

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nathaniel Q. Buffington,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 23, 2024

Court of Appeals Case No.
23A-CR-1974

Appeal from the Dearborn
Superior Court

The Honorable Sally A.
McLaughlin, Judge

Trial Court Cause No.
15D02-2301-F6-37

Memorandum Decision by Chief Judge Altice
Judges Bradford and Felix concur.

Altice, Chief Judge.

Case Summary

- [1] Nathaniel Q. Buffington pleaded guilty to Level 6 felony resisting law enforcement, and the trial court sentenced Buffington to two and one-half years. Buffington appeals, asserting that his sentence, the maximum, is inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

Facts & Procedural History

- [3] While on patrol around 11:00 p.m. on January 19, 2023, Lawrenceburg Police Department Officer Luke Gentry observed a motorcycle, driven by Buffington and with a passenger on the back, turn left on a red light. A license plate inquiry revealed that the motorcycle was registered to Buffington and that the plate had been expired for nearly five years. Officer Gentry activated his emergency lights to initiate a traffic stop, and, after about a minute, Buffington stopped briefly at a stop sign before accelerating away. Officer Gentry pursued Buffington and notified dispatch. While fleeing from officers, Buffington ran a red light and numerous stop signs, entered lanes of oncoming traffic, swerved around officers' vehicles, and exceeded posted speed limits. Officer Gentry continued the pursuit onto Interstate 275 but concluded it when Buffington took an exit in Ohio. Dispatch advised Officer Gentry that there was an active warrant out of Ohio for Buffington's arrest with a caution that he could be armed and dangerous.

- [4] Two days later and while on patrol in Lawrenceburg, Officer Gentry observed Buffington standing on a sidewalk. Officer Gentry exited his vehicle and arrested Buffington, who had a marijuana cigarette on his person.
- [5] On January 23, 2023, the State charged Buffington with Level 6 felony resisting law enforcement, Class B misdemeanor possession of marijuana, and Class B misdemeanor reckless driving. In May 2023, the parties appeared for a bench trial but advised that they had reached an agreement. Buffington thereafter pleaded guilty in open court to Level 6 felony resisting law enforcement, with the State dismissing the remaining charges and sentencing left to the trial court's discretion.
- [6] At the June 2023 sentencing hearing, Buffington, age forty-eight, testified to having steady work as a self-employed union painter. He stated that, if released, he had plans to live with his mother, who was eighty years old and suffered with certain medical issues that he intended to assist her with. Buffington testified to having had aortic surgery in recent years, for which he was still receiving treatment, and that some years prior he was involved in an accident resulting in broken bones and a traumatic brain injury. He acknowledged having a criminal history, including "plenty of DUIs," but stated, "I would like to say I'm really not a criminal. I haven't done anything criminally since I was a teenager." *Transcript* at 13. Buffington testified to having requested participation in a substance treatment program while incarcerated and that he had mental health issues for which he needed treatment not available to him in jail.

[7] As to the night in question, Buffington stated that he initially made the left turn on red because the traffic light's sensor appeared to be malfunctioning, claiming that he waited for around five minutes in "raining ice" before proceeding to make the turn. *Id.* at 18, 21. According to Buffington, when he pulled over for the traffic stop, Officer Gentry "pulled a gun" on him, after which he fled the scene. *Id.* at 15, 23. Buffington stated that he was scared of going to jail on an active warrant and scared of "getting shot" so he was "heading to Cincinnati." *Id.* at 23, 25. Buffington testified that he made "a horrible decision" that day and regretted his actions. *Id.* at 17. He apologized to, among others, the officers involved.

[8] Officer Gentry testified that, when attempting to make the initial traffic stop of Buffington, at no point did he exit his patrol car or have his gun out. He described that at least eight Lawrenceburg officers, and several others from neighboring units, participated in the pursuit. Officer Gentry acknowledged that another officer may have drawn a firearm at some point during the pursuit.

