential neighborhood, as the women sped away in a vehicle. Johnson exhibited no restraint, and his violent, dangerous behavior not only put these women's lives at risk but potentially others in the neighborhood. Under these circumstances, we cannot say that Johnson's slightly aggravated, partially suspended, concurrent twelve-year sentences are inappropriate.

[12] Turning to his character, which is the focus of Johnson's appellate argument, we note that although Johnson was only eighteen years old when he committed these offenses, he had a lengthy history with violent behavior and drugs. Johnson entered the juvenile justice system in 2014, at the young age of twelve, and was adjudicated a delinquent child shortly after turning thirteen for possession of marijuana. This was followed by a number of arrests, new

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[2] Under the plea agreement, which required concurrent sentences for the Level 3 felonies, Johnson faced up to a total of twenty-eight years in prison. The State asked the trial court to impose twenty-one years with only two years suspended.

delinquency adjudications, and modifications of disposition, including for drug use and acts that would constitute criminal mischief, disorderly conduct, and resisting law enforcement if committed by an adult. For several years, Johnson vacillated between formal probation, electronic monitoring, and secure detention. He received anger management and substance abuse services during this time. Then, in October 2017, Johnson was placed at Southwest Regional Youth Village for several months, where he obtained his GED. After his release in 2018, he had several additional arrests and was again adjudicated a delinquent child in 2019 for possession of marijuana. Johnson also has two prior adult misdemeanor convictions for a driving offense and possession of marijuana (with a failed diversion). To say the least, this lengthy history does not reflect well on Johnson's character.

[13] The record also displays Johnson's tendency toward aggression, which included shooting out windows with an air gun, stabbing his brother with a fork during a physical altercation, chasing down another juvenile to fight while on home detention, shooting his brother with a BB gun, and pulling a knife on a family member. At the sentencing hearing, Johnson acknowledged that since the age of thirteen he has been belligerent with no respect for authority and that, despite having a supportive family, he "chose to do wrong completely on [his] own." *Transcript* at 47. Further, evidence was presented at the sentencing hearing of several recorded phone calls between him and his mom or cousin, which were made from December 2019 through May 2020 while Johnson was in jail on the instant charges. In these calls, as his defense attorney noted, Johnson talked

about guns and violence and sounded like "some kind of hard-core gangster," but Johnson claimed that he "just [got] caught up in a bad life and ya know you have to put on a show[.]" *Id*. at 23. In response to the attempt to downplay his words as "machismo and just showboating," the State aptly pointed out at sentencing that Johnson's words lined up with his actions, "which show a pattern of aggressive behavior and disdain for authority[.]" *Id*. at 64, 65.

[14] Johnson's primary focus on appeal is his mental health. He has been diagnosed with bipolar disorder, ADHD, and social anxiety disorder, as well as certain drug use disorders. Johnson had received treatment in the past, starting in 2014, but at the time of these offenses was not taking medication or receiving treatment. Further, his own statements during the jail phone calls suggest that he did not take these diagnoses seriously and saw them simply as a means to obtain a reduced sentence. Along with his guilty plea, his mental health certainly was a mitigating circumstance, as found by the trial court[3] and acknowledged by the State at sentencing, but we cannot say that its existence establishes that the sentence imposed by the trial court is inappropriate. In sum, therefore, we conclude that Johnson has failed to persuade us that his sentence is inappropriate.

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[3] To the extent Johnson argues that the trial court abused its discretion in the weight it provided to this mitigating circumstance, we remind him that under the new statutory sentencing scheme – which is no longer really new – "the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence and thus a trial court can not now be said to have abused its discretion in failing to properly weigh such factors." *Kimbrough v. State*, 979 N.E.2d 625, 628 (Ind. 2012) (internal quotations omitted).

[15] Judgment affirmed.

Mathias, J. and Weissmann, J., concur.