

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Anthony D. Tilford,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 29, 2022

Court of Appeals Case No.
21A-CR-2709

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-2108-F3-4298

Bailey, Judge.

Case Summary

- [1] Anthony Tilford (“Tilford”) appeals the ten-year sentence imposed following his plea of guilty to Robbery, as a Level 3 felony.¹ He presents the sole issue of whether the sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On July 12, 2021, Anthony Stice (“Stice”) was riding his bicycle, accompanied by Tilford, Kaylee Shuffitt (“Kaylee”), and Kevin Shuffitt (“Kevin”), who were walking. Kevin pointed a gun at Stice’s head and threatened: “get off the bicycle or I’m going to kill you.” (App. Vol. II, pg. 12.) Kevin then struck Stice with the gun multiple times. Tilford removed the handlebars from the bicycle and struck Stice on his head and arms. Kaylee took the bicycle away.
- [3] Stice had suffered a swollen jaw, a cut on his shoulder, a scratch on his neck, and a broken tooth. He called 9-1-1 to report that he had been robbed at gunpoint and provided descriptions of his attackers. Responding officers located and arrested Tilford. On August 13, 2021, the State charged Tilford with Robbery, elevated to a Level 3 felony because it resulted in bodily injury.
- [4] On September 30, 2021, Tilford and the State reached an agreement for disposition of the Robbery charge. Under the terms of the plea agreement, the

¹ Ind. Code § 35-42-5-1(a)(1).

executed portion of Tilford's sentence would be capped at ten years. Additionally, Burglary and Theft charges under a different cause number were to be dismissed. On October 5, 2021, the trial court accepted the plea agreement. Tilford was sentenced to ten years imprisonment in the Indiana Department of Correction. The sentencing order also provided:

After serving a minimum of three years, the Court recommends that the defendant be placed in a clinically appropriate substance abuse treatment program as well as to address the defendant's mental health needs as determined by IDOC.

Upon successful completion, the Court will consider a modification of this sentence.

(App. Vol. II, pg. 63.) Tilford now appeals.

Discussion and Decision

[5] Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by a trial court. *See, e.g., Sanders v. State*, 71 N.E.3d 839, 843 (Ind. Ct. App. 2017), *trans. denied*. This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Under 7(B), the appellant must demonstrate that his sentence is inappropriate in light of the nature of his offense and of his character. *Id.* (citing Ind. Appellate Rule 7(B)). In conducting our review under this Rule, deference to the trial courts "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).

[6] The Indiana Supreme Court has explained that the principal role of appellate review is to attempt to leaven the outliers, "not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The question is not whether another sentence is more appropriate, but whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

[7] A defendant convicted of a Level 3 felony is subject to a sentencing range of three to sixteen years; nine years is the advisory sentence. I.C. § 35-50-2-5(b). Accordingly, Tilford received a sentence of one year above the advisory sentence. Tilford directs our attention to his troubled childhood, medical conditions, and history of substance abuse, and he "respectfully requests that this Court remand this case to the trial court with instructions to suspend the balance of his sentence and place him in community corrections so that he may enter the Wheeler Mission Hebron Addiction Recovery Program." Appellant's Brief at 13.

[8] First, we look to the nature of the offense. This refers to the "defendant's actions in comparison with the elements of the offense." *Cannon v. State*, 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. A person who knowingly or intentionally takes property from another person by using or threatening the

use of force, or putting the person in fear, commits Robbery, as a Level 5 felony. I.C. § 35-42-5-1(a). Tilford admitted that he took property from Stice by using force. Indiana Code Section 35-42-5-1(a) additionally provides that Robbery is a Level 3 offense if a person other than the defendant sustains bodily injury in the course of the commission of the crime. Tilford admitted that he caused bodily injury to Stice by striking Stice with the handlebars from his own bicycle. The nature of the offense does not militate toward a lesser sentence than that imposed by the trial court.

[9] Next, we consider what we know of the defendant's character. This refers to "general sentencing considerations and the relevant aggravating and mitigating circumstances." *Douglas v. State*, 878 N.E.2d 873, 881 (Ind. Ct. App. 2007). Tilford pled guilty, which reflects favorably upon his character, but he received a substantial benefit in return, the dismissal of two felony charges.

[10] Tilford has prior misdemeanor convictions for Conversion, Residential Entry, Domestic Battery, Possession of a Controlled Substance, Possession of Marijuana, and Criminal Mischief. He has prior felony convictions for two counts of Theft, Pointing a Firearm, Domestic Battery, and two counts of Intimidation. He has violated the conditions of probation and electronic monitoring and has twice been unsuccessfully discharged from probation. Thus, prior attempts at rehabilitation short of incarceration have failed. And, although Tilford asserts that he received a letter of acceptance from an appropriate community program for substance abusers, a defendant is not

entitled to serve a sentence in either probation or a community corrections program. *Bass v. State*, 974 N.E.2d 482, 488 (Ind. Ct. App. 2012).

[11] In sum, based upon our review of the nature of the offense and the character of the offender, we are unpersuaded that Tilford has met his burden to show that this sentence is inappropriate.

[12] Affirmed.

Najam, J., and Bradford, C.J., concur.