## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Wade Ross Roark,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff*

August 11, 2022

Court of Appeals Case No. 21A-CR-2865

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

Trial Court Cause No. 39C01-1911-F1-1345

**Crone, Judge.**

## Case Summary

[1] Wade Ross Roark appeals his convictions for level 1 attempted murder and level 5 felony criminal recklessness, arguing that the trial court erred in granting the State's motion in limine to exclude references to Roark's competency or sanity at the time of the offenses. He also appeals his aggregate thirty-eight-year sentence, asserting that it is inappropriate based on the nature of the offenses and his character. We conclude that Roark invited any alleged error in the trial court's decision to grant the State's motion in limine. We further conclude that Roark has failed to carry his burden to show that his sentence is inappropriate. Therefore, we affirm.

## Facts and Procedural History

[2] On the evening of November 22, 2019, Roark was watching a movie with his sister Alice Alig and her family in her home. Also in the home were Alice's husband Gary, their son, their nine- and eleven-year-old grandsons, and Gary's nephew. After the movie, Alice and Gary retired to their bedroom, leaving Roark and the boys in the living room. At some point, Gary's nephew woke Gary up and told him that Roark was shooting in the basement. Gary went to the steps to the basement and asked Roark what was going on. Roark told him that there were "lasers on him." Tr. Vol. 2 at 122. Gary assured Roark that there were no lasers. Believing that Roark would calm himself down, Gary returned to bed. Later, Gary heard more gunshots and called 911.

[3] At approximately 2:30 a.m. on November 23, police were dispatched to the Alig home. Five police vehicles arrived with their emergency lights activated, and police established a perimeter around the residence. Police heard gunshots coming from inside the residence. *Id*. at 96. A sheriff's deputy used the PA system in his vehicle to talk to the individuals in the home, and he identified himself as law enforcement several times. Gary exited the home with his hands up and informed the police that his wife and children were still in the house. The police entered the house and encountered Alice, who told them that the children were upstairs in a room directly above the shooter. Officers then retrieved the children and removed them from the home. As they were moving through the house, police observed bullet holes in the floor of the living room directly above the shooter and plaster, debris, and bullet holes in a recliner.

[4] By the time everyone but Roark had been removed from the house, ten police vehicles were present, all with their emergency lights activated. During the next three to four hours, officers heard multiple gunshots coming from the home. Some officers reentered the home to attempt to talk to Roark and identified themselves "multiple times" as law enforcement. *Id*. at 101.

[5] Officers from the Indiana State Police hostage negotiation team and emergency response team arrived. The negotiators spoke to Roark on the telephone. Detective Andrew Mitchell was present during the phone conversations and heard Roark talking about "people being after him, […] Mexicans being in the house, [and a] DEA agent out for him." *Id*. at 143. According to Detective Mitchell, Roark was "[e]xtremely irate." *Id*. The negotiators informed Roark

multiple times that "only law enforcement was at the residence, there was no one inside of the residence, and that he was safe." *Id*. at 145. The negotiators told Roark that police wanted him to put the gun down and come out, but Roark replied that he had "two clips—ammunition, and—and he would be just fine, and if anybody was to come down there, he would take care of it." *Id*. at 152.

[6] Indiana State Trooper Joseph Livers was a member of the emergency response team. He and other team members attempted to enter the house, but Roark fired rounds up through the floor in their direction. Tr. Vol. 3 at 102-03. Later, Trooper Livers and two other troopers took a position just to the side of the front porch of the house. Trooper Livers was unaware that to his left was a "larger than a softball size" hole in the foundation. Tr. Vol. 2 at 201. From this hole, a person in the basement would be able to see people outside to various degrees depending on how far away from the hole they were. Roark would have been able to hear the conversation of and see the legs of someone standing by the front porch, and if that person were kneeling, Roark would have been able to see the person's upper torso. *Id*. at 240-41.

