MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Terence D. Walker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 29, 2023

Court of Appeals Case No. 23A-CR-1773

Appeal from the Delaware Circuit Court

The Honorable Thomas A. Cannon, Jr., Judge

Trial Court Cause No. 18C05-1909-F1-13

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] A jury found Terence D. Walker guilty of level 1 felony attempted murder. The trial court imposed a thirty-five-year sentence. Walker now appeals, claiming that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] On August 23, 2019, George Harker, Jr., was riding bikes with a companion on Hartford Street in Muncie. Walker, who was driving a vehicle, approached Harker and said, "[T]old you I'd get you." Tr. Vol. 2 at 53. Walker then shot Harker. The bullet passed through Harker's left lung, hit the back side of his heart, and lodged on the right side of his body.

[3] The State charged Walker with level 1 felony attempted murder. A jury trial began on June 5, 2023. The jury found Walker guilty as charged. Following a sentencing hearing, the trial court sentenced Walker to an executed term of thirty-five years. This appeal ensued.

Discussion and Decision

[4] Walker asks us to reduce 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." 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). Walker bears 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.

[5] "[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 offense 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.

[6] Although Appellate 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.

[7] Regarding the nature of the offense, 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). The sentencing range for a level 1 felony is between twenty and forty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4(b). The trial court here imposed a thirty-five-year sentence, which is several years below the maximum allowable sentence. Walker makes no specific argument that his sentence is inappropriate in light of the nature of his offense, so we view this as a concession that there is nothing about the nature of this offense that warrants a sentence reduction.

[8] As for his character, Walker suggests that his diagnosis with sickle cell anemia and his alleged efforts, albeit unsuccessful, to deal with his longtime "struggle with substance abuse" are things that should reflect positively on his character.

Appellant's Br. at 9.[1] We assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). A typical factor we consider when examining a defendant's character is criminal history. *McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied* (2021).

[9] Walker has a criminal history including prior misdemeanor convictions for battery and carrying a handgun without a license, and multiple convictions for both felony and misdemeanor drug offenses. He was on probation when he committed the current crime, which demonstrates that prior attempts at leniency have been unsuccessful. Moreover, the record indicates that Walker made recorded jail phone calls to his girlfriend discussing bribes to keep witnesses away from his trial. In short, our deference to the trial court's judgment has not been overcome by compelling evidence portraying Walker's character in a positive light. He has not met his burden to demonstrate that his sentence is inappropriate, and therefore we affirm it.

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[1] Walker clearly conflates the abuse-of-discretion standard with the inappropriateness standard, arguing that his sentence is "inappropriate" because the trial court erred by not giving proper weight to the mitigating factor of his sickle cell anemia and for considering his substance abuse history as an aggravating factor despite the alleged steps he had taken to deal with his problems. Appellant's Br. at 8-9. This conflation of arguments is improper as it is well settled that the two types of claims are distinct and are to be analyzed separately. *King v. State*, 894 N.E.2d 265, 266 (Ind. Ct. App. 2008). Because the relative weight or value assignable to aggravating or mitigating factors is not subject to appellate review for an abuse of discretion, *Anglemyer*, 868 N.E.2d at 491 (Ind. 2007), we analyze Walker's argument solely within the framework of Indiana Appellate Rule 7(B).

[10] Affirmed.

Riley, J., and Mathias, J., concur.