

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Anthony Joseph Perez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

November 6, 2023

Court of Appeals Case No.  
23A-CR-785

Appeal from the  
Tippecanoe Superior Court

The Honorable  
Steven P. Meyer, Judge

Trial Court Cause No.  
79D02-2209-MR-5

**Memorandum Decision by Judge Foley**  
Chief Judge Altice and Judge May concur.

## **Foley, Judge.**

- [1] Anthony Joseph Perez (“Perez”) pleaded guilty to murder,<sup>1</sup> a felony, and admitted to a sentencing enhancement for the use of a firearm during the commission of a felony.<sup>2</sup> The trial court sentenced him to sixty-three years for his murder conviction, which was enhanced by fifteen years for the use of a firearm, for an aggregate sentence of seventy-eight years executed in the Indiana Department of Correction (“DOC”). Perez appeals and argues that his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

## **Facts and Procedural History**

- [2] On September 4, 2022, Perez and his girlfriend, Casey Lewis (“Lewis”), were at a Walmart in Lafayette, Indiana. While inside the store, they began to argue over money and then continued to argue as they walked to Lewis’s van in the parking lot. When they returned to the van, Lewis sat in the back of the van while Perez sat in the front passenger seat. Lewis was screaming at Perez, which he was concerned would attract police attention. Perez was worried and wanted to leave the parking lot because he was on probation but had cut off his ankle monitor and was afraid he would be apprehended. Because Lewis would not leave the Walmart parking lot, Perez removed his revolver from the glove

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<sup>1</sup> Ind. Code § 35-42-1-1.

<sup>2</sup> I.C. § 35-50-2-11.

compartment to intimidate Lewis and fired the revolver once inside the van to show her he was serious about wanting to leave and to convince her to do so. After Perez fired the revolver, Lewis got out of the van and began walking towards the rear of the vehicle. Perez then shot Lewis in the back. Lewis grabbed her back, screamed, and fell to the ground. Lewis later died at the scene. Perez left the gun in the van and fled the scene.

[3] Multiple witnesses in the Walmart parking lot described a white male wearing an orange or red shirt and a white hat fleeing the area after hearing two gunshots and a female screaming. After fleeing the scene of the shooting, Perez left the clothes he had been wearing in a dumpster and got a ride to Indianapolis, Indiana. Once in Indianapolis, Perez bought a bus ticket from Indianapolis to San Diego, California. However, instead of going to San Diego, Perez got off the bus in Arkansas to mislead police. On September 9, 2022, Perez was apprehended in Little Rock, Arkansas.

[4] When the police processed the scene, they found a revolver inside the van sitting on the front passenger seat which had two fired cartridge cases in the cylinder. There was an empty slot in the revolver's cylinder, between the two spent rounds, and an unfired round of ammunition was discovered on the back floorboard of the van. On September 6, 2022, a detective attended Lewis's autopsy, and it was confirmed that Lewis's death was the result of a gunshot wound and the manner of death was homicide.

[5] On September 13, 2022, the State charged Perez with two counts of murder, Level 3 felony attempted kidnapping while armed with a deadly weapon, Level 3 felony attempted kidnapping resulting in serious bodily injury, Level 3 felony attempted criminal confinement while armed with a deadly weapon, Level 3 felony attempted criminal confinement resulting in serious bodily injury, Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 5 felony intimidation with a deadly weapon, Level 6 felony pointing a firearm at another, Class A misdemeanor unlawful possession of a firearm by a domestic batterer, and Level 5 felony unlawful carrying of a handgun with a prior felony conviction. The State also sought a habitual offender enhancement as well as a sentencing enhancement for unlawful use of a firearm during the commission of a felony. On January 5, 2023, Perez pleaded guilty to one count of murder and admitted he used a firearm during the offense. In exchange, the State agreed to dismiss the remaining counts under the same cause number and to dismiss a pending probation violation and another pending cause number in its entirety.

[6] A sentencing hearing was held on March 21, 2023. The trial court found the following circumstances to be aggravating: Perez's criminal history; that he committed an offense in Arkansas after committing the present offense and fleeing Indiana; that he attempted to avoid detection; that he violated his community corrections placement at the time the instant offense was committed; that prior attempts at rehabilitation had failed; that he had previously violated conditions of probation and community corrections multiple times; and that he was affiliated with a gang. As mitigating

circumstances, the trial court found Perez’s timely guilty plea and acceptance of responsibility, which was diminished somewhat due to the benefit he received from his plea agreement; his prior mental health and substance use issues; and his expressed remorse. After finding that the aggravating factors outweighed the mitigating factors, the trial court sentenced Perez to sixty-three years for murder which was enhanced by fifteen years for the firearm sentencing enhancement, resulting in an aggregate sentence of seventy-eight years in the DOC. Perez now appeals.

