MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joseph W. Baldwin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 13, 2023

Court of Appeals Case No. 22A-CR-1736

Appeal from the Switzerland Circuit Court

The Honorable W. Gregory Coy, Judge

Trial Court Cause No. 78C01-2001-F6-34

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] This is Joseph Baldwin's second appeal of his sentence for Level 6 felony operating a vehicle while intoxicated (OWI) and being a habitual vehicular substance offender (HVSO). On remand for resentencing, the trial court imposed two and one-half years on Baldwin's OWI conviction, enhanced by eight years for his HVSO status. Baldwin appeals his sentence, asserting that it was inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts & Procedural History

[3] The facts of the offense, as set out in Baldwin's first appeal,[1] are that in January 2020,

> Baldwin crashed his van into a guardrail near State Road 56. No one was injured in the crash, and Baldwin's sole passenger was his dog. When police arrived at the crash site, they discovered cans of open and unopened alcoholic beverages inside Baldwin's van. Baldwin subsequently failed four field sobriety tests and a field breathalyzer test, prompting police to take Baldwin into custody. He then took a certified breathalyzer test, which revealed a blood alcohol content of .207—nearly two and a half times the legal limit.

[1] *Baldwin v. State*, No. 21A-CR-1979, 2022 WL 1134612 (Ind. Ct. App. Apr. 12, 2022).

Appellant's Appendix Vol. II at 100 (record citations omitted).

[4] The State charged Baldwin with four counts: Level 6 felony operating a vehicle while intoxicated (OWI) (Count I); two counts of Class A misdemeanor operating a vehicle while intoxicated (Counts II and III); and Class C misdemeanor operating a vehicle while intoxicated (Count IV). The State thereafter filed an HVSO enhancement alleging Baldwin had three prior OWI convictions. In August 2021, pursuant to a negotiated plea agreement, Baldwin pled guilty to Count I and admitted to being an HVSO. Sentencing was left to the discretion of the trial court.

[5] The matter proceeded to a sentencing hearing that same day. Baldwin presented evidence that he worked five days per week at Walmart, which was within walking distance of his residence. He testified that he suffered from bulging disks in his back for which he recently had undergone surgery. Baldwin acknowledged that he had at least eleven misdemeanor convictions, including four OWI convictions, and had other OWI arrests that resulted in guilty pleas for reckless driving. Baldwin also had a pending OWI case in Clark County. Following the Clark County arrest, Baldwin completed a 30-day inpatient drug treatment program and, until incarcerated in the present case, was attending an outpatient therapy program and AA meetings.

[6] The trial court found as aggravating circumstances that Baldwin had a "fairly extensive criminal history," which included multiple probation violations and a pending case at the time of this offense; this incident involved an accident;

Baldwin's BAC was more than two and one-half times the legal limit; and Baldwin was driving with a suspended license on a "well traveled road here in the community" that was shared with Amish families, such that "this could have been a [] catastrophic thing." *Prior Transcript Vol. 2* at 31. The trial court found as mitigating that Baldwin pled guilty and saved the expense of trial; no one was harmed by his actions; he completed an inpatient substance use disorder program and was currently participating in an intensive outpatient program and attending AA meetings; letters were submitted in support of Baldwin indicating that he has a job and that he is a hard worker; and Baldwin appeared remorseful for his actions. The court determined that the aggravators "far outweigh[ed]" the mitigators. *Id*. at 32.

[7] The trial court sentenced Baldwin to two and one-half years on Count I enhanced by eight years on the HVSO enhancement for a total executed sentence of ten and one-half years. The sentencing order provided that the court would consider sentence modification after Baldwin had served six months of incarceration. Baldwin appealed, arguing that all parties, including the trial court, operated on the erroneous premise that Baldwin's HVSO enhancement was nonsuspendable. We agreed and remanded for resentencing, finding that "based on Baldwin's sentencing record, we cannot be sure the court

would have imposed the same sentence had it realized it could have suspended the eight-year HVSO enhancement."[2] *Appendix Vol. II* at 100.

[8] On June 24, 2022, the trial court held a resentencing hearing, at which it took judicial notice of the evidence presented at the original sentencing hearing. Baldwin testified that, following original sentencing, he served approximately thirty days in the local jail before being transported in mid-September 2021 to the Indiana Department of Correction (DOC). He explained that, initially, no DOC programs were available to him but that in December 2021 he began a six-month Behind Bars program, which he would soon be completing, and that he had incurred no write-ups since being incarcerated. Baldwin testified that, if released, he had made arrangements to live with his father. As to employment, Baldwin was unsure whether his job with Walmart was still being held for him but he testified that he knew someone who would likely "put him to work" and that he also had been checking two local newspapers where he saw various applicable job opportunities. *Transcript Vol. 2* at 6. Baldwin asked the court to release him so he could "get [] back to work." *Id*. at 7.

[9] When questioned about planned treatment if released, Baldwin stated that he did not plan on attending AA or any type of relapse prevention program. When asked what steps he intended to take if he felt the urge to use alcohol or other substances, he replied that he "just won't" use it, noting he had turned

[2] Remanding on this basis, we declined to address Baldwin's argument that his sentence was inappropriate under Ind. Appellate Rule 7(B).

down "pot" and "hooch" while incarcerated in the DOC because he simply did not want or need it. *Id*. at 10.

