

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joseph Sherlock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

May 24, 2022

Court of Appeals Case No.
21A-CR-2716

Appeal from the Tippecanoe
Circuit Court

The Honorable Sean M. Persin,
Judge

Trial Court Cause No.
79C01-2009-F4-62

Robb, Judge.

Case Summary and Issue

- [1] Joseph Sherlock pleaded guilty to burglary, a Level 5 felony; possession of methamphetamine, a Level 6 felony; and possession of a controlled substance, a Class A misdemeanor. The trial court sentenced Sherlock to an aggregate of seven years with five years to be executed in the Indiana Department of Correction (“DOC”) and two years suspended to probation.
- [2] Sherlock now appeals, raising one issue for our review which we restate as whether Sherlock’s sentence was inappropriate given the nature of the offense and the character of the offender. Concluding that Sherlock’s sentence was not inappropriate, we affirm.

Facts and Procedural History

- [3] On September 23, 2020, officers were dispatched to the home of seventy-eight-year-old Stuart Wolf. Wolf had left his home earlier that day and upon his return, he discovered Sherlock inside his home. Wolf had previously hired Sherlock to paint his home and barn. The agreed upon price of the job had been approximately \$7,000; however, Sherlock had convinced Wolf that his checks were not cashing resulting in Wolf writing more than eight checks to Sherlock totaling \$18,000. *See* Appellant’s Appendix, Volume II at 85. When he returned home, Wolf noticed “several drawers in his bedroom and living room had been ransacked and several items of personal property were missing.” *Id.* And Sherlock demanded more money from him.

- [4] When the officers arrived at Wolf’s home, they located Sherlock inside and detained him. Officers searched Sherlock and found a BB gun, several gold rings, identification cards belonging to Gladys Wolf, and other property belonging to Wolf. Officers also located a white powdery substance that tested positive for methamphetamine and multiple pills identified as amphetamine and alprazolam.
- [5] On September 30, 2020, the State charged Sherlock with burglary, a Level 4 felony; possession of methamphetamine, a Level 6 felony; theft, a Class A misdemeanor; theft, a Level 6 felony; and possession of a controlled substance, a Class A misdemeanor. Subsequently, Sherlock entered into a plea agreement wherein his burglary charge was amended to a Level 5 felony and his theft charges were dismissed.¹
- [6] At sentencing, the trial court found that the “seriousness of the offence [sic], the victim’s advanced age and the defendant taking advantage of the victim because of his age, the defendant’s criminal history, and [that] the defendant was out on pretrial release/probation” were aggravating circumstances. Appealed Order at 2. The trial court also found Sherlock’s expressed remorse, his guilty plea, and his ability to pay the restitution to be mitigating circumstances; however, the trial court determined that the aggravators outweighed the mitigators.

¹ Sherlock also agreed to pay \$11,350 in restitution and to have no contact with the victim.

[7] The trial court sentenced Sherlock to five years for burglary, two years for possession of methamphetamine, and one year for possession of a controlled substance. The trial court ordered Sherlock's burglary and possession of methamphetamine sentences to run consecutively to each other, and his possession of a controlled substance sentence to be served concurrently for an aggregate sentence of seven years. Five years were to be executed in the DOC and two years suspended to probation. Sherlock now appeals.

Discussion and Decision

I. Inappropriate Sentence Standard of Review

[8] Article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Rule 7(B) provides, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Sentencing decisions rest within the discretion of the trial court and, as such, should receive considerable deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference 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).

[9] The defendant bears the burden of demonstrating his sentence is inappropriate under the standard, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors in the record in making such a determination, *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017). Ultimately, “whether we regard a sentence as [in]appropriate at the end of the day 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.” *Cardwell*, 895 N.E.2d at 1224. And the principal role of this court in reviewing a defendant’s sentence is “not to achieve a perceived ‘correct’ result in each case[,]” but to attempt to leaven the outliers. *Id.* at 1225. Thus, the question is *not* whether the defendant’s sentence is appropriate or another sentence is *more* appropriate; rather, the test is whether the sentence is inappropriate. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017).

