MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shawn J. Vernon Riggle,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 12, 2023

Court of Appeals Case No. 22A-CR-1529

Appeal from the Clay County Circuit Court

The Honorable Joseph D. Trout, Judge

Trial Court Cause No. 11C01-2006-F5-503

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Shawn J. Vernon Riggle appeals his three-year sentence for Level 5 felony operating a motor vehicle after forfeiture of his license for life.[1] He argues his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

Facts and Procedural History

[2] On June 11, 2020, off-duty Officer Ryan Cannon of the Brazil Police Department reported to Officer Elliot Mullinix that Riggle, whose license was forfeited for life, was at a gas station refueling a motor vehicle. When Riggle drove the vehicle away from the gas station, Officer Mullinix, who knew Riggle's license was forfeited, activated his lights and siren to stop Riggle. Rather than pulling over, Riggle drove home, got out of his vehicle, and attempted to enter his house. Officer Mullinix ordered Riggle to stop, but he disregarded the commands. When Officer Mullinix threatened to use a taser, Riggle finally complied and was arrested.

[3] The State charged Riggle with operating a vehicle after license forfeiture for life and resisting law enforcement.[2] Pursuant to a plea agreement, Riggle pled guilty to Level 5 felony operating a motor vehicle after forfeiture of license for life, and the State dismissed the resisting law enforcement charge and charges

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[1] Ind. Code § 9-30-10-17(a)(1).

[2] Ind. Code § 35-44.1-3-1(a)(1).

pending against Riggle under three other cause numbers. At the sentencing hearing, the trial court identified three aggravators: Riggle's lengthy criminal history, his multiple probation violations, and his commission of this new offense while on bond. The trial court found a mitigator in Riggle's guilty plea but called it only a slight mitigator because Riggle received a substantial benefit from the State's dismissal of multiple other charges in exchange for his guilty plea. The trial court also identified Riggle's acknowledgement and expressed desire to address his alcohol and drug issues as mitigating factors. The trial court found the aggravating factors outweighed the mitigating factors, noted Riggle was a very high risk to reoffend, and ordered Riggle to serve a three-year sentence in the Department of Correction.

Discussion and Decision

[4] Riggle asserts his three-year executed sentence is inappropriate. Our standard of review for claims of inappropriate sentence is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We consider both the total number of years of a sentence and the way the sentence is to be served in assessing its appropriateness. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[5] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence 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." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-6 indicates a Level 5 felony is punishable by imprisonment "for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." Riggle received the advisory three-year sentence. Appellate courts are "unlikely" to find a sentence inappropriate when it is an advisory sentence assigned to a crime by the legislature. *Mise v. State*, 142 N.E.3d 1079, 1088 (Ind. Ct. App. 2020), *trans. denied*. Accordingly, an appellant "bears a particularly heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence." *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[6] Riggle suggests his sentence is inappropriate because he "committed no traffic violations when he was arrested." (Appellant's Br. at 8.) However, the definition of the crime of which Riggle was convicted did not require him to

commit additional sanctionable acts. *See* Ind. Code § 9-30-10-17(a)(1) (defining crime as "operates a motor vehicle after the person's driving privileges are forfeited for life"). *And see Brock v. State*, 955 N.E.2d 195, 205 (Ind. 2011) (holding section 9-30-10-17 requires proof of only two elements: operation of vehicle and forfeiture of license), *cert. denied*, 566 U.S. 909 (2012). Thus, we do not find Riggle's sentence to be inappropriate based on the nature of his offense.

[7] "When considering the character of the offender, one relevant fact is the defendant's criminal history. The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018) (internal citation omitted). Riggle's juvenile history includes four delinquent acts: public intoxication in December 1991, minor consumption of alcohol in September 1992, theft in October 1992, and minor consumption of alcohol in October 1992. Riggle's criminal history extends from 1993 to the present and includes the following convictions: residential entry; operating a vehicle with a BAC of .10% or more; Class A misdemeanor battery resulting in bodily injury; Class B misdemeanor battery; Class D felony child solicitation; public intoxication and disorderly conduct; Class D felony operating while intoxicated with a prior conviction of operating while intoxicated within five years; criminal trespass; Class D felony driving while suspended; possession of marijuana and driving while suspended; Class B misdemeanor public intoxication; Class C felony forgery and Class D felony theft; Class A misdemeanor conversion; resisting law enforcement; Class D felony operating a vehicle as an HTV; Class D felony

operating a vehicle as an HTV; Class D felony failure to register as a sex or violent offender; Class D felony criminal recklessness resulting in serious bodily injury; Class D felony strangulation; Class D felony residential entry and Class D felony theft; Level 6 felony residential entry and Level 6 felony theft with a prior conviction of theft; Level 5 felony operating a motor vehicle after forfeiture of license for life; Level 6 felony operating a vehicle after being a habitual traffic offender and Level 6 felony theft; Level 6 felony attempted auto theft; Level 5 felony operating a motor vehicle after forfeiture of license for life; Class A misdemeanor battery resulting in bodily injury; Class A misdemeanor invasion of privacy; and Class A misdemeanor trespass. The conviction appealed herein appears to be Riggle's tenth conviction of an offense related to driving. In addition, Riggle's probation had been revoked or modified at least thirteen times. This criminal history suggests a sentence longer than the advisory would not have been inappropriate.

[8] Riggle asserts his sentence is inappropriate for his character because he pled guilty, "expressed remorse and self-reflection[,]" and "secured a plan" for treatment. (Appellant's Br. at 9.) However, given Riggle's prolific thirty-year criminal history, his remorse and willingness to enter treatment do not convince us his sentence is inappropriate. Moreover, Riggle's guilty plea appears to be more a matter of pragmatics than self-sacrifice – Riggle had no available defense to either element of his crime, which the State could have demonstrated with brief testimony from the arresting officer, and in exchange for his guilty plea, Riggle received dismissal of charges under four separate cause numbers.

Accordingly, his plea does not justify reduction of his sentence. *See*, *e.g.*, *Lavoie v. State*, 903 N.E.2d 135, 143 (Ind. Ct. App. 2009) (pragmatic plea that resulted in dismissal of other charges did not justify modification of sentence for inappropriateness). We cannot say Riggle's three-year executed sentence is inappropriate for his tenth driving offense or his recalcitrant character.

Conclusion

[9] The three-year executed sentence imposed by the trial court for Riggle's commission of driving while his license was forfeited for life is not inappropriate in light of Riggle's offense or his character. Accordingly, we affirm.

[10] Affirmed.

Mathias, J., and Bradford, J., concur.