## **Discussion and Decision**

- [7] Perez argues that his aggregate seventy-eight-year sentence is inappropriate. The Indiana Constitution authorizes 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). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).
- [8] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate,

not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).

[9] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Perez was convicted of one count of murder, enhanced by the use of a firearm in the commission of the offense. A conviction for murder carries a sentencing range of forty-five to sixty-five years, with the advisory sentence being fifty-five years. Ind. Code § 35-50-2-3(a). The sentencing enhancement for using a firearm in the commission of the crime imposes an additional term of between five and twenty years. I.C. § 35-50-2-11(d), (g). Perez’s conviction for murder enhanced for using a firearm carried a maximum aggregate sentence of eighty-five years. The trial court sentenced Perez to sixty-three years for murder which was enhanced by fifteen years for the firearm sentencing enhancement, resulting in an aggregate sentence of seventy-eight years in the DOC.

[10] When reviewing the nature of the offenses, this court considers “the details and circumstances of the commission of the offense[s].” *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Perez argues that none of the circumstances of his crime distinguishes it from the typical offense of murder to

justify deviating from the advisory sentence. Yet, the nature of Perez’s offense reflects that it was more egregious than a typical murder. Indeed, although Perez claimed at sentencing that his actions were not “something purely intentional,” he shot Lewis in the back in an attempt not to attract the police as they argued because he was on probation and had previously cut off his ankle monitor and was on the run. Then, after shooting her, he abandoned her in the parking lot to die. And prior to shooting Lewis, he had discharged his revolver inside of the van, which coupled with the action of shooting Lewis in the parking lot of a retail establishment, posed a substantial risk of endangering other patrons. After shooting Lewis, he then attempted to discard evidence when he removed his clothes and placed them in a dumpster before absconding the state by purchasing a bus ticket to California. He further tried to evade capture by getting off the bus in Arkansas instead of the final destination of San Diego. When law enforcement attempted to apprehend him in Arkansas, he committed the offense of refusal to submit to arrest. Perez has not shown compelling evidence that portrays the nature of his offense in a positive light, such as accompanied by restraint, regard, and lack of brutality.

[11] The character of the offender is found in what we learn from his life and conduct. *Merriweather*, 151 N.E.3d at 1286. “A defendant’s criminal history is one relevant factor in analyzing character, the significance of which varies based on the ‘gravity, nature, and number of prior offenses in relation to the current offense.’” *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a

minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Id.*

[12] As to his character, Perez refers to his mental health diagnoses, his difficult childhood, his history of substance abuse, and the fact that he has three children but does not explain how these things make his sentence inappropriate. However, Perez does have a substantial criminal history. Beginning as a juvenile, Perez had several contacts with the criminal justice system, which continued through his adulthood. At the time of sentencing, Perez was twenty-nine years old and had two misdemeanor convictions, three felony convictions, a prior habitual offender enhancement, and several violations of probation. In 2012, Perez was convicted of Class D felony fraud, and in 2015, he was convicted of Class A misdemeanor domestic battery. Two separate probation violations were filed against him while he was on probation for the domestic battery conviction. In 2016, Perez was convicted of Level 6 felony battery, and after receiving a partially suspended sentence, he had two separate probation violations filed against him. In 2019, he was convicted of Level 5 felony possession of methamphetamine and received a habitual offender sentencing enhancement. At the time he committed the instant offense, there was a pending probation violation filed against him, and a new charge of escape for cutting off his ankle monitor was pending; both were dismissed pursuant to Perez's plea agreement. Additionally, Perez committed the offense of Class A misdemeanor refusal to submit to arrest in Arkansas, which he had already been convicted of at the time of sentencing. Such an extensive criminal history

does not reflect well on Perez's character and demonstrates that his prior contacts with the criminal justice system have not deterred him from engaging in criminal behavior and committing additional crimes.

[13] Additionally, the evidence revealed that Perez has gang affiliations and used methamphetamine on a daily basis up until the date of his arrest. Further, although Perez listed several mental health disorders he had been diagnosed with, including intermittent explosive disorder, borderline personality disorder, stimulant disorder, unspecified depressive disorder, and antisocial personality disorder, he does not point to how they place his character in a positive light. Perez did plead guilty, but the trial court did take that into consideration when listing mitigating factors, and in pleading guilty, Perez received a significant benefit in that numerous other charges from the instant offense were dismissed as was a pending probation violation and a pending charge under a separate cause number. Consequently, Perez has failed to identify "substantial virtuous traits or persistent examples of good character" to support reducing his sentence. *Stephenson*, 29 N.E.3d at 122.

[14] Based on the facts in the record, Perez has not shown that his seventy-eight-year aggregate sentence for murder committed with a firearm is inappropriate in light of the nature of the offense and his character.

[15] Affirmed.

Altice, C.J., and May, J., concur.