

## 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

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Gavin Allen Ford,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 17, 2022

Court of Appeals Case No.  
22A-CR-274

Appeal from the Delaware Circuit  
Court

The Honorable Linda Ralu Wolf,  
Judge

Trial Court Cause Nos.  
18C03-2008-F3-24  
18C03-2102-F3-3

**Brown, Judge.**

[1] Gavin Allen Ford appeals his sentence for two counts of attempted aggravated battery as level 3 felonies, escape as a level 5 felony, armed robbery as a level 3 felony, and pointing a firearm as a level 6 felony. He asserts that his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

### ***Facts and Procedural History***

[2] On February 12, 2020, under cause number 18C02-1912-JD-104, the trial court ordered Ford to participate in the Teaching and Empowering Adolescent Males (“TEAM”) Program at the Youth Opportunity Center. In April 2020, Ford left the Youth Opportunity Center and the TEAM program, and the court issued a warrant for his arrest.

[3] On June 16, 2020, Ford entered a Dollar General during business hours, encountered and argued with an acquaintance, exited the store, returned with a firearm, and fired it multiple times in the store.

[4] On July 2, 2020, the State filed an Amended Petition Alleging Delinquency and a Petition for Waiver of Jurisdiction. On August 19, 2020, the juvenile court waived jurisdiction, and on August 26, 2020, the State charged Ford under cause number 18C03-2008-F3-24 (“Cause No. 24”) with: Count I, attempted aggravated battery as a level 3 felony; Count II, attempted aggravated battery as a level 3 felony; Count III, criminal recklessness as a level 5 felony; Count IV, criminal recklessness as a level 5 felony; Count V, criminal recklessness as a level 5 felony; Count VI, escape as a level 5 felony; Count VII, pointing a firearm as a level 6 felony; Count VIII, intimidation as a level 6 felony; and

Count IX, dangerous possession of a firearm as a class A misdemeanor. On November 3, 2020, the trial court placed Ford on pretrial release with GPS monitoring. On February 10, 2021, Ford violated the terms of his placement when he failed to maintain a charge on his GPS device.

[5] On February 13, 2021, Ford received a car ride from his friend, M.J., during which she drove him around town to complete various errands. After she drove him to his house, they argued and Ford pointed a handgun at her face, took her cellphone, fired a single shot from the weapon into the car's floorboards, pointed the weapon at her face again, commanded her to exit the vehicle, and drove away in the vehicle.

[6] On February 23, 2021, under cause number 18C03-2102-F3-3 ("Cause No. 3"), the State charged Ford with Count I, armed robbery as a level 3 felony; Count II, criminal recklessness as a level 6 felony; Count III, pointing a firearm as a level 6 felony; Count IV, auto theft as a level 6 felony; Count V, interference with the reporting of a crime as a class A misdemeanor; and Count VI, leaving the scene of an accident as a class B misdemeanor. On December 16, 2021, Ford and the State entered a plea agreement under Cause Nos. 3, 24, and 18C03-2102-F6-110<sup>1</sup> ("Cause No. 110"), pursuant to which Ford agreed to plead guilty to Counts I, II, and VI under Cause No. 24 and Counts I and III under Cause No. 3, and the State agreed to dismiss the remaining counts under

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<sup>1</sup> Under Cause No. 110, the State charged Ford in 2021 with escape as a level 6 felony.

Cause Nos. 3, 24, and 110. The parties further agreed that the sentences imposed for the counts under Cause No. 24 would run concurrent to each other, and the sentences imposed for the counts under Cause No. 3 would run concurrent with each other but consecutive to the sentences imposed under Cause No. 24.

[7] On January 10, 2022, the court held a sentencing hearing. During the hearing, positive testimony about Ford's character came from a supervisor from the Youth Opportunity Center, Ford's sister, and his mother, who also testified about Ford's issues with mental and emotional stability. Ford testified, agreed with the statement that he had "always known that there's going to be some incarceration," expressed remorse for his actions at the Dollar General and with M.J., discussed his upbringing and its influence on his life, and read a statement apologizing to the court and those whose lives he put at risk and asking for forgiveness. Transcript Volume II at 61.

