MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kristin A. Mulholland
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Erik Anthony Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 15, 2023

Court of Appeals Case No.
23A-CR-1752

Appeal from the
Lake Superior Court

The Honorable
Samuel L. Cappas, Judge

Trial Court Cause No.
45G04-2211-F1-41

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

[1] Erik Anthony Smith appeals his seven-year sentence for Level 4 felony leaving the scene of an accident resulting in catastrophic injury to another person, arguing it is inappropriate. We affirm.

Facts and Procedural History

[2] In November 2022, Diane Powell was engaged to Smith. When Diane's father unexpectedly passed away, Diane's family decided that Smith was not welcome at the funeral because of a fight that had occurred between Smith and Diane's sister a few days earlier. Diane told Smith he was not allowed to attend the funeral about thirty minutes before it started. Smith was upset.

[3] After the funeral, Diane and her family went to Diane's mother's house. Diane got into an argument with her family, and Smith drove to the house in his Ford F-350 truck to pick her up.

[4] According to the stipulated factual basis, when Smith arrived to pick up Diane, the two of them got into an argument in the street. Smith backed up his truck. When he drove forward, he struck Diane, causing her to go under the tire. Smith did not stop or remain at the scene, and he did not call 911 or seek medical or police help. Instead, he drove away and abandoned the truck. Diane suffered "catastrophic" injuries, including scapular fractures, multiple spine

fractures, pain, bruising, and swelling. Appellant's App. Vol. II p. 39. She was taken to a hospital in Chicago where she underwent surgery.

[5] Shortly after this incident, Smith texted Diane's mother: "Those cops ain't gonna catch me bro I was on America[']s most wanted for 5 yea[r]s." Tr. Vol. II p. 16; Ex. 4. Eight days later, the police found and arrested Smith.

[6] The State charged Smith with Level 1 felony attempted murder, Level 3 felony aggravated battery, Level 4 felony leaving the scene of an accident resulting in catastrophic injury to another person, and two counts of Level 5 felony domestic battery. Smith and the State later entered into a plea agreement under which Smith agreed to plead guilty to the leaving-the-scene charge and the State agreed to dismiss the other counts. The parties also agreed to a sentencing cap of seven years, which is one year above the advisory sentence for a Level 4 felony. *See* Ind. Code § 35-50-2-5.5.

[7] At the sentencing hearing, the trial court found several aggravators, including: (1) Smith has had eighteen contacts with the criminal-justice system, resulting in three misdemeanor convictions and two juvenile adjudications; (2) Smith was on probation when he committed this offense; (3) Smith did not show any care or concern for Diane "within a reasonable amount of time"; (4) Smith disobeyed a no-contact order issued in this case by calling Diane from jail, revealing a "manipulative and bullying character"; (5) Smith was charged with battery against Diane's sister for an incident that occurred a few days before this

one[1]; and (6) when police tried to arrest Smith, rather than take responsibility for what he did to his fiancée, he resisted.[2] Tr. Vol. II pp. 72-73. The court also found several mitigators: (1) Smith pled guilty, although he received a significant benefit in that several charges were dismissed, including a charge for Level 1 felony attempted murder; (2) Smith had children for whom he had been paying child support, and long-term incarceration would result in hardship to them; and (3) Smith expressed remorse at sentencing, which the court found to be sincere. The court sentenced Smith to seven years and ordered that he was "allowed to participate in the Community Transition Court Program at the back end of his sentence, if he so qualifies." Appellant's App. Vol. II p. 70. Recognizing that Smith was perhaps unhappy with his sentence, the court told him:

> I actually thought about rejecting the plea agreement and letting you go to trial on attempted murder was my thought. So you may not appreciate the sentence you got, but you should, because otherwise you'd be looking at 20 to 40 . . . .

Tr. Vol. II p. 74.

[8] Smith now appeals his sentence.

---

[1] Smith was charged with misdemeanor battery, but it was dismissed after Smith was sentenced in this case. *See* Cause No. 45H05-2211-CM-884.

[2] Smith was charged with misdemeanor resisting law enforcement, but it was dismissed due to him receiving a seven-year sentence in this case. *See* Cause No. 45H06-2211-CM-265.

Discussion and Decision

[9] Smith contends his seven-year sentence is inappropriate and asks us to order it to "be suspended or that the entire sentence be served in an alternative placement which would permit him to continue working to support his family." Appellant's Br. p. 13. 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).

[10] The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. Here, the trial court sentenced Smith to seven years, which was the maximum under the plea agreement and only one year above the advisory sentence.

[11] This is not an exceptional case warranting a sentencing revision. As for the nature of the offense, Smith claims he accidentally—and not intentionally—ran over Diane with his truck, as "emotions were high." Appellant's Br. p. 11. Even so, Smith did not stop, help, or seek help for his fiancée. He claims he didn't do so because he knew Diane's family would "get [her] medical attention." *Id.* But this doesn't explain why Smith ditched his truck and texted Diane's mother that the police would never find him. And, as the trial court found, when the police found Smith eight days later, he resisted.

[12] There are some redeeming aspects to Smith's character. At the time of the offense, he was employed and supported his children (including Diane's daughter). He pled guilty, but as the trial court noted, he received a significant benefit in the dismissal of a Level 1 felony attempted-murder charge. And although the court found Smith to be remorseful at sentencing, it questioned the timing of his remorse. Finally, Smith has a criminal history, was on probation when he committed this offense, and made manipulative phone calls to Diane from jail in violation of the no-contact order. Smith has failed to persuade us that a sentence authorized by his plea agreement and only one year above the advisory is inappropriate.

[13] Affirmed.

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