

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Audrey Lunsford
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General

Joseph M. Ross
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

De Andra Cheeks,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 5, 2022

Court of Appeals Case No.
22A-CR-1290

Appeal from the Hendricks Circuit
Court

The Honorable Daniel F. Zielinski,
Judge

Trial Court Cause No.
32C01-2101-F5-5

Altice, Judge.

Case Summary

- [1] De Andra Cheeks appeals his three-year aggregate sentence for Level 5 felony escape, Level 6 felony resisting law enforcement, Class B misdemeanor leaving the scene of an accident, and Class A misdemeanor operating a motor vehicle without ever receiving a license, claiming that his sentence is inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

Facts & Procedural History

- [3] Around 10 a.m. on January 9, 2021, a man, later determined to be Cheeks, drove a maroon Dodge Avenger into a gas station parking lot at a high rate of speed and collided with a pickup truck, causing property damage. Cheeks left the scene, and police were called. A couple of minutes later, Plainfield Police Department (PPD) Officer Shawn Gruca observed a vehicle and driver matching the description of that involved in the gas station hit and run. Officer Gruca, in his fully marked patrol vehicle, positioned his vehicle behind the Avenger and, after checking the vehicle's registration, activated his emergency lights. Cheeks stopped his vehicle in the road, and Officer Gruca approached and made verbal contact with Cheeks through a cracked window. During this time, an off-duty officer arrived at the traffic stop to assist. As Officer Gruca was responding to Cheeks's question about why he was being stopped, Cheeks drove away at a high rate of speed. The two officers gave chase, and Officer Gruca observed Cheeks disregard several red traffic lights. Cheeks's vehicle, at

times, reached speeds over 100 mph. At one point, as Cheeks was waving his arm out his window, Officer Gruca used a speaker to command Cheeks to stop, which he did. Cheeks complied with directions to exit his vehicle and was taken into custody.

[4] As another PPD officer was transporting Cheeks to the Hendricks County Jail, and while the vehicle was moving, Cheeks, still handcuffed in the backseat, rolled down the window, unbuckled his seatbelt, and exited through the open window. The officer stopped, pursued Cheeks on foot, and apprehended him. The officer suffered injuries when he fell into a fence as he was apprehending Cheeks.

[5] On January 11, 2021, the State charged Cheeks with Level 5 felony escape, Level 6 felony resisting law enforcement, Class B misdemeanor leaving the scene of an accident, and Class A misdemeanor operating a motor vehicle without ever receiving a license. The State simultaneously charged Cheeks with seven traffic infractions including operating a vehicle without financial responsibility, speeding in a work zone, and disregarding lighted traffic signals. On May 9, 2022, Cheeks pled guilty to all charges.

[6] That same day, the court held a sentencing hearing. Cheeks testified that, while out on bond since January 2021, he had been employed, was participating in an online program for his GED, and had no encounters with law or “any problems or issues” while on release. *Transcript* at 21. Cheeks stated that he was not in his “right state of mind” when he committed the offenses, was “going through

some things,” and had remorse for his conduct that day. *Id.* at 24. He explained that, at the time, he was hanging around with people that he no longer associates with “at all.” *Id.* at 25. He testified that he was currently living with his mother and his two children, ages two and four, and that he provided care and financial support for his children.

[7] Cheeks’s mother, Tanya French, also testified. As for Cheeks now living with her, she described, “[i]t’s been a good thing,” as she suffers from some physical ailments and Cheeks helps her in various ways, and he “provides for his kids,” “doing what he’s supposed to do as a father.” *Id.* at 27. She said that she “charges” Cheeks \$350 per month in rent for him and his children to live with her. *Id.* French testified, “I don’t condone the wrongness” of what Cheeks did on the day in question but that she knew “around that time my son wasn’t himself.” *Id.* at 28. She believed that he “fell into” a group of people and “whatever they were doing,” but he was no longer associating with them and was mostly at home when not at work. *Id.* at 29.

[8] The State recommended imposition of an executed sentence of the advisory three years on the Level 5 felony with the remaining sentences to be concurrent. Cheeks requested a sentence of one to two years of probation on the Level 5 felony, concurrent with any sentence on the remaining counts, noting that incarceration would “put a substantial burden on his family” and asking that any executed time be served in a work release program. *Id.* at 30.