[8] The court found the following aggravating factors: Ford's juvenile history, he was waived to adult court for the instant offense, prior attempts at rehabilitation had not been successful, during commission of the crimes in Cause Nos. 3 and 110, he had been on pretrial release and GPS supervision under Cause No. 24, the crimes were devastating to the victims, a sentence less than the advisory would depreciate the seriousness of the crimes, and the crimes were "of his own volition and not at the direction of any other person." *Id.* at 82. The court noted part of M.J.'s statement and read some of it aloud, stating:

After being robbed and held at gunpoint by someone I did not think would do those things to me, has taken a toll on my mental and emotional health. The first few months after this happened, the situation would just replay in my head, and I felt like no matter what I did I couldn't keep my mind off it. I always feel like someone is out to get me. I hate going anywhere alone and it's hard for me to trust people. I always feel like someone is watching me. It also caused me to be depressed and not want to go to work. I got behind on school because I couldn't focus and ended up completely dropping out for the time being.

*Id.* The court found the following as mitigating factors: Ford pled guilty but received a considerable benefit from the dismissal of other charges, he “has considerable emotional support from his family,” *id.* at 79, he has a history of mental health issues, Ford was truly remorseful, but it was part of a pattern of conduct in which “he does impulsive things then he turns around and he apologizes,” *id.* at 82, and his age. The court also attributed minimal weight to any alleged provocation for the Dollar General incident because he fired into a store and placed customers, employees, and children in danger. The court declined to find as mitigating factors that the crimes resulted from circumstances unlikely to recur or that Ford would respond positively to probation or short-term imprisonment because he had received prior opportunities to reform. The court found that the aggravators outweighed the mitigators and sentenced Ford to concurrent sentences: under Cause No. 24 of ten years for Count I, attempted aggravated battery as a level 3 felony, ten years for Count II, attempted aggravated battery as a level 3 felony, and three years for Count VI, escape as a level 5 felony. Under Cause No. 3, the court

sentenced him to concurrent terms of ten years for Count I, armed robbery as a level 3 felony, and eighteen months for Count III, pointing a firearm as a level 6 felony. It ordered the sentences under Cause No. 3 to be served consecutively with the sentences imposed under Cause No. 24, for an aggregate sentence of twenty years.

### *Discussion*

[9] The issue is whether Ford’s sentence is inappropriate in light of the nature of the offenses and his character. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[10] Ford argues this Court should revise his sentences “because they are inappropriate in light of his character and youth,” and he contends that his upbringing and mental health are factors the Court should consider.

Appellant’s Brief at 10, 12.<sup>2</sup>

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<sup>2</sup> Ford also claims that the sentence “is inappropriate in light of the mitigating and aggravating factors presented during sentencing.” Appellant’s Brief at 4. While Ford raised the single issue of whether his sentence is inappropriate, he appears to conflate two separate sentencing standards: whether the trial court abused its discretion in identifying mitigating and aggravating factors and whether his sentence is inappropriate pursuant to Ind. Appellate Rule 7. “As our Supreme Court has made clear, inappropriate sentence and abuse of discretion claims are to be analyzed separately.” *King v. State*, 894 N.E.2d 265, 267

[11] Ind. Code § 35-50-2-5(b) provides that a person who commits a level 3 felony shall be imprisoned for a fixed term of between three and sixteen years with the advisory sentence being nine years. Ind. Code § 35-50-2-6(b) provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years. Ind. Code § 35-50-2-7(b) provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year.

[12] Our review of the nature of the offenses reveals that, after escaping from the Youth Opportunity Center and with an active warrant, Ford argued with an acquaintance, retrieved a firearm, and discharged the weapon more than once into a Dollar General where employees and customers including families with

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(Ind. Ct. App. 2008) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). Accordingly, “an inappropriate sentence analysis does not involve an argument that the trial court abused its discretion in sentencing the defendant.” *Id.* To the extent Ford argues that the trial court abused its discretion, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant’s guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*). Even if we were to address an abuse of discretion argument, we would not find it persuasive in light of the record and the lack of a cogent argument citing relevant authority.

