MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ryan D. Alexander,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

January 27, 2021

Court of Appeals Case No.
20A-CR-1453

Appeal from the
Jefferson Superior Court

The Honorable
Jeffrey Sharp, Special Judge

Trial Court Cause Nos.
39D01-1802-F6-199
39D01-1803-F4-266

Vaidik, Judge.

Case Summary

[1] Ryan D. Alexander pled guilty to Level 4 felony burglary and Level 6 felony possession of methamphetamine and was sentenced to thirteen years. Alexander now appeals, arguing the trial court erred in considering the probable-cause affidavits in imposing his sentence, his due-process rights were violated because he was denied the opportunity to argue for a community-corrections placement due to outstanding fees, and his burglary sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On February 20, 2018, police were called to Shoe Sensation in Madison to remove Alexander from the store because he had previously been "trespassed" from the store. Appellant's App. Vol. II p. 32. When police arrived, they asked Alexander if he had anything in his pockets they should know about. As Alexander voluntarily emptied his pockets, he slipped what was later determined to be methamphetamine down the back of his pants. The State charged Alexander with Level 6 felony possession of methamphetamine and Class A misdemeanor criminal trespass under Cause No. 39D01-1802-F6-199 ("F6-199"). On February 23, Alexander was released on his own recognizance and placed on pretrial release. *Id.* at 20.

[3] Sometime between February 28 and March 6, while Alexander was on pretrial release in F6-199, he broke into Kelli Hoffman's house while she was on

vacation. Hoffman lived in the house with her two minor daughters. Alexander chose Hoffman's house because it looked like no one was home. Alexander broke in through a sliding glass door and ransacked the house. Once inside, he stole approximately $11,000 worth of items, including a camera, four flat-screen televisions, a Beretta .380 handgun, a hoverboard, and an Xbox. Alexander also took items with sentimental value, including a ring Hoffman's grandmother had given her.

[4] When Hoffman returned home from vacation, she found her house had been burglarized and called 911. After speaking with the police, Hoffman spoke with her neighbor, who said an unknown man had come to Hoffman's house a "couple of days in a row." Tr. p. 42. The neighbor confronted the man, who was Alexander, and asked him what he was doing there. Alexander responded it was "his buddy's house" and he had left his cell phone there. *Id.* The neighbor thought Alexander looked "sketchy" and snapped a photo of him. *Id.* She sent the photo to Hoffman, who then posted it to Facebook hoping to identify him.

[5] After posting the photo, Hoffman received numerous messages identifying Alexander as the man in the photo. She also received a message from Alexander himself. Alexander confirmed it was him in the photo but denied burglarizing Hoffman's house. When Alexander said he had information about the burglary, Hoffman asked him if he would meet her later that day. Alexander agreed. Hoffman then called the lead investigator on her case, and they decided Hoffman would wear a recording device to the meeting.

[6] When Hoffman met Alexander, he admitted burglarizing her house and said he could get her items back but "would need money to do so." *Id.* at 44-45. He also admitted selling her property for drugs and money. Alexander was arrested. He later agreed to help the police track down the items he had taken from Hoffman's house.

[7] Although some items were returned to Hoffman, others were not, including the Beretta .380 handgun. As the investigation continued, Hoffman learned the FBI had found her handgun in Louisville, Kentucky, during an unrelated arrest. The man arrested in that case later contacted Hoffman on Facebook and told her he knew where she lived. This frightened Hoffman and her children. Hoffman also received a phone call from Alexander's grandmother, who, at Alexander's urging, asked her to "drop" the case in exchange for the rest of her property. *Id.* at 46.

[8] In March 2018, the State charged Alexander with Level 4 felony burglary and two counts of Level 6 felony theft in Cause No. 39D01-1803-F4-266 ("F4-266"). While in jail awaiting trial in F6-199 and F4-266, Alexander was involved in two fights, one in April 2019 and the other in July 2019. He also joined the Latin Kings gang while in jail.

