

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Darren Adrian Ferguson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 17, 2023
Court of Appeals Case No.
23A-CR-1307
Appeal from the
Lake Superior Court
The Honorable
Salvador Vasquez, Judge
Trial Court Cause No.
45G01-2208-MR-33

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] Darren Adrian Ferguson appeals his fifteen-year sentence for Level 2 felony voluntary manslaughter, arguing it is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

Facts and Procedural History

- [2] On August 13, 2022, Ferguson’s ten-year-old son was assaulted by Jullius Brooks, an adult, while playing basketball at a park in Hammond. Upon learning this, Ferguson went to the park and confronted Brooks. After a brief argument, Brooks began to walk or run away. Ferguson drew a handgun and fired three shots. Brooks was struck once in the back and died. Several other people, including children, were present at the time of the shooting.
- [3] The State charged Ferguson with murder. The parties entered into a plea agreement under which Ferguson pled guilty to the reduced charge of Level 2 felony voluntary manslaughter and sentencing was left to the discretion of the trial court. In sentencing Ferguson, the court found two aggravating circumstances: (1) Ferguson acted recklessly “by shooting in a park occupied by adults and children in a manner that could have struck any of them and in disregard of the harm that could have occurred” and (2) the offense occurred in the presence of children, including Ferguson’s own child. Appellant’s App. Vol. II p. 84. The court also found six mitigating circumstances: (1) the crime was

the result of circumstances unlikely to recur; (2) Ferguson has no criminal history; (3) Ferguson is likely to respond affirmatively to probation or short-term imprisonment because of the lack of criminal history; (4) Ferguson's character and attitudes indicate he is unlikely to commit another crime; (5) imprisonment will cause undue hardship to Ferguson's dependents; and (6) Ferguson pled guilty and admitted responsibility. The court sentenced Ferguson to fifteen years in the Department of Correction.

[4] Ferguson now appeals.

Discussion and Decision

[5] Ferguson contends his sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that 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." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "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 that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[6] The sentencing range for a Level 2 felony is ten to thirty years, with an advisory sentence of seventeen-and-a-half years. Ind. Code § 35-50-2-4.5. The trial court sentenced Ferguson to a below-advisory term of fifteen years. Even if Ferguson had received the advisory sentence, he would bear a “particularly heavy burden” in demonstrating inappropriateness, since the advisory sentence “is the starting point our General Assembly has selected as an appropriate sentence for the crime committed.” *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*. Having received a below-advisory sentence, his burden is even greater.

[7] Ferguson’s argument focuses largely, and understandably, on his character. He was forty years old at the time of the shooting and had no criminal history, and he accepted responsibility by pleading guilty. These facts and the other mitigating circumstances found by the trial court support a sentence at the low end of the range. However, the nature of his offense justifies a sentence above the minimum. Ferguson shot Brooks in the back as Brooks was walking or running away. And Ferguson doesn’t even mention the facts the trial court found to be aggravating, namely, several other people, including Ferguson’s son and other children, were present for the shooting. Those bystanders not only watched Brooks die but were also placed in grave danger when Ferguson fired three shots. Ferguson has not carried his heavy burden of persuading us that his below-advisory sentence is inappropriate.

[8] Affirmed.

Bradford, J., and Brown, J., concur.