II. Nature of the Offense

[10] We begin our analysis of the “nature of the offense” prong with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point the Indiana legislature has selected as an appropriate sentence for the committed crime. *Childress*, 848 N.E.2d at 1081. Sherlock pleaded guilty to burglary, a Level 5 felony; possession of methamphetamine, a Level 6 felony; and possession of a controlled substance, a Class A misdemeanor. Level 5 felonies are punishable by up to six years imprisonment, with an advisory sentence of three years, Ind. Code § 35-50-2-6(b); Level 6 felonies are punishable by up to two-and-one-half years, with an advisory sentence of one

year, Ind. Code § 35-50-2-7(b); and Class A misdemeanors are punishable by up to one year, Ind. Code § 35-50-3-2.

[11] Sherlock was sentenced to five years for burglary, two years for possession of methamphetamine, and one year for possession of a controlled substance. Thus, Sherlock’s felony sentences were above the advisory but below the maximum and his misdemeanor sentence was the maximum. The trial court ordered Sherlock’s misdemeanor sentence for possession of a controlled substance to run concurrently with the other two sentences for an aggregate sentence of seven years with five years to be executed in the DOC and two years suspended to probation.²

[12] The nature of the offense is found in the details and circumstances of the offenses and the defendant’s participation therein. *Lindhorst v. State*, 90 N.E.3d

² Sherlock argues that his sentence was inappropriate because it was “an absolute maximum” sentence authorized by law. Brief of Appellant at 8; *see* Ind. Code § 35-50-1-2(d)(2) (“If the most serious crime for which the defendant is sentenced [for an episode of criminal conduct] is a Level 5 felony, the total of the consecutive terms of imprisonment may not exceed seven (7) years.”). However, in *Davidson v. State*, our supreme court declined to

constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge.

926 N.E.2d 1023, 1025 (Ind. 2010). Thus, this court has subsequently stated:

[F]or purposes of Rule 7(B) review, a maximum sentence is not just a sentence of maximum length, but a *fully executed* sentence of maximum length and . . . [a]nything less harsh, be it placement in community corrections, probation, or any other available alternative to prison, is simply not a maximum sentence.

Bratcher v. State, 999 N.E.2d 864, 871 (Ind. Ct. App. 2013) (quotations and citations omitted), *trans. denied*. Here, the trial court suspended a portion of Sherlock’s sentence and placed him on probation. Thus, Sherlock did not receive a maximum sentence for purposes of Appellate Rule 7(B).

695, 703 (Ind. Ct. App. 2017). When reviewing a defendant's sentence that deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*.

[13] Sherlock argues that the record fails to establish that the nature of his offenses deserved sentence enhancement. However, the record indicates that Sherlock broke into the home of an elderly man with whom he was familiar; rummaged through drawers throughout his house; collected personal belongings, blank checks, and identifying information; and then demanded more money from Wolf when he arrived home. He was then found in possession of methamphetamine and the controlled substances amphetamine and alprazolam. Given the nature of his offenses, we find that Sherlock's sentence is not inappropriate.

III. Character of the Offender

[14] Sherlock argues that his sentence was inappropriate given his character.³ We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Id.* at 143. A defendant's life and conduct

³ In the character of the offender section of Sherlock's brief he uses language similar to an abuse of discretion argument. However, he does not state it as a separate issue; therefore, we will not treat it as such.

are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. And the trial court’s recognition or nonrecognition of aggravators and mitigators serves as an initial guide in determining whether the sentence imposed was inappropriate. *Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016).

[15] The trial court found Sherlock’s criminal history to be an aggravating factor. Sherlock’s criminal history includes multiple theft or theft by deception convictions and one receiving stolen property conviction. *See* Appellant’s App., Vol. II at 71-72. A defendant’s criminal history is one relevant factor in analyzing his or her character, the significance of which varies based on the “gravity, nature, and number of prior offenses in relation to the current offense.” *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Sherlock notes that he has no prior felony convictions; however, “[e]ven a minor criminal record reflects poorly on a defendant’s character[.]” *Reis*, 88 N.E.3d at 1105. Although Sherlock does not have a felony record, his criminal history shows a pattern of theft that reflects poorly on his character. Therefore, given Sherlock’s character, his sentence is not inappropriate.

Conclusion

[16] We conclude that Sherlock’s sentence was not inappropriate given the nature of the offense and the character of the offender. Accordingly, we affirm.

[17] Affirmed.

Pyle, J., and Weissmann, J., concur.