[10] Counsel for Baldwin asked the trial court to modify Baldwin's sentence "to account for the time he's [] served" and direct that the balance be served "either on a supervised probation or as a direct placement." *Id*. at 14. The State argued that Baldwin had repeated OWI convictions, among other offenses, and that Baldwin's responses at the hearing reflect "that he has not educated himself on the fact that he does have a substance abuse problem and the things that a person has to do to change that." *Id*. at 15.

[11] The trial court imposed the same sentence of two and one-half years, enhanced by eight years for the HVSO adjudication. The court gave Baldwin credit for 317 actual days for time served and, observing that Baldwin had served ten months, "modif[ied] the balance of the sentence to in-home detention" to be served through county community corrections. *Appendix Vol. II* at 107; *Transcript Vol. 2* at 18. Baldwin now appeals.

Discussion & Decision

[12] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. App. R. 7(B). The principal role of App. R. 7(B) review "should be to attempt to leaven the outliers and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). 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).

[13] Whether a sentence is 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. The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). More particularly, the defendant must show that his sentence is inappropriate with "compelling evidence portraying in a positive light the nature of the offense[s] (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).

[14] 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 a Level 6 felony is between six months and two and one-half years with the advisory being one year. Ind. Code § 35-50-2-7. A defendant found to be an HVSO shall be sentenced to an additional fixed term of at least one year, but not more than eight years to be added to the term of imprisonment for the underlying offense. Ind. Code § 9-30-15.5-2. Here, the trial court imposed a sentence of two and one-half years, enhanced by eight years but gave Baldwin credit for 317 actual days served and ordered the remaining balance to be served on home detention through Washington County

Community Corrections. Baldwin asks us to revise his sentence "with a focus towards addressing his recovery and not mere punishment through long term incarceration." *Appellant's Brief* at 11.

[15] 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). Baldwin maintains that the nature of the offense was not "overly egregious," as it was a single vehicle accident with no injuries, and he was truthful and cooperative with the officers during his arrest. *Appellant's Brief* at 10.

[16] The lack of serious injuries was, in our view, due to good fortune, given that Baldwin was operating his vehicle with a BAC of over twice the legal limit when he hit a guardrail on a road that was "heavily traveled" by the community, including the Amish on non-motorized modes of travel. *Prior Transcript* at 31. There were open containers of alcohol in Baldwin's vehicle, and when police arrived, they encountered him leaning on the guardrail and smelling of alcohol and not knowing where he was. Baldwin has not presented "compelling evidence portraying in a positive light the nature of the offense." *See Stephenson*, 29 N.E.3d at 122. We conclude that the nature of Baldwin's offense does not warrant a lesser sentence.

[17] When examining Baldwin's character, we note 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). 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. 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*. The significance of a criminal history in assessing a defendant's character and an appropriate sentence 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). Baldwin has a lengthy criminal history that includes twelve misdemeanor convictions, including four OWI convictions and another pending OWI charge. Other convictions include leaving the scene of a property damage accident, resisting law enforcement, reckless driving, and public intoxication.

[18] Baldwin acknowledges that he "does have an extended criminal history and multiple probation violations" but urges that his criminal history was "predicated by his addiction to alcohol," for which he sought treatment after his last arrest. *Appellant's Brief* at 11. And he highlights that this is his first felony. Thus, he argues he is not the worst of offenders deserving of the maximum sentence. We are unpersuaded for a couple of reasons.

[19] First, in assessing whether a sentence is inappropriate, appellate courts may consider whether a portion of the sentence is ordered suspended or is otherwise fashioned using any of the variety of sentencing tools available to the trial court. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010); *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019), *trans. denied*. We have held that, for purposes of App. R. 7(B) review, "a maximum sentence is not just a sentence of maximum

length, but a fully executed sentence of maximum length. Anything less harsh, be it placement in community corrections, probation, or any other available alternative to prison, is simply not a maximum sentence." *Jenkins v. State*, 909 N.E.2d 1080, 1085-86 (Ind. Ct. App. 2009), *trans. denied*. Here, the trial court's first sentencing order provided that Baldwin could petition the court for modification after he had served six months of incarceration, and, at resentencing, the court observed that Baldwin already had served ten months of incarceration. The court then ordered that the remainder of Baldwin's sentence be served through community corrections. Thus, contrary to Baldwin's claim, he was not facing "the maximum sentence." *Appellant's Brief* at 20.

[20] Second, Baldwin has a history of committing driving while intoxicated offenses. Despite having been given multiple opportunities to participate in probation and drug and alcohol classes, Baldwin has continued to commit new alcohol-related driving offenses. This behavior reflects poorly on his character. *See Heyen v. State*, 936 N.E.2d 294, 305 (Ind. Ct. App. 2010) (sentence not inappropriate where the defendant "continue[d] to commit the same crimes again and again"), *trans. denied*. We agree with the State that Baldwin's repeated disregard of the law, or his inability to abide by it, "demonstrates that [he] poses a risk to the community." *Appellee's Brief* at 14.

[21] In sum, Baldwin has failed to convince us that his ten and one-half-year sentence – of which the remaining portion was ordered to be served through community corrections – is inappropriate in light of either the nature of his offense or his character.

[22] Judgment affirmed.

Riley, J. and Pyle, J., concur.