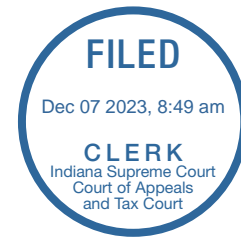


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Michael P. Greene,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 7, 2023

Court of Appeals Case No.
23A-CR-635

Appeal from the Vigo Superior
Court

The Honorable Matthew A.
Sheehan, Judge

Trial Court Cause Nos.
84D05-1803-F5-890
84D05-2112-F5-4228

Memorandum Decision by Judge Kenworthy
Judges Bailey and Tavitas concur.

Kenworthy, Judge.

Case Summary

- [1] Michael P. Greene appeals his six-year aggregate sentence, raising one issue for our review: Does his sentence warrant revision under Indiana Appellate Rule 7(B)? Concluding Greene’s sentence is not inappropriate in light of the nature of his offense and his character, we affirm.

Facts and Procedural History

- [2] In 2007, Greene was convicted of Class C felony child molesting. Based on this conviction, Greene was required to register as a sex offender. In 2018, Greene was convicted of Level 5 felony failure to register as a sex offender and placed on probation. A couple of years later, the State petitioned to revoke Greene’s probation and charged Greene in this case with two counts of failure to register as a sex offender—one as a Level 5 felony and one as a Level 6 felony. The State also alleged Greene was a habitual offender. In late February 2023, Greene and the State entered into a plea agreement. Under the terms of the agreement, Greene pleaded guilty to Level 5 felony failure to register as a sex offender,¹ admitted he was a habitual offender,² admitted to a probation violation, and agreed to a six-year cap on his sentence. The trial court accepted the plea agreement, dismissed Greene’s Level 6 felony charge, and terminated his probation as unsatisfactorily completed.

¹ Ind. Code § 11-8-8-17(b) (2020).

² I.C. § 35-50-2-8(i)(2) (2017).

- [3] Prior to sentencing, Greene was evaluated by a licensed clinical social worker. The social worker reported Greene suffered from childhood trauma because he “saw his mother shot and killed when he was like three (3) years old.” *Tr. Vol. 2* at 43. Further, Greene was diagnosed with schizophrenia, “schizoaffective disorder,” PTSD, and ADHD. *Id.* at 44. Greene also has a history of abusing illegal substances like methamphetamine, marijuana, mushrooms, oxycontin, and LSD. Due to his condition, Greene was treated at the Hamilton Center and Options Behavioral Health Center on several occasions. Overall, Greene failed to adhere to recommendations and did not engage in treatment.
- [4] The trial court sentenced Greene to an aggregate sentence of six years executed in the Department of Correction—three years for Level 5 felony failure to register as a sex offender with a three-year habitual offender enhancement. When sentencing Greene, the trial court acknowledged Greene’s “significant mental health issues” as a “significant mitigating factor.” *Id.* at 58. Yet the trial court determined Greene’s criminal history—including five prior felony convictions for failure to register as a sex offender—and several probation violations warranted the imposed sentence.

Greene’s Sentence Does Not Warrant 7(B) Revision

- [5] Greene asks us to review and revise his sentence. The Indiana Constitution authorizes this Court to review and revise a trial court’s sentencing decision as provided by rule. Ind. Const. art. 7, § 6. Indiana Appellate Rule 7(B) provides we 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 principal role of appellate review is to leaven the outliers, not to achieve a perceived correct sentence in each case. *Conley v. State*, 183 N.E.3d 276, 288 (Ind. 2022). Thus, “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) (per curiam).

[6] “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “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). The question “is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” *Helsley v. State*, 43 N.E.3d 225, 228 (Ind. 2015) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)) (emphasis omitted). Whether we regard a sentence as 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.

[7] The defendant bears the burden of persuading us a revised sentence is warranted. *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021). And because our legislature has selected the advisory sentence as the “starting point” for “an appropriate sentence for the crime committed,” the defendant bears a

“particularly heavy burden” when the trial court imposes the advisory sentence. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[8] Here, the trial court sentenced Greene to three years for Level 5 felony failure to register as a sex offender, enhanced by three years for being a habitual offender. *See* I.C. § 35-50-2-6(b) (2014) (providing for a sentence of one to six years for a Level 5 felony, with a three-year advisory sentence); *see also* I.C. § 35-50-2-8(i)(2) (2017) (providing for an additional sentence of two to six years for a habitual offender convicted of a Level 5 felony). Thus, Greene received the advisory term for his Level 5 felony offense. And Greene’s habitual offender enhancement was toward the bottom of the applicable range. Therefore, Greene bears a “particularly heavy burden” to show his sentence warrants 7(B) revision. *See Fernbach*, 954 N.E.2d at 1089.

[9] Beginning with the nature of Greene’s offense, we note this is Greene’s sixth conviction for failing to register as a sex offender. *See Appellant’s App. Vol. 2* at 49–52. Thus, Greene has demonstrated a continuous disregard for his legal obligation to register. As such, the nature of Greene’s offense weighs against revision.³

³ Greene argues he was homeless at the time of his conduct underlying this offense, and thus unable to register a home address. *See Appellant’s Br.* at 13. But the record reveals otherwise. *See Appellant’s App. Vol. 2* at 38–39 (indicating the charges underlying this case were based upon Greene failing to register his change of address while living on Maple Avenue in Terre Haute, Indiana for a period of about three weeks). Nonetheless, Indiana Code Section 11-8-8-12 requires a sex offender who resides in a temporary residence or who does not have a principal or temporary residence to register or report with the local law enforcement authority.

[10] As to Greene’s character, his criminal history is significant. *See Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021) (explaining a defendant’s criminal history is one relevant factor in analyzing character). In addition to his previous five felony convictions for failure to register as a sex offender, Greene has convictions for Class C child molesting, misdemeanor reckless driving, and misdemeanor disorderly conduct. And Greene has violated the terms of his probation on at least six separate occasions. Although Greene’s guilty plea saved the State the expense of trial, it also benefited Greene in the form of a dismissal of his Level 6 felony failure to register charge and a sentence capped at six years. And to the extent Greene contends his mental health issues favor revision, the trial court considered his struggles a “significant mitigating factor.” *Tr. Vol. 2* at 58. But the trial court determined the aggravating factors outweighed the mitigating factors and warranted the imposed sentence. As the trial court explained: “Greene’s continuous inability to follow the law and to follow the requirements of probation, give this court no assurance or faith that Mr. Greene can be successful in any sentence that would not be executed fully in the Department of Corrections.” *Id.* at 58–59. Put simply, Greene’s repeated inability to abide by the laws and rules placed upon him reflect poorly on his character and weigh against 7(B) revision.

Conclusion

[11] Greene’s six-year aggregate sentence is not inappropriate in light of the nature of his offense and his character. His sentence therefore does not warrant 7(B) revision. Accordingly, we affirm.

[12] Affirmed.

Bailey, J., and Tavitas, J., concur.