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IN THE
COURT OF APPEALS OF INDIANA

Tyler A. Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 23, 2022

Court of Appeals Case No. 21A-CR-2799

Appeal from the Fulton Superior Court

The Honorable Gregory L. Heller, Judge

Trial Court Cause No. 25D01-2011-F1-753

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Tyler Smith (Smith), appeals his conviction for attempted murder, Ind. Code § 35-42-1-1(1).

[2] We affirm.

ISSUES

[3] Smith presents this court with two issues on appeal, which we restate as:

(1) Whether the trial court erred when it denied Smith's motion to dismiss pursuant to Indiana Criminal Rule 4(B); and
(2) Whether Smith's sentence is inappropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] In November 2020, Smith arrived at a laundromat in Rochester, Indiana, where J.L., also known as "Ten Percent," was talking with some friends. (Transcript Vol. II, pp. 228-29). Smith and J.L. were acquaintances who had an acrimonious relationship. After retrieving a BB gun from his vehicle, Smith approached J.L. and shot him. Later that night, Smith called J.L. and told him, "the next one is going to be a hot round[,]" which J.L. understood to mean a bullet. (Tr. Vol. II, pp. 223-24).

[5] On the night of November 27, 2020, J.L. rode his bicycle to a local convenience store to purchase cigarettes. Smith was in the area, driving his pickup truck, and was accompanied by his girlfriend, Christina Velez (Velez). When Smith noticed

J.L. on his bicycle, he exclaimed, "there's that motherfucker." (Tr. Vol. II, pp. 243-44). Smith began following J.L. While J.L. was in the convenience store, Smith parked the truck. Velez wanted to leave the vehicle because she "didn't want [to be] involve[d] in any of this," but Smith "wouldn't let her out," telling her that "there is no getting out. He goes ride or die." (Tr. Vol. II, p. 244). When J.L. began his trip home on his bicycle, Smith followed. J.L. heard a truck "rev up," looked over, and saw the vehicle coming toward him. (Tr. Vol. II, p. 225). Realizing that Smith was driving the truck, J.L. "pedaled as fast as [he] could" to get home. (Tr. Vol. II, p. 225).

[6] When J.L. reached his home, he jumped off his bike, while Smith parked the truck in front of the house, opened the door, and began firing .22 caliber rifle shots at J.L. Smith shot J.L. several times, including through his abdomen, and hit a nerve in J.L.'s leg. After Smith left the scene, he drove to a nearby alley, and placed the rifle inside another vehicle. Meanwhile, first responders tended to J.L. who was airlifted to South Bend Memorial Hospital where he underwent emergency surgery. J.L. had sustained six separate injuries to his small bowel, injuries to his colon that required a colostomy because the injuries were too large to repair, and steel plates were placed in his arm. J.L. no longer has any feeling in his left leg from his knee to his hip.

[7] On November 30, 2020, the State filed an Information, charging Smith with attempted murder, a Level 1 felony; aggravated battery, a Level 3 felony; and criminal recklessness, a Level 6 felony. On December 14, 2020, the Indiana

Supreme Court issued an order regarding the application of Criminal Rule 4(B) and the COVID-19 pandemic which, in relevant part, stated as follows:

> For purposes of Indiana Criminal Rule 4(B) early-trial motions filed **after the date of this order and before March 2, 2021**, the motion shall be deemed to have been made **on March 1, 2021** and shall be **further subject to** congestion of the court calendar or locally existing emergency conditions for good cause shown.

In re Admin. Rule 17 Emergency Relief for Ind. Trial Courts Relating to the 2019 Novel Coronavirus (COVID-19), (Dec. 14, 2020) (bold in original). On February 3, 2021, Smith's counsel filed a motion for a speedy trial pursuant to Indiana Criminal Rule 4(B). In its order granting the motion for a speedy trial, the trial court recognized that "[p]ursuant to Indiana Supreme Court Order [] issued 12/14/2020, early-trial motions filed after 12/14/2020 and before 3/1/2021 shall be deemed to have been made on 3/1/2021 and shall be further subject to congestion of the court calendar." (Appellant's App. Vol. II, p. 47). The trial court set Smith's jury trial for May 5, 2021.

