MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Weston Havey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 7, 2022

Court of Appeals Case No. 21A-CR-2228

Appeal from the Clay Circuit Court

The Honorable Joseph D. Trout, Judge

Trial Court Cause No. 11C01-2003-F1-307

Mathias, Judge.

[1] Weston Havey appeals the twenty-two year sentence imposed by the trial court following his guilty plea to Level 2 felony burglary with a deadly weapon. He

contends that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Concluding that he has not established that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] On the night of March 27, 2020, eighteen-year-old Havey, his girlfriend Sierra Dewees, his friends Preston Hasler and Blake Braun, and an unnamed juvenile were gathered at the juvenile's house in Clay County, Indiana. Tr. Vol. II p. 91. Havey and his friends drank alcohol.[1] At some point, the group began to plan a burglary.[2] *Id.* The group had information about a man who possessed a significant amount of marijuana and they decided to rob him. Havey agreed to participate in the burglary. *Id*. at 96. The group decided that Dewees would drive the others because she was the only one who had not been drinking. *Id*.

[3] The juvenile remained behind at his house but gave Dewees directions to a house he believed was occupied by the individual who possessed marijuana. But they mistakenly arrived at a house belonging to Irving Mullins. After Hasler tried and failed to kick in the front door, Havey took over and successfully kicked the door down. *Id.* at 98. Havey then walked into the house where he found Mullins in his living room watching television. *Id*. at 99. With his

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[1] Earlier that day, Havey consumed Xanax, Percocet, and Oxycontin without a prescription.

[2] Two days prior, this group of friends had discussed robbing a man who they believed had a large amount of marijuana. Tr. Vol. II pp. 94, 97. During this initial conversation, Havey expressed that he did not want to be involved in the robbery. *Id*. at 94.

shotgun in his hands, Havey told Mullins to get on the ground. *Id.* Mullins rolled onto the ground and grabbed the handgun he kept beside his recliner.

[4] Thereafter, Havey realized that he was inside the wrong house and tried to flee. *Id*. Havey ran toward what appeared to be a backdoor at the rear of the house, but the door would not open. *Id*. at 100–01. After Mullins fired his gun and injured one of Havey's friends, the rest of the group fled from the house. *Id*. at 27, 100–01. Havey was in a bedroom at the back of the house and heard gunfire between the room where he was and the front door. *Id*. at 100–01.

[5] Mullins knew where Harvey was and fired multiple shots at Havey through the walls of the house. *Id*. at 102. When Havey decided to try to escape, Havey fired a shot in a different direction from Mullins's location in the house and escaped out the front door. *Id*. at 103, 105–06.

[6] Soon thereafter, the State arrested Havey and charged him with Level 1 felony attempted murder and Level 2 felony burglary. Appellant's App. Vol. II p. 13. Havey entered into a plea agreement, pleading guilty to Level 2 felony burglary in exchange for the State's dismissal of the Level 1 felony attempted murder charge. *Id*. at 62. As a condition of Havey's plea, the parties agreed that the felony attempted murder charge would not be considered as an aggravating factor at sentencing. *Id*.

[7] At Havey's sentencing hearing, the trial court considered his guilty plea, his cooperation with the police, his remorse, and his youthful age as mitigating factors. Tr. pp. 126–27. The aggravating factors included Havey's juvenile

delinquency adjudications, the victim's age of 67, and the significant harm, injury, or loss being greater than the necessary elements of the crime.[3] *Id*. at 133. The trial court ordered Havey to serve a sentence totaling twenty-two years with twenty years executed in the Department of Correction and two years suspended to probation. Appellant's App. Vol. II p. 91.

[8] Havey now appeals.

Discussion and Decision

[9] Havey argues that his twenty-two year sentence is inappropriate under Indiana Appellate Rule 7(B). Under this rule, we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The defendant bears the burden of persuading this Court that the sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). This determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage 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).

[3] Havey's delinquency adjudications include theft for stealing his grandfather's guns and possession of marijuana. Tr. pp. 72–73; Appellant's App. Vol II p. 73.

[10] 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, we will not modify the court's sentence unless the defendant produces 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).

[11] Here, Havey did not receive the maximum possible sentence. Havey pleaded guilty to one count of Level 2 felony burglary, which carries a sentencing range of ten to thirty years, with the advisory sentence being seventeen and one-half years. Ind. Code § 35-50-2-4.5. The trial court imposed a twenty-two year sentence; twenty years executed in the Department of Correction and two years suspended to probation. We now turn to whether this sentence is inappropriate in light of the nature of the offense and his character.

[12] Concerning the nature of his offense, Havey argues that his abandonment of the planned theft and his efforts to exit the home warrant revision of his sentence. We disagree. The facts underlying Havey's conviction support the sentence imposed by the trial court. Havey brought a shotgun to Mullins's home for the purpose of carrying out his burglary. With his shotgun in hand, he kicked down the front door, saw a 67-year-old man in his living room, and ordered him to get on the ground. In the course of this burglary, Havey fired two shots inside

Mullins's home. While the two shots were not fired in Mullins's direction, this does not diminish the physical and psychological impact the gunfire had on Mullins and the damage to his home.[4] Havey's offense caused the victim to suffer more harm or injury than the conduct required to satisfy the elements of Level 2 felony burglary.

[13] Turning to Havey's character, Havey argues that he had a difficult childhood, expressed remorse, and accepted responsibility for his offense, which tips the scale in favor of revision of his sentence. First, he points to troubling circumstances of his childhood to contextualize his behavior. Our Supreme Court has consistently held that evidence of childhood difficulty carries little, if any, mitigating weight. *See* *Bethea v. State*, 983 N.E.2d 1134, 1141 (Ind. 2013); *Coleman v. State*, 741 N.E.2d 697, 700 (Ind. 2000).

[14] Next, Havey contends that his remorse warrants revision of his sentence. But the trial court already acknowledged Havey's remorse as a mitigating factor in issuing his less-than-maximum sentence. Havey also contends that his complete cooperation with the police and quick plea of guilty constitute acceptance of responsibility, and that this warrants revision of his sentence. But Havey agreed to plead guilty in exchange for dismissal of the Level 1 felony attempted murder charge, and the State agreed that the charge would not be considered as an aggravating factor. Further, the trial court already considered his cooperation

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[4] In his victim statement, Mullins detailed the significant damage, both physically to his house as well as psychologically to him, that this burglary caused.

with law enforcement as a mitigating factor. Given the harm Mullins suffered and Havey's clear responsibility for that harm, Havey's cooperation, his remorse, his childhood difficulties, his cooperation, and his pragmatic guilty plea are not rare and exceptional circumstances warranting sentence revision.

Conclusion

[15] Havey has not met his burden of persuading us that his twenty-two year sentence is inappropriate in light of the nature of the offense and the character of the offender.

[16] Affirmed.

Bailey, J., and Altice, J., concur.