[7] A little after 8:00 a.m., one of the other troopers in position with Trooper Livers heard a shot and then heard Livers scream, and Livers fell to the ground. *Id*. at 153; Tr. Vol. 3 at 6. Police officers pulled Trooper Livers away from the house and rendered emergency care. Trooper Livers had two holes in his left leg and was transported to the emergency room. His tibia was fractured in many places, was "really obliterated[,]" and had been "basically split […] in half." Tr. Vol. 3

at 35, 38. Bullet fragments were lodged in his left knee, many too small to remove, thereby putting Trooper Livers at risk for future infection. Metal shrapnel was also embedded in his right knee, which created an additional risk of future infection. Trooper Livers was moved to a Cincinnati hospital for surgery. After his initial hospital stay, he contracted a MRSA infection and developed an abscess. *Id*. at 111. He ultimately required four surgeries. At the time of trial, he still faced significant risk that an infection would enter his bloodstream and kill him, he was unable to run and could only walk minimal distances, and he experienced daily pain. *Id*. at 112. He will likely never return to duty as a police officer. *Id*. at 95, 112.

[8] After Trooper Livers was removed from the scene, Roark threw his handgun out the front door and exited the house. Roark was ordered to raise his hands high and walk backward toward the officers, but he was not fully compliant and was tased. Roark resisted officers' attempts to handcuff him, but he was eventually handcuffed and taken into custody. That day, he was interviewed and taken to a hospital for a blood draw authorized pursuant to a search warrant. Toxicology testing revealed that he had methamphetamine in his system at a level of sixteen nanograms per milliliter, well over the five nanograms per milliliter required for a positive result. Ex. Vol. 1 at 81.

[9] The State charged Roark with level 1 felony attempted murder, level 3 felony aggravated battery, level 5 felony battery, and level 5 felony criminal recklessness. Roark requested competency evaluations, and the trial court appointed Dr. Daniel Hackman and Dr. Stephanie Callaway to evaluate him.

Dr. Hackman opined that Roark suffered an "Unspecified Psychotic Disorder, which cause[d] him to lack the ability to understand the proceedings against him and to lack the ability to assist in the preparation of his defense." Appellant's App. Vol. 3 at 116. Dr. Callaway determined that Roark "ha[d] an understanding of the proceedings and he ha[d] the ability to aid his attorney in his defense, despite the presence of some psychiatric symptoms and possible cognitive deficits." *Id*. at 133. Following a hearing, the trial court found Roark competent and able to understand the proceedings and assist counsel in the preparation of a defense.

[10] Roark then filed a notice of his intent to raise an insanity defense. The trial court again appointed Drs. Hackman and Callaway to evaluate Roark. Dr. Hackman found that "Roark's psychotic symptoms had a sudden onset consistent with methamphetamine use or other illicit drug use. The symptoms have now resolved, even without treatment with antipsychotic medication. It is likely that Mr. Roark's symptoms of psychosis have resolved due to his ongoing sobriety while he has been incarcerated." *Id*. at 154. Dr. Hackman believed that "Roark's psychosis at the time of the alleged offenses stemmed from his voluntary use of methamphetamine," and he concluded that Roark "did not have a mental disease or defect that would qualify for a defense of not guilty by reason of insanity at the time of the alleged offenses." *Id*. at 159. Dr. Callaway opined that "Roark was under the influence of methamphetamines or in the withdrawal phase from methamphetamine use at the time of the alleged

offense[s].” *Id*. at 175. Dr. Callaway concluded that Roark did not suffer from a mental disease or defect at the time of the alleged crimes. *Id*. at 176.

[11] Before trial, the State filed a motion in limine seeking to exclude references to Roark’s competency or sanity at the time of the offense.[1] During voir dire, the parties discussed the motion in limine. Roark’s counsel did not object to the motion, explaining as follows:

> Well, I mean, obviously, the Court found him competent, and we did try the mental defect defense, which the doctors did not back. So, I mean, I’m not going to make any evidentiary comments about his competency or his, I guess, mental state. What I am going to talk about is his mental state at the time of the event. I’m not going to say that he was mentally ill, but I am going to make reference to the fact that he felt that lasers were being pointed at him, that the police reports had indicated that he was irrational and delusional, as long as those -- as long as I’m not prevented from going that direction, I don’t have a problem with the motion.

Supp. Tr. Vol. 4 at 4. The prosecutor responded that witnesses would have the ability to testify what they observed, “just not any medical conclusions about illness or competency.” *Id*. at 5. The trial court asked whether both parties “we[re] on the same page[,]” and defense counsel indicated that they were. *Id*. Based on this agreement, the trial court granted the State’s motion. Roark did

[1] This motion is absent from the record. The page cited by Roark is from a different motion in limine.

not proffer any preliminary or final instructions pertaining to the insanity defense.