[8] On May 6, 2021, the trial court continued the jury trial on its own motion and rescheduled Smith's trial for June 30, 2021. In its continuance order, the trial court noted the existence of our supreme court's December 14, 2020 order and two of Governor Holcomb's Emergency Orders regarding Covid-19, which extended the public health emergency until the end of May 2021. Reflecting on the local courtroom conditions, the trial court found:

> As a result of the ongoing pandemic the Fulton County courts are required to utilize the [c]ircuit [c]ourt for all jury trials to

> maintain safety protocols, such as social distancing, which the [s]uperior [c]ourt is not able to maintain due to the small size of the [s]uperior [c]ourt. Consequently, jury trials are required to be scheduled coordinating calendars between two courts.
>
> At the time the [c]ourt set the original trial date it was with the hope that the jury trial could be conducted in the [s]uperior [c]ourt. However, the ongoing pandemic does not permit this. Consequently, the [c]ourt has continued the jury trial to June 30, 2021 for the reasons stated.

(Appellant's App. Vol. II, p. 76).

[9] On June 16, 2021, Smith filed a motion to dismiss pursuant to Indiana Criminal Rule 4(B). After conducting a hearing on the motion, the trial court denied Smith's motion, explaining:

> As everybody is aware, I mean, the pandemic has continued and so as the trial was getting closer, I did notify the courts that the [c]ourt was going to be exercising the discretion afforded the [t]rial [c]ourt as a result of the Supreme Court's order to continue the trial. Not only do we have congestion of the court calendar, we have congestion of two court calendars and we still had local existing conditions, as stated by the State, because the [c]ourt was monitoring that, that was still placing us in the orange.

(Tr. Vol. II, p. 34).

[10] On June 30, July 1, and July 2, 2021, the trial court conducted a jury trial. At the conclusion of the trial, the jury found Smith guilty as charged. On July 21, 2021, the trial court conducted a sentencing hearing, at which it vacated the convictions for aggravated battery and criminal recklessness to avoid a double jeopardy

violation. While finding no mitigating circumstances, the trial court articulated two aggravating factors: Smith's criminal and delinquent history and the significant harm to J.L., which the trial court considered to be greater than the elements necessary to prove the crime. The trial court entered a sentence of thirty-five years, with thirty years to be executed at the Department of Correction and five years suspended to probation.

[11] Smith now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Indiana Criminal Rule 4(B)*

[12] Smith contends that the trial court erroneously denied his motion to dismiss pursuant to Criminal Rule 4(B). A denial of a motion for discharge under Criminal Rule 4(B) is generally reviewed under the clearly erroneous standard. *Austin v. State*, 997 N.E.2d 1027, 1040 (Ind. 2013). While the trial court's resolution of legal questions, or application of law to undisputed facts, is reviewed *de novo*, appellate review will only consider "the probative evidence and reasonable inferences supporting" the trial court's decision, without reweighing evidence or choosing between reasonable inferences. *Id.*

[13] Criminal Rule 4(B) provides: "If any defendant held in jail on an indictment or an affidavit shall move for an early trial, he shall be discharged if not brought to trial within seventy (70) calendar days from the date of such motion." Exceptions to this requirement include, among other things, "where there was no sufficient time to try him during such seventy (70) calendar days because of the congestion of the

court calendar." Crim. R. 4(B)(1). While court congestion generally requires a motion from the prosecutor, a trial court "may take note of congestion or an *emergency* without the necessity of a motion, and upon so finding may order a continuance." *Id*. (emphasis added). Where the trial court's finding of an emergency is based on undisputed facts, our standard of review—like for all questions of law—is *de novo*. *Austin*, 997 N.E.2d at 1039. The ultimate reasonableness of the trial court's finding of an emergency depends very much upon the facts and circumstances of the particular case. *See id.*

[14] When Smith filed his motion for a speedy trial on February 3, 2021, our supreme court's order of December 14, 2020, necessitated by the existence of a worldwide health pandemic, was in effect and tolled the time for a speedy trial until March 1, 2021. In line with the mandates of this order, the trial court scheduled Smith's jury trial for May 5, 2021. Smith now challenges the trial court's *sua sponte* continuance of his speedy trial on May 6. In its order of continuance, the trial court duly noted the continuing emergency conditions. The trial court explained that Fulton County still remained "in the orange," which, according to the Indiana Department of Health's COVID-19 Home Dashboard, indicated that the seven-day moving average of test-positivity rates was between 10 to 14.9%, with 100 to 199 new cases being reported each week. (Tr. Vol. II, p. 34). These pandemic conditions created a local court congestion with only one courtroom being available to conduct the hearings of two courts as the superior courtrooms were too small to safely conduct in-person proceedings.