In the summary of the argument section of his brief, Ford also claims that “[t]he sentence is unconstitutional under the Eighth Amendment of the United States Constitution as well as Article I, Section 16, of the Indiana Constitution because it is disproportionate when applied to this particular juvenile offender.” In the conclusion section of his brief, he asserts that his sentences “are contrary to the Indiana Constitution which states that ‘The penal code shall be founded on the principles of reformation, and not of vindictive justice.’” Appellant’s Brief at 8, 12. Because Ford’s contentions are supported neither by cogent argument nor citation to authority, they are waived. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring argument be supported by coherent reasoning with citations to authority).

children were located. After he was charged, the court placed him on pretrial release with GPS monitoring, and he failed to maintain a charge on his GPS device and violated the terms of his placement. Three days later, a friend drove Ford to complete errands, she and Ford began to argue, and Ford pointed a firearm at her, took her cellphone, discharged the weapon into the floor of the vehicle, directed her to exit the vehicle, and left with the vehicle. According to the friend, her vehicle was “totaled out” after it was involved in a collision, and surveillance video showed the stolen vehicle crashing into a gas pump and two males matching Ford’s description exiting the vehicle and switching seats before leaving. Appellant’s Appendix Volume II at 167.

[13] Our review of the character of the offender reveals that Ford pled guilty to two counts of attempted aggravated battery, one count of escape, one count of armed robbery, and one count of pointing a firearm. In return, the State dismissed counts III through V and VII through IX under Cause No. 24, counts II and IV through VI under Cause No. 3, and the count under Cause No. 110, and the dismissed counts included three level 5 felonies, two level 6 felonies, and a class A misdemeanor under Cause No. 24, two level 6 felonies and a class A and class B misdemeanor under Cause No. 3, and a level 6 felony under Cause No. 110. According to his juvenile history, set forth in the presentence investigation report (“PSI”), Ford was adjudicated to be a delinquent child multiple times, including for acts which, if committed by an adult, would have constituted theft as a class A misdemeanor, fraud as a level 6 felony, battery as a class B misdemeanor, and criminal mischief as a class B misdemeanor in

2015, disorderly conduct as a class B misdemeanor in 2018, battery resulting in bodily injury as a class A misdemeanor and battery against a public safety official as a level 6 felony in 2019, and escape as a level 6 felony in 2020. The PSI further indicates that Ford has been afforded the opportunities of formal probation and placement in secured detention facilities in St. Joseph and Delaware Counties, in the Transition Academy in St. Joseph County, electronic monitoring, and the Youth Opportunity Center and TEAM program.

[14] According to the PSI, Ford’s mother stated in 2020 that he had been prescribed medications for “the treatment of attention deficit/hyperactivity disorder and impulsive control disorder and mental health counseling [sic]. However, he refused to take his medication.” *Id.* at 134. She testified during the waiver of jurisdiction hearing and agreed with the statements that she made “[a] lot” of effort to get him to take medications, but she was not successful. Transcript Volume II at 33. During the sentencing hearing, the court found that Ford was truly remorseful, but that he often “does impulsive things, then he turns around and he apologizes.” *Id.* at 82. The court described the incident at the Dollar General, stating that “there were families with small children in the store at the time of the shooting,” and “[t]he employees and customers were placed in imminent danger by [Ford].” *Id.* at 83. The PSI stated that M.J. and the employees and customers of the Dollar General were “put in fear for their lives” due to Ford’s actions. Appellant’s Appendix Volume II at 126. The court described the incident involving M.J. and stated that the incidents taken

together demonstrated “disdain for the law” and that Ford “has no regard for human life.” Transcript Volume II at 83.

[15] After due consideration, we conclude that Ford has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[16] For the foregoing reasons, we affirm Ford’s sentence.

[17] Affirmed.

Mathias, J., and Molter, J., concur.