MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cody Polsgrove,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 8, 2023

Court of Appeals Case No.
23A-CR-1217

Appeal from the
St. Joseph Superior Court

The Honorable
Elizabeth C. Hurley, Judge

Trial Court Cause No.
71D08-2011-F5-262

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

[1] Cody Polsgrove appeals his six-year sentence for Level 5 felony causing serious bodily injury when operating a vehicle with a Schedule I or II controlled substance (or its metabolite) in his blood, arguing it is inappropriate. We affirm.

Facts and Procedural History

[2] One morning in October 2020, Leah Richards was driving her minivan in a rural area of St. Joseph County with her three-year-old daughter in the back passenger-side seat. Richards was driving north on State Road 23 around 48-51 miles per hour in a 55-mile-per-hour zone when Polsgrove—who was driving his Ford F-150 truck east on New Road around 58-61 miles per hour in a 45-mile-per-hour zone—ran a stop sign and t-boned into the driver's side of the minivan. There was no evidence that Polsgrove hit the brakes before t-boning the minivan. Richards was seriously injured, sustaining fifteen broken ribs, a broken arm, a broken pelvis, a lacerated spleen (which had to be removed), and a lacerated liver. She underwent surgery and spent a week in the ICU.

[3] The police obtained a search warrant to have Polsgrove's blood drawn. The toxicology results showed that he had 1.9 nanograms per milliliter of delta-9 THC and less than 20 nanograms per milliliter of an inactive metabolite of THC in his blood. Tr. Vol. II p. 106. According to the toxicologist, these values, by themselves, did not establish impairment. The State charged Polsgrove with

Level 5 felony causing serious bodily injury when operating a vehicle with a Schedule I or II controlled substance (or its metabolite) in his blood. *See* Ind. Code § 9-30-5-4(a)(2).[1] As Polsgrove acknowledges, this offense does not require the State to "show a causal connection between the ingestion of marijuana and the accident." Appellant's Br. pp. 10-11. In other words, no evidence of impairment is required. A jury trial was held, and Polsgrove was found guilty.

[4] At the sentencing hearing, evidence was presented that Polsgrove, then age twenty-eight, had a juvenile and criminal record. Polsgrove has two juvenile adjudications, including one for reckless driving. Polsgrove has adult convictions for Class A misdemeanor failure to stop after an accident resulting in bodily injury (2014), Class A misdemeanor battery resulting in bodily injury (2014), misdemeanor driving under the influence of alcohol or drugs (Florida, 2015), Class A misdemeanor operating while intoxicated (2021), Class A misdemeanor carrying a handgun without a license (2021), and Level 6 felony possession of methamphetamine (2021). In addition, Polsgrove was on pretrial release in relation to the 2021 convictions when he committed this offense and

[1] A different section, Indiana Code section 9-30-5-1(c), makes it a Class C misdemeanor for a person to operate a vehicle with a Schedule I or II controlled substance (or its metabolite) in their blood. Effective July 1, 2021, it is a defense to subsection (c) if the controlled substance is marijuana (or a metabolite) and the person did not, among other things, cause a traffic accident. I.C. § 9-30-5-1(d)(2); P.L. 49-2021, § 1. This defense does not apply here.

was on pretrial release in this case when he was arrested for public intoxication (that charge is still pending).

[5] The trial court found three aggravators: (1) Polsgrove has a juvenile and adult record, including convictions similar to the present one; (2) Richards suffered "catastrophic" injuries, which were greater than needed to establish serious bodily injury; and (3) "the offense took place in the presence of a child." Tr. Vol. III p. 120. The trial court found one mitigator: Polsgrove was employed. Finding the aggravators to outweigh the mitigator, the court sentenced Polsgrove to six years, with four years in prison and two years on community corrections.

[6] Polsgrove now appeals.

Discussion and Decision

[7] Polsgrove contends his sentence is inappropriate and asks us to revise it to four years, with two years in prison and two years on community corrections. Indiana Appellate Rule 7(B) provides that an appellate 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." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "Whether a sentence is inappropriate ultimately 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." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[8] The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). Here, the trial court imposed the maximum sentence of six years but ordered two of those years to be served on community corrections.

[9] Polsgrove focuses on the nature of the offense, noting that the toxicology results didn't establish that he was impaired at the time of the accident. Although impairment is not required for this offense, the trial court found that such evidence was present here:

> [I]n this case what we did have was you driving if I recall the trial testimony, at speeds that exceeded the speed limit, failing to stop at a stop sign that was very clearly indicated and not just clearly indicated in and of itself but probably a good hundred yards before that stop sign an indicator that a stop sign was coming up. So sort of two opportunities to recognize that you needed to slow down and come to a stop. And instead, you ignored both and went through that intersection at around 60 miles an hour plowing right into the driver's side of the vehicle.

Tr. Vol. III p. 121. And as the trial court explained, Richards's injuries were catastrophic.

[10] But even if the nature of the offense does not support a maximum sentence, Polsgrove's character tips the scale. Polsgrove has several driving-related convictions. He has a juvenile adjudication for reckless driving, a conviction for failure to stop after an accident resulting in bodily injury, and two convictions for operating while intoxicated. He has other convictions as well, including a felony conviction for possession of meth. Moreover, Polsgrove committed this offense when he was on pretrial release in another case and was arrested for public intoxication when he was on pretrial release in this case. As the trial court explained, nothing has seemed to "cur[b]" Polsgrove's "repeated" behaviors. *Id.* at 121, 122. Polsgrove has failed to persuade us that his sentence is inappropriate.

[11] Affirmed.

Bradford, J., and Brown, J., concur.