[9] The trial court recognized as mitigating that Buffington pleaded guilty, showed remorse, has medical conditions, has available employment, and has an aging mother who could use his help. The court considered Buffington's criminal history, including that he had an active arrest warrant, as an aggravating factor. The court also found as aggravating that the chase occurred at high rates of speed on a motorcycle with a passenger on the back during dangerous and icy conditions, as Buffington fled from Indiana toward Ohio. The trial court determined that the aggravating factors "far outweigh[ed]" the mitigating

factors and sentenced Buffington to 910 days (two and one-half years) with no days suspended. *Id.* at 38.

[10] Buffington now appeals. Additional information will be provided below as needed.

Discussion & Decision

[11] Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our principal role in App. R. 7(B) review is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Turkette v. State*, 151 N.E.3d 782, 786 (Ind. Ct. App. 2020) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)), *trans. denied*. App. R. 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[12] Deference to the trial court 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). When assessing the nature of the offense and character of the offender, we may consider "any factors appearing in the record." *Turkette*, 151 N.E.3d at 786.

Ultimately, whether a sentence should be deemed inappropriate turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.

Cardwell, 895 N.E.2d at 1224.

[13] In 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. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). The sentencing range for Buffington’s Level 6 felony is between six months and two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7. Buffington asks us to revise his maximum two-and-a-half-year sentence.

[14] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Buffington acknowledges that he fled from law enforcement and disregarded multiple stop signs, a traffic light, and the speed limit but argues that he did not intend to harm anyone “nor did he cause anyone harm.” *Appellant’s Brief* at 9. We are unmoved by this argument. Buffington led officers on a high-speed chase through icy streets and toward the state line on a motorcycle, with long-expired plates and a passenger on the back. Over eight officers were involved. We agree with the State that his conduct was “egregiously dangerous to Buffington, officers, his passenger, and the general public” and that the fact that no one was harmed “is more attributable to luck than anything else.” *Appellee’s Brief* at 6, 8. The nature of Buffington’s offense does not render his sentence inappropriate.

- [15] Buffington urges that his character “did not warrant a maximum sentence.” *Appellant’s Brief* at 7. In support, he points out that he is a high school graduate, has maintained consistent employment for twenty years as a self-employed union painter and builder, has health issues that need attention, and intended to live with and assist caring for his elderly mother. He emphasizes that he took responsibility for his actions and, at sentencing, expressed remorse.
- [16] We conduct our review of a defendant’s character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. We have held that character is found in what we learn of the offender’s life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When assessing the character of an offender, one relevant factor is the offender’s criminal history. *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*.
- [17] Buffington has had encounters with the law spanning decades. He has several juvenile adjudications, with the most serious being for arson. He has adult convictions in 1992 and 1993 for theft, disorderly conduct, contributing to unruly or delinquent child, receiving stolen property, drug possession, driving under the influence, and failure to register a motor vehicle. In 1994, he was convicted of driving under the influence and driving with a suspended license. He was convicted that same year of robbery, serving seven years of a fifteen-year sentence in prison in Ohio. In 2006, he was convicted of failure to stop after an accident and placed on community control, which placement was terminated unsuccessfully less than one year later. Buffington was convicted of operating a vehicle while intoxicated in 2007 and operating a vehicle with

alcohol concentration of .15 or more in 2016. In 2020, he was convicted of Level 5 felony improperly handling a firearm in a motor vehicle, and he was placed on community control, with two violations being filed. At the time of the current incident, Buffington had an active warrant out of Ohio for his arrest.

[18] In addition to his adjudications and convictions, and as Buffington acknowledged at sentencing, he has had “a fair number” of charges dismissed over the years. *Transcript* at 13. A review of the record indicates that he faced five charges as a juvenile and more than forty as an adult, not counting the three in the present case. We have recognized that, although a record of arrests by itself is not evidence of a defendant’s criminal history, it is appropriate to consider such a record as a poor reflection on the defendant’s character, because it may reveal that he has not been deterred even after having been subjected to the police authority of the State. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The record before us does not reflect substantial virtuous traits or persistent examples of good character to warrant sentence revision. *See Stephenson*, 29 N.E.3d at 122.

[19] Accordingly, we find that Buffington’s sentence of two and one-half years is not inappropriate in light of the nature of his offense or his character.

[20] Judgment affirmed.

Bradford, J. and Felix, J., concur.