[9] In November 2019, Alexander and the State entered into a plea agreement covering both cause numbers under which Alexander agreed to plead guilty to Level 6 felony possession of methamphetamine in F6-199 and Level 4 felony

burglary in F4-266 and the State agreed to dismiss the remaining counts. As an additional condition of the plea agreement, Alexander acknowledged:

> You have been given the opportunity to read the probable cause affidavit filed in this case and **acknowledge that the facts contained in it are true** and constitute a factual basis for your plea. That entry of a guilty plea pursuant to this agreement constitutes an admission of the truth of all facts alleged in the charge or counts to which you are pleading guilty and that entry of the guilty plea will result in a conviction on those charges or counts.

Appellant's App. Vol. II p. 44 (emphasis added).

[10] The sentencing hearing was held in June 2020. At the hearing, evidence was presented about thirty-two-year-old Alexander's criminal history. Specifically, he has convictions for Class D felony possession of a controlled substance (2012), Level 6 felony unlawful possession of a syringe (2017), and several misdemeanors, including theft (2017), two counts of criminal mischief (2017), visiting a common nuisance (2017), and criminal trespass (2018). In addition, evidence was presented Alexander violated his probation/community corrections in the 2012 controlled-substance case for, among other things, testing positive for drugs and being in unauthorized locations. Ex. 8c. Evidence also was presented that while Alexander was released on bond in the 2017 syringe case, he failed to appear for a court hearing and committed misdemeanors in three cause numbers. *See* Appellant's Br. p. 6; Ex. 8a, pp. 47-48.

[11] Following the hearing, the trial court found six aggravators: (1) Alexander has a criminal history and a history of "violating conditions of bond as well as probation and pretrial services"; (2) he committed burglary while on pretrial release for possession of methamphetamine; (3) he was involved in two batteries while in jail awaiting trial in this case (although charges were never filed) and joined Latin Kings; (4) he took items belonging to Hoffman's children; (5) Hoffman's and her children's "sense of security" was "robbed"; and (6) Alexander "committed eight separate offenses in the span of one year," lacks respect for authority and rules, and is at high risk to reoffend. Appellant's App. Vol. II pp. 72, 75. The court found four mitigators: (1) Alexander pled guilty; (2) he expressed remorse; (3) he has substance-abuse problems; and (4) he was willing to pay restitution. Finding the aggravators outweigh the mitigators, the court sentenced Alexander to one year for Level 6 felony possession of methamphetamine in F6-199 and twelve years for Level 4 felony burglary in F4-266, to be served consecutively, for a total sentence of thirteen years.

[12] Alexander now appeals.

Discussion and Decision

I. Probable-Cause Affidavits

[13] Alexander first contends the trial court erred in considering facts of the dismissed charges contained in the probable-cause affidavits because the affidavits were not admitted into evidence at the sentencing hearing or

incorporated into the PSI. But as the State points out, Alexander's plea agreement provides:

> You have been given the opportunity to read the probable cause affidavit filed in this case and **acknowledge that the facts contained in it are true** and constitute a factual basis for your plea. That entry of a guilty plea pursuant to this agreement constitutes an admission of the truth of all facts alleged in the charge or counts to which you are pleading guilty and that entry of the guilty plea will result in a conviction on those charges or counts.

Appellant's App. Vol. II p. 44 (emphasis added). Alexander responds the bolded language is unclear as to whether he agreed "all the facts within the probable cause are true or only those that establish his guilt for the factual basis." Appellant's Reply Br. p. 10. But we find the language is clear: Alexander agreed "the facts contained in [the probable-cause affidavits] are true[.]" This means he agreed all facts in the probable-cause affidavits—even those of the dismissed charges—are true. Accordingly, Alexander's argument "the State has failed to present reliable evidence providing [sic] the circumstances of the dismissed charges" fails. *Id.*

II. Community Corrections

[14] Alexander next contends his due-process rights were violated because he was "denied the opportunity to argue" for a community-corrections placement "solely because he had outstanding fees from 2015." Appellant's Br. p. 17. As

support he was "denied the opportunity" to make this argument, Alexander cites the PSI, which provides:

> Per Shelby Bear with Jefferson County Community Corrections:
>
> Mr. Alexander has had the opportunity to participate in community supervision prior to this case. While on supervision he did participate in services and completed what was asked of him. He currently owes $1544 in past due fees to Community Corrections. Mr. Alexander is not eligible for Community Corrections supervision unless his fees are paid in full before he begins his supervision.