[9] In sentencing Cheeks, the court observed that his PSI showed “an extensive criminal history” but that “most of those were dismissed for some reason” so the court did not expressly consider that history as an aggravator. *Appellant’s Appendix* at 120; *Transcript* at 30. Aside from those, the court found that Cheeks, who had several misdemeanor convictions, “does have a history of [] criminal delinquent activity” and noted that he was charged with another offense “while this case was pending,” which the PSI reflects was misdemeanor battery, on the day of his arrest. *Appellant’s Appendix* at 120-21. The court found as mitigating that the probation department indicated that Cheeks was “likely to respond affirmatively to probation or short-term imprisonment.” *Id.* at 121.

[10] Although viewing the State’s recommendation of a three-year advisory sentence as being “generous,” the court sentenced Cheeks to three years executed in the Indiana Department of Correction as follows: three years for the escape conviction, one year for resisting law enforcement, ninety days for leaving the scene of an accident, and one hundred eighty days for operating a vehicle without ever obtaining a license, all to run concurrently. *Transcript* at 31. The court’s order included restitution and provided that Cheeks may petition to modify his sentence if certain conditions are met and after Cheeks had served half of his sentence. Cheeks now appeals.

Discussion & Decision

[11] Cheeks contends that his sentence is inappropriate. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana’s flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court “prevail[s] 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). The question under App. R. 7(B) is not whether another sentence is more appropriate; rather, the test is whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018). Our Supreme Court has directed that revision of a defendant’s sentence under App. R. 7(B) is only for “exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). Cheeks bears the burden of persuading us that his sentence is inappropriate. *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*.

[12] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Cheeks was convicted of Level 5 felony escape, Level 6 felony resisting law enforcement, Class B misdemeanor leaving the scene of an accident, and Class

A misdemeanor operating a motor vehicle without ever receiving a license. The sentencing range for a Level 5 felony is between one and six years with the advisory sentence being three years. Ind. Code § 35-50-2-6. The sentencing range for a Level 6 felony is between six months and two and one-half years with the advisory being one year. I.C. § 35-50-2-7. For a Class A misdemeanor, a person may not be sentenced to a fixed term of more than one year, and, for a Class B misdemeanor, to not more than 180 days. I.C. § 35-50-3-2, -3. Here, Cheeks received the advisory three years on his escape conviction, and concurrent sentences of one year on the resisting law enforcement conviction, and 90 and 180 days on his two misdemeanor convictions. Cheeks asks this court to exercise its authority and revise his sentence on the escape conviction to one year, to be served concurrent to the other sentences and on probation.

[13] In considering the nature of the offense, we look to the details and circumstances of the offense and the defendant's participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Cheeks left the scene of an accident that he caused in the gas station parking lot and showed an utter disregard for the well-being and safety of bystanders, officers, and himself as he drove at excessive speeds, sometimes over 100 mph. He also ran multiple red lights and drove through a work zone. Then, while handcuffed and detained in the back of a police car on the way to jail, Cheeks jumped out of the moving PPD vehicle and ran from an officer. The nature of the offense does not warrant revision of Cheeks's sentence.

[14] We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. Character is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). Criminal history is one relevant factor in analyzing character. *Madden*, 162 N.E.3d at 564. Cheeks, who was twenty-five at the time of sentencing, had several misdemeanor convictions. In addition, his PSI reflected that he faced twenty charges – in six causes filed between 2015 to 2021 – that were dismissed. *See Johnson v. State*, 837 N.E.2d 209, 218 (Ind. Ct. App. 2005) (“When evaluating the character of an offender, a ... court may consider the offender's arrest record in addition to actual convictions.”), *trans. denied*. We find that Cheek's disregard for the law does not portray his character in “a positive light,” which is his burden under App. R. 7(B). *Stephenson*, 29 N.E.3d at 122.

[15] Cheeks highlights that, while out on bond, he had no encounters with law enforcement, appeared at all court hearings, was pursuing his GED online, and maintained consistent employment. He also testified that he supported his two minor children and took care of his mother. While we commend the positive conduct, and indeed hope he continues on that path, Cheeks has not persuaded us that his three-year sentence, for which he may petition for modification if certain requirements are met, warrants revision based on his character.

[16] In sum, we “do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is inappropriate.” *Miller*, 105 N.E.3d at 196. Cheeks has not

established that his sentence is inappropriate based on the nature of the offense or his character.

[17] Judgment affirmed.

Brown, J. and Tavitas, J., concur.