[12] During trial, Roark argued that he did not have the specific intent to kill required to commit attempted murder because he fired shots randomly and believed that people who were not actually present were pointing lasers at him. Tr. Vol. 2 at 91-92; Tr. Vol. 3 at 147-48. The jury found Roark guilty as charged. At sentencing, the trial court vacated the battery convictions due to double jeopardy concerns and sentenced him for the attempted murder and criminal recklessness convictions. The court found several aggravating factors: (1) the significant harm, injury, and loss suffered by the victim; (2) the nature and circumstances of the crimes, in that Roark fired multiple rounds into the ceiling in the direction where he knew children were present, had ample opportunity to surrender but kept police at bay for hours, and could have stopped firing his weapon but instead fired from a place of concealment, leaving Trooper Livers with no chance to defend himself; (3) Roark's history of criminal behavior, including active arrest warrants in Kentucky for wanton endangerment, resisting law enforcement, and disorderly conduct; and (4) his lack of remorse. Appealed Order at 3. Regarding Roark's lack of remorse, the trial court noted that his behavior in court was "wholly unrepentant, and disrespectful not only to the Court but to his own family, and the family of the Victim who were all in attendance." *Id*. The trial court further noted that Roark "sneered" as the court addressed him, shook his head as the State's witness

recounted the nature and severity of the victim's injuries, and several times used profanity and told the court, "f*** you." *Id*. at 4.

[13] The trial court afforded little weight to fifty-nine-year-old Roark's advanced age as a mitigating factor and rejected his claim of "incompetence" as a mitigating factor, finding instead that his "break in reality [was] due to voluntary drug use." *Id*. The court found that the aggravating circumstances outweighed the mitigating circumstances. The court then sentenced Roark to thirty-eight years for his attempted murder conviction and a concurrent term of four years for his criminal recklessness conviction. This appeal ensued.

## Discussion and Decision

### Section 1 – Any alleged error in the trial court's decision to grant the State's motion in limine was invited by Roark.

[14] Roark argues that the trial court erred in granting the State's motion in limine and "refusing to allow" him to present any evidence or make any argument regarding the insanity defense. Appellant's Br. at 15. However, Roark did not object to the motion in limine but rather agreed to it because the defense chose not to advance an insanity defense.

[15] "A party's failure to object to, and thus preserve, an alleged trial error results in waiver of that claim on appeal." *Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019). When the failure to object accompanies the party's affirmative requests of the court, 'it becomes a question of invited error.'" *Durden v. State*, 99 N.E.3d 645, 651 (Ind. 2018) (quoting *Brewington v. State*, 7 N.E.3d 946, 974 (Ind.

2014)). "[W]hereas waiver generally leaves open an appellant's claim to fundamental-error review, invited error typically forecloses appellate review altogether." *Batchelor*, 119 N.E.3d at 556. "[T]o establish invited error, there must be some evidence that the error resulted from the appellant's affirmative actions as part of a deliberate, well-informed trial strategy." *Id*. at 558 (quotation marks omitted). "A passive lack of objection, standing alone, is simply not enough. And when there is no evidence of counsel's strategic maneuvering, we are reluctant to find invited error based on the appellant's neglect or mere acquiescence to an error introduced by the court or opposing counsel." *Id*. (citation and quotation marks omitted).

[16] Here, Roark's defense counsel specifically told the trial court that he was not going to argue that Roark was mentally ill and that the defense agreed to the motion as long as evidence regarding Roark's mental state when he was committing the offenses could be admitted, such as evidence that Roark said that lasers were being pointed at him and police reports indicating that he was irrational and delusional. Supp. Tr. Vol. 4 at 4. Roark did not proffer any preliminary or final instructions pertaining to the insanity defense. Instead, the defense strategy was to highlight Roark's mental state to undermine the State's attempted murder charge on the element of specific intent. Accordingly, we conclude that Roark invited any alleged error in the trial court's decision to grant the motion in limine. *See Durden*, 99 N.E.3d at 656 (concluding that defense counsel "did far more than simply fail to object" to procedural error at trial when he "expressly declined 'any caveats' or special instructions for the

jury and repeatedly assured the court of his approval of the procedure employed, despite its defects.").