Appellant's App. Vol. II p. 53. Alexander asserts "[o]utstanding community corrections fees, without any evidence or allegation that the defendant recklessly or knowingly failed to pay those fees, is an unconstitutional reason to deny that person's acceptance into the program." Appellant's Br. p. 17.

[15] We acknowledge "[c]ompletely foreclosing a benefit that the State offers to defendants in the criminal justice system, based solely on an inability to pay a fee or fine, violates the Fourteenth Amendment." *Mueller v. State*, 837 N.E.2d 198, 204 (Ind. Ct. App. 2005). But that is not what happened here. There is simply no indication in the record Alexander was denied the opportunity to argue for a community-corrections placement. Indeed, defense counsel brought up the possibility of community corrections and asked the trial court to suspend some of Alexander's sentence. *See* Tr. pp. 62, 72. Neither the trial court nor the State responded community corrections was off the table.

[16] Instead, the record reflects the reason Alexander did not receive community corrections is because he is not a good candidate for it. The probation department said as much in the PSI:

> Based on the severity of the current offenses, if found guilty, the Jefferson County Probation Department would recommend a sentence at the Indiana Department of Correction, fully executed. **The Defendant has had opportunities to succeed in the community and has failed, and due to this it is not believed the Defendant would be successful if a suspended sentence was ordered.**

Appellant's App. Vol. II p. 53 (emphasis added). The State said it agreed with the probation department's recommendation that Alexander's sentence should be fully executed. Tr. p. 67. As the State observed, if Alexander couldn't abide by the conditions of his pretrial release in F6-199 or behave in jail, it didn't "make any sense" to place him in a "less restrictive environment." *Id.* at 70. There is no due-process violation here.

III. Inappropriate Sentence

[17] Last, Alexander contends his maximum sentence of twelve years for Level 4 felony burglary is inappropriate and asks us to revise it to the advisory sentence of six years. Under Indiana Appellate Rule 7(B), 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." "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 their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[18] Alexander says his burglary is not "the worst of the worst" because Hoffman and her children were not home. Appellant's Br. p. 15. While this is true, Alexander ransacked their house and took big-ticket items, including items that belonged to Hoffman's children, and items with sentimental value. He then sold the items for drugs and money. Alexander later contacted Hoffman and offered to get her things back **if** she gave him money. Although Alexander got some of Hoffman's items back, he didn't get everything back, including the handgun. While in jail, Alexander asked his grandmother to call Hoffman and persuade her to drop the charges. In addition, the man who had Hoffman's handgun contacted her and said he knew where she lived. This frightened Hoffman and her children.

[19] Moreover, Alexander admits his character is not "good or mitigating." *Id.* He acknowledges his criminal history but claims it could be "much worse" as he has "never been convicted of a violent offense or been to prison." *Id.* at 13. While this may be true, the record reflects Alexander committed seven offenses in the year leading up to the burglary. He committed many of these offenses while on bond or pretrial release, including the burglary. The record also

reflects Alexander has failed to appear and violated his probation/community corrections. As the trial court found, Alexander "has shown a complete disregard" for the court's "orders and authority in general." Appellant's App. Vol. II p. 73. Although Alexander says his criminal history is related to his struggles with addiction, he was involved in two fights in jail while awaiting trial, when he presumably wasn't using drugs. Alexander also joined Latin Kings in jail.

[20] We acknowledge, as did the trial court, Alexander accepted responsibility and expressed remorse. But these are overshadowed by Alexander's continued disregard of authority. We also acknowledge Alexander has two children whose mother has died. However, Alexander's grandmother, although elderly, has been caring for them. Alexander has failed to persuade us his twelve-year sentence for Level 4 felony burglary is inappropriate.

[21] Affirmed.

Brown, J., and Pyle, J., concur.