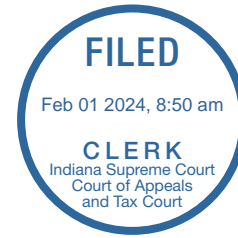


MEMORANDUM DECISION

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 Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

Valerie K. Boots
Marion County Public Defender Agency
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Anthony Thurman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 1, 2024

Court of Appeals Case No.
23A-CR-1659

Appeal from the Marion Superior
Court

The Honorable Marc T.
Rothenberg, Judge

The Honorable Charles F. Miller,
Judge

Trial Court Cause No.
49D29-2204-F4-9198

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Anthony Thurman was convicted in Marion Superior Court of Level 4 felony attempted burglary and Level 6 felony auto theft. The trial court ordered Thurman to serve an aggregate sentence of eight years with four years executed in the Department of Correction and four years served on home detention through Marion County Community Corrections. Thurman appeals his sentence, arguing that it is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On April 2, 2022, Benjamin Sears saw Thurman, who was armed with a crowbar, rummaging through a vehicle that Sears knew did not belong to Thurman. Sears was carrying a handgun, he pointed it at Thurman and told Thurman to freeze. Thurman jumped into the vehicle and drove away. Thurman did not have permission to operate the vehicle. Sears chased Thurman, but Sears lost sight of him and called 911. Thurman later abandoned the vehicle in the middle of 30th Street near High School Road in Indianapolis.

[4] Later that day, Thurman walked up to a residence owned by Chloe Coffman and Stephen Klepper. Thurman broke a glass window on an exterior door of the residence's sunroom. He then entered the sunroom and broke the glass on the door separating the sunroom from the kitchen. Coffman heard glass breaking and saw Thurman reach his hand through the broken glass of the

kitchen door. Thurman yelled to Coffman, “give me your keys” as he was trying to unlock the door. Tr. p. 121. Klepper walked into the kitchen and yelled back at Thurman that he was going to get his gun. *Id.* Thurman exited the sunroom and ran away from the home through the backyard. Klepper chased Thurman, and Coffman called 911.

[5] Thurman continued to walk south. He walked through the backyard of a home owned by Daniel Sedam, who saw Thurman trying to open the door to his truck. Sedam yelled at Thurman several times. Thurman did not respond but eventually walked away from Sedam’s home while carrying the crowbar. Sedam’s wife took a picture of Thurman as he walked away, and Sedam called 911.

[6] Thereafter, Indianapolis Metropolitan Police Officer Robert Dine saw Thurman walking through a yard while carrying the crowbar. The officer began to approach Thurman, and Thurman ran from the officer. Officer Dine called dispatch and another officer joined the pursuit. The officers apprehended and arrested Thurman.

[7] The State charged Thurman with Level 4 felony attempted burglary, Level 5 felony burglary, Level 6 felony auto theft, and Class A misdemeanor resisting law enforcement. The State dismissed the Level 5 burglary charge prior to trial. Thurman waived his right to a jury trial, and his bench trial commenced on May 8, 2023. The trial court found Thurman guilty of Level 4 felony attempted

burglary and Level 6 felony auto theft but not guilty of resisting law enforcement.

[8] The trial court held Thurman’s sentencing hearing on June 29. The court considered Thurman’s criminal history and the age of one of his victims as aggravating circumstances. The court found that Thurman suffered from mental illness as a mitigating circumstance. For the Level 4 felony conviction, the court ordered Thurman to serve eight years with four years executed in the Department of Correction and four years served on home detention through Marion County Community Corrections. The court imposed a concurrent 910-day sentence for the auto theft conviction.

[9] Thurman now appeals.

Discussion and Decision

[10] The trial court ordered Thurman to serve an aggregate sentence of eight years with four years executed in the Department of Correction and four years served on home detention through Marion County Community Corrections. Thurman appeals his sentence, arguing that it is inappropriate in light of the nature of the offense and the character of the offender.

[11] Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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 v. State*, 895 N.E.2d

1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam). Thurman bears the burden to show that his sentence is inappropriate. *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g 875 N.E.2d 218.

[12] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[13] Thurman was convicted of Level 4 felony attempted burglary and Level 6 felony auto theft. For a Level 4 felony, the trial court may impose a sentence between two and twelve years, with the advisory sentence being six years. I.C. § 35-50-2-5.5. And for a Level 6 felony, the trial court may impose a sentence between six months and two and one-half years. I.C. § 35-50-2-7(b).

[14] Thurman’s aggregate eight-year sentence is not inappropriate. He claims that his “attempted burglary was not significantly more egregious as to justify a

sentence” that is two years more than the advisory sentence. Appellant’s Br. at 12. But he caused significant damage to the Coffman and Klepper’s home during his attempt to break into the home. He broke the glass on two doors. And Thurman acknowledges that his actions frightened his victims and caused significant damage to their home.

[15] Thurman makes a similar argument with regard to the auto theft conviction and notes that the vehicle was not damaged and was returned to its owner.

Thurman also argues that he did not know that the victim of that offense was an elderly man and the victim did not witness the offense. But Thurman does not acknowledge that he left the vehicle in the middle of the street, creating a traffic hazard. Thurman was also lucky that none of his victims or any of the bystanders suffered physical injuries as the result of his offenses. Thurman has not presented any argument or evidence that would portray the nature of his offenses in a positive light.

[16] Turning to the character of the offender, thirty-three-year-old Thurman was convicted of several misdemeanor offenses before he committed the felonies in this case. These included convictions for possession of marijuana, conversion, possession of paraphernalia, operating a vehicle with a controlled substance in a person’s body, and possession of a controlled substance. On the date of sentencing, Thurman had two pending charges for driving while suspended. Thurman also admitted to using methamphetamine. Thurman’s criminal history is not substantial but does reveal that he struggles to live a law-abiding life.

[17] Thurman suffers from mental illness. He also suffered an injury to his brain as a child. He was properly medicated on the date of sentencing, and the trial court noted his improved appearance and Thurman's manner of conducting himself. Sadly, Thurman was homeless on the date he committed the offenses.

[18] Without question, Thurman's mental illness combined with his methamphetamine use contributed significantly to the commission of his offenses on April 2, 2022. But our review of the sentencing hearing convinces us that the trial court thoughtfully considered Thurman's circumstances when it imposed the challenged sentence. After considering the aggravating and mitigating circumstances, the court ordered Thurman to serve an eight-year sentence, two years more than the advisory but four years less than the maximum, and the court ordered Thurman to serve four years of his sentence on home detention through community corrections. The court also imposed a concurrent sentence for the auto theft conviction. Thurman's sentence is not inappropriate.

[19] For all of these reasons, we affirm the trial court's judgment.

[20] Affirmed.

Tavitas, J., and Weissmann, J., concur.