[15]Smith's argument that the trial court was required to make a specific finding that local pandemic conditions constituted an emergency is without merit. The parameters of Indiana Criminal Rule 4(B) clearly specify that a trial court may continue a trial upon taking note of a congestion or an emergency—without the additional requirement of a *local* emergency. Here, the trial court's finding that both an emergency and court congestion existed was reasonable in light of the circumstances relating to the COVID-19 pandemic that raged at the time the trial court continued Smith's trial. The trial court did not err by continuing Smith's jury trial and denying his motion for discharge.

II. *Inappropriateness of Sentence*

[16]Smith next contends that his sentence is inappropriate. Pursuant to Indiana Appellate Rule 7(B), 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. "The 7(B) appropriateness inquiry is a discretionary exercise of the appellate court's judgment, not unlike the trial court's discretionary sentencing determination." *Knapp v. State*, 9 N.E.3d 1274, 1291-92 (Ind. 2014), *cert. denied*, 135 S.Ct. 978 (2015). "On appeal, though, we conduct that review with substantial deference and give due consideration to the trial court's decision—since the principal role of our review is to attempt to leaven the outliers, and not to achieve a perceived correct sentence." *Id*. at 1292. Accordingly, the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Conley v. State*, 972 N.E.2d 864,

876 (Ind. 2012). It is the defendant's burden on appeal to persuade the reviewing court that the sentence imposed by the trial court is inappropriate. *Chappell v. State*, 966 N.E.2d 124, 133 (Ind. Ct. App. 2012), *trans. denied*.

[17] Smith was convicted of attempted murder, a Level 1 felony. The sentencing range for a Level 1 felony is twenty to forty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4(b). The trial court imposed a thirty-five-year sentence, with five years suspended to probation.

[18] Regarding the nature of the offense, we note that this was an absolutely senseless and unprovoked attack, with severe injuries as a result. Smith and J.L. "just didn't like each other," which prompted Smith to take a .22 caliber rifle and shoot J.L., after having attacked him earlier that month with a BB gun. (Tr. Vol. III, p. 179). Smith fired multiple shots in a public street, hitting J.L. three times. After being airlifted and undergoing emergency surgery, it was revealed that J.L. had sustained six separate injuries to his small bowel, injuries to his colon that required a colostomy because the injuries were too large to repair, and steel plates were placed in his arm. J.L. lost all feeling in his left leg from his knee to his hip. Although Smith concedes that "the nature of the offense in this case was certainly violent and caused serious injury to J.L.," he maintains that this case should not be considered "an outlier among the facts surrounding other defendants sentenced for attempted murder" and which would warrant an aggravated sentence. (Appellant's Br. pp. 17, 18). However, we agree with the trial court's observation that, while an attempted murder can occur "without causing potentially permanent injury and hardship," Smith's actions resulted in such severe injuries that J.L. is

now required to carry a colostomy bag, which he may continue to need for the remainder of his life.[1] (Tr. Vol. IV, p. 5).

[19] Turning to Smith's character, we note that he was twenty-six years old at the time of sentencing. His criminal history began in July 2014 with a misdemeanor theft and illegal possession of an alcoholic beverage. Prior to being convicted of these two charges, he committed another theft. In March 2016, Smith was convicted of carrying a handgun without a license, was placed on probation, two petitions to revoke his probation were filed, and both were found true. In March 2017, he was convicted of possession of marijuana, as a misdemeanor, and placed on probation. While he was on probation, five failure-to-appear warrants were issued for him. In October 2017, he committed his first violent offense—battery resulting in bodily injury as a Class A misdemeanor—and committed a second offense for carrying a handgun without a license in February 2020. At the time of sentencing, he also had pending charges for possession of a controlled substance, possession of marijuana, and possession of paraphernalia. Smith's criminal history is a testament to a disturbing evolution from relatively minor misdemeanors to carrying a handgun without a license and to crimes of violence, culminating in J.L.'s attempted murder.

[1] At the time of sentencing, it was still medically unclear whether J.L. would need the colostomy bag permanently.

[20] In light of the nature of the offense and Smith's character, we cannot conclude that his near-advisory sentence is inappropriate. Accordingly, we affirm the trial court's sentence.

CONCLUSION

[21] Based on the foregoing, we hold that the trial court properly denied Smith's motion to dismiss under Indiana Criminal Rule 4(B); and Smith's sentence is not inappropriate in light of the nature of the offense and his character.

[22] Affirmed.

[23] May, J. and Tavitas, J. concur