## Section 2 – Roark has failed to carry his burden to show that his sentence is inappropriate.

[17] Next, Roark asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "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." Roark has the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[18] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case.

*Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "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). As we assess the nature of the offenses and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, whether a sentence should be deemed inappropriate "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.

[19] Turning first to the nature of the offenses, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Roark was convicted of level 1 felony attempted murder and level 5 felony criminal recklessness. The advisory sentence for a level 1 felony is thirty years, with a sentencing range of twenty to forty years. Ind. Code § 35-50-2-4. The advisory sentence for a level 5 felony is three years, with a sentencing range of one to six

years. Ind. Code § 35-50-2-6. Roark faced a maximum sentence of forty-six years. *See Fix v. State*, 186 N.E.3d 1134, 1143 (Ind. 2022) (explaining that consecutive sentence for a crime of violence and a crime that is not a crime of violence is exempt from sentencing limitation for consecutive sentencing under Indiana Code Section 35-50-1-2). Roark received an aggregate sentence of thirty-eight years.[2]

[20] Roark claims that the facts show that he "was clearly not intending to shoot a State Trooper on the night in question." Appellant's Br. at 22. However, this claim is contrary to the jury's verdict finding him guilty of the attempted murder of Trooper Livers, and Roark is not challenging the sufficiency of the evidence supporting his conviction. *See Taylor v. State*, 879 N.E.2d 1198, 1204 (Ind. Ct. App. 2008) ("A person may not be convicted of attempted murder unless the State proves beyond a reasonable doubt the defendant acted with specific intent to kill.") (citing *Hopkins v. State*, 759 N.E.2d 633, 637 (Ind. 2001)). He further asserts that he was suffering from a "serious disconnection from reality." Appellant's Br. at 22. This assertion strikes us as an attempt to avoid responsibility. The trial court found that his delusions were due to his voluntary methamphetamine use, and thus his mental state does not mitigate the severity of the crime or diminish his culpability.

[2] Roark asserts that his sentence is only two years less than the maximum sentence allowed by law. Appellant's Br. at 20. He ignores that his *aggregate* sentence is based on both his convictions.

[21] The nature of Roark's offenses shows that he fired gunshots from the basement of his sister's home into the living areas of the home, putting the lives of his family at risk. Police had to enter the home at great risk to themselves to rescue the children. After the family was evacuated and police entered the home to attempt to talk to Roark, he fired shots up through the floor at them. For almost six hours, he refused to relinquish his gun and surrender to police. He intentionally shot at Trooper Livers, resulting in the obliteration of the trooper's tibia, subjecting him to the risk of a fatal infection, leaving him in constant pain, rendering him unable to run or walk more than a short distance, and preventing him from returning to active duty as a police officer. When Roark did finally come out of the house, he failed to comply with police orders and had to be tased. As the State puts it, "nothing about this hours-long violent situation paints the nature of Roark's offense 'in a positive light,' which is his burden under Rule 7(B)." Appellee's Br. at 20 (quoting *Stephenson*, 29 N.E.3d at 122).

[22] As for Roark's character, we observe that an offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). Roark contends that at the time of sentencing he was almost sixty years old, was receiving disability benefits due to chronic back issues, has good family support, was suffering a psychotic break at the time of the offense, was in serious need of mental health treatment and/or substance abuse treatment, and is entitled to a presumption of innocence on his outstanding Kentucky arrest

warrants.[3] None of this presents examples of Roark's good character. What the record shows about Roark's character is that he showed no remorse for the pain and severe consequences suffered by Trooper Livers as a result of Roark's actions and that Roark was disrespectful to the trial court, his family members, and the victim's family members. Further, his arrest record is troubling in that wanton endangerment is similar to his crimes here. *See* Ky. Rev. Stat. § 508.070 (wanton endangerment is "conduct which creates a substantial danger of physical injury to another person"). We conclude that Roark has failed to carry his burden to show that his sentence is inappropriate based on the nature of his offenses and his character.

[23] Affirmed.

Vaidik, J., and Altice, J., concur.

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[3] According to the appealed order, warrants for Roark's failure to appear in his Kentucky cases were issued in October 2019, the month before he committed the current offenses.