## MEMORANDUM DECISION




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# IN THE COURT OF APPEALS OF INDIANA

Joseph E. Richardson,
*Appellant-Defendant,*

v.

State of Indiana,
*Appellee-Plaintiff.*

May 31, 2022

Court of Appeals Case No. 21A-CR-2817

Appeal from the Brown Circuit Court

The Honorable Mary Wertz, Judge

Trial Court Cause No. 07C01-2103-F6-157

**Tavitas, Judge.**

## Case Summary

[1] Joseph Richardson appeals his sentence following a guilty plea for operating a vehicle with an ACE of .15 or more, a Level 6 felony, and resisting law enforcement, a Class A misdemeanor. Finding that Richardson's sentence was not inappropriate in light of the nature of his offenses and his character, we affirm.

## Issue

[2] Richardson raises a single issue: whether his sentence is inappropriate in light of the nature of his offenses and his character.

## Facts

[3] On March 15, 2021, the State charged Richardson with Count I, operating a vehicle while intoxicated and endangering a person, a Level 6 felony; Count II, operating a vehicle with an ACE of .15 or more, a Level 6 felony; Count III, operating a vehicle while intoxicated, a Level 6 felony; and Count IV, resisting a law enforcement officer, a Class A misdemeanor.[1] On July 19, 2021, the State filed a habitual vehicle substance offender enhancement. The State filed a

[1] We begin with the charges rather than the details of the crime because those details do not appear in the record. Though the State relies upon the probable cause affidavit, we note that said affidavit was never admitted into evidence, nor was a pre-sentence investigation report generated. The trial court did not order a pre-sentence investigation in the instant case, but rather took judicial notice of such a report from a prior unrelated case. The sentencing hearing did not focus on any details of the crimes. As always, we limit our review to the facts properly before us.

second such enhancement on August 5, 2021, and amended the charging information nine days later.

[4] On August 17, 2021, the trial court held a plea hearing, wherein Richardson pleaded guilty to Count II and Count IV as a part of a plea agreement. The State agreed to dismiss the other counts. The trial court held a sentencing hearing on November 22, 2021. Richardson's former probation officer testified that Richardson is an alcoholic without a good support system or place to live. Richardson repeatedly asked for assistance and was attempting to find stable housing. Richardson also presented proof that he had been admitted to the Lighthouse recovery program and sought placement there. The trial court expressed misgivings about the legal basis for ordering an executed sentence at such a facility. Richardson testified that he had previously completed an inpatient program and had been successfully involved with another alcohol program that he eventually had to leave because he could not afford it.

[5] The trial court took judicial notice of a pre-sentence investigation report from a prior unrelated crime, which detailed Richardson's extensive criminal history. Many of Richardson's prior crimes are alcohol related. The trial court found both Richardson's extensive criminal history and his extensive history of violating conditions of probation and various community corrections programs and treatment programs to be aggravators, as well as the fact that he was on probation at the time of the offenses. The trial court found no mitigating factors. The trial court sentenced Richardson to 740 days executed on Count II

and 365 days executed on Count IV to be served concurrently. Richardson now appeals.

## Analysis

[6] Richardson contends that his sentence is inappropriate in light of the nature of his offenses and his character. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[7] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "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.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).[2]

[8] When 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. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Richardson was convicted of a Level 6 felony and a Class A misdemeanor. Indiana Code Section 35-50-2-7(b) provides that "[a] person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year." Indiana Code Section 35-50-3-2 provides that "[a] person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one (1) year . . . ."

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[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

[9] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, however, details of the particular offenses are not included in the record. Because Richardson presented no details of the crime below, he is unable to persuade us that this particular offense was "accompanied by restraint, regard, [or] a lack of brutality." *Stephenson*, 29 N.E.3d at 122.

[10] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). Most important to this prong of the analysis in this case is Richardson's criminal history. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*). Richardson's criminal history is not minor. It now comprises fifteen misdemeanors and ten felonies. Many of those crimes are alcohol related, including other offenses for operating a vehicle while under the influence of alcohol.

[11] The trial court further found that Richardson was "offered many opportunities on probation and community corrections program[s] and [has] a significant history of violating conditions of probation and community corrections programs and that [Richardson had] been offered programs of treatment and rehabilitation, but continued to commit criminal offenses." Tr. Vol. II p. 28. Thus, despite myriad opportunities to rectify his behavior and maintain a sober lifestyle, Richardson has repeatedly reoffended. Nothing in the character of the offender persuades us that the sentence imposed was inappropriate.

## Conclusion

[12] Richardson's sentence was not inappropriate in light of the nature of his offenses and his character. We affirm.

[13] Affirmed.

Riley, J., and May, J., concur.