MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Litany A. Pyle
Crawfordsville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeremiah D. Grimes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 29, 2022

Court of Appeals Case No. 22A-CR-61

Appeal from the Montgomery Superior Court

The Honorable Heather Barajas, Judge

Trial Court Cause No. 54D01-2105-F6-1088

Bradford, Chief Judge.

Case Summary

[1] In May of 2021, Jeremiah Grimes was arrested after attempting to steal two catalytic converters. Ultimately, a jury found Grimes guilty of Level 6 felony attempted theft, Level 6 felony attempted theft of a motor vehicle component, and Class A misdemeanor criminal mischief. The trial court sentenced Grimes to three and one-half years of incarceration. Grimes appeals his sentence, arguing that it is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] In the early morning of May 3, 2021, Grimes was riding around with Corey Kirts in Kirts's vehicle. Grimes and Kirts surveilled a neighborhood for two hours, driving their vehicle slowly through the streets, turning around, and pulling into different driveways then backing out during this time. At one point, Grimes exited Kirts's vehicle and walked through the neighborhood. Around 1:10 a.m., a resident of the neighborhood called the Crawfordsville Police Department to report the suspicious activity. Though law enforcement arrived several minutes later, they did not find Grimes or Kirts. Grimes and Kirts returned around forty-five minutes later.

[3] Kirts parked his vehicle in a parking lot next to a Ford F150. Grimes used a reciprocating saw to cut through the F150 to reach the catalytic converters. Grimes had an extra saw blade and pliers on the ground next to the F150. Kirts

had additional supplies in his vehicle, including extra batteries for the saw, more blades, and a chain wrench. Residents noticed the activity and called the police again. When law enforcement arrived, Grimes fled but was eventually stopped by officers.

[4] When law enforcement's arrival interrupted Grimes, he had already removed the driver's-side catalytic converter from the F150 and attempted to remove the passenger-side catalytic converter. Grimes caused approximately $1468.22 of damage to the F150. The State ultimately charged Grimes with Level 6 felony theft, Level 6 felony theft of a motor vehicle component, Level 6 felony attempted theft, Level 6 felony attempted theft of a motor vehicle component, and Class A misdemeanor criminal mischief. The jury found Grimes guilty of attempted theft, attempted theft of a motor vehicle component, and criminal mischief.

[5] At sentencing, Grimes admitted to having used hydrocodone, fentanyl, methamphetamine, cocaine, and alcohol in the year prior to his arrest in this case. Grimes admitted that he had last used methamphetamine the day prior to this incident. Kirts paid restitution in full as part of a plea deal in an unrelated criminal matter. The trial court noted that Grimes's history demonstrated that he was not a good candidate for rehabilitative programs, noting that he had violated probation at least three times previously and had been suspended from probation once before. The trial court sentenced Grimes to an aggregate term of three and one-half years of incarceration.

Discussion and Decision

[6] Grimes argues that his sentence is inappropriate in light of the nature of the offense and his character.[1] We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done 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). In addition to the "due consideration" we are required to give to the trial court's sentencing decision,

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[1] To the extent that Grimes argues that the trial court erred in sentencing him by imposing consecutive rather than concurrent sentences, he has failed to adequately develop that claim on appeal. Grimes's brief's statement of the issues contains the issue of "[w]hether the trial court erred in refusing to run the offense concurrently with the other, thereby adding additional time to Mr. Grimes' sentence[.]" Appellant's Br. p. 4. Grimes, however, fails to develop a cogent argument relating to this alleged error. He does not include any factual analysis or standard of review for this alleged error, instead focusing mostly on his claim under Appellate Rule 7(B). "[A] request for sentence revision under Appellate Rule (7)(B) is not truly a claim of sentencing error. Rather, it is a request for the court to exercise its constitutional authority to revise a lawfully entered sentence." *Kimbrough v. State*, 979 N.E.2d 625, 630 (Ind. 2012). Because Grimes has failed to make a cogent argument concerning error by the trial court in imposing his sentence, that argument is waived on appeal. *See Willet v. State*, 151 N.E.3d 1274, 1278 (Ind. Ct. App. 2020) ("It is well established that failure to present a cogent argument results in waiver on appeal.").

"we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[7] Grimes was ultimately found guilty of guilty of Level 6 felony attempted theft, Level 6 felony attempted theft of a motor vehicle component, and Class A misdemeanor criminal mischief. The maximum sentence Grimes could have received in this case is four years. *See* Ind. Code § 35-50-1-2(d)(1) ("If the most serious crime for which the defendant is sentenced is a Level 6 felony, the total of the consecutive terms of imprisonment may not exceed four (4) years."). As mentioned, the trial court sentenced Grimes to three and one-half years of incarceration, one-half year less than the maximum allowable sentence. Grimes contends that this sentence is inappropriately harsh.

[8] Grimes's sentence is not inappropriate in light of the nature of his offense. Grimes and Kirts surveilled a neighborhood for hours, left the neighborhood seemingly to avoid detection by police, and later returned to the neighborhood after police had left to attempt to steal multiple catalytic converters. Grimes and Kirts had additional supplies in the vehicle, including several extra saw blades and batteries, which is evidence of the planning and deliberate nature of Grimes' offenses.

[9] Although Grimes argues that the nature of his offense was not serious, pointing to the facts that he was only convicted of attempted crimes and restitution was paid, we are unconvinced. First, the characterization that Grimes was only

convicted of attempted theft omits the facts that Grimes was convicted of Class A misdemeanor criminal mischief and caused over $1000.00 of property damage. Second, restitution was paid by Kirts, not Grimes. Grimes had nothing to do with restitution being paid in this case and so will not be credited with remedying the harm caused by his offense. Grimes has failed to prove that his sentence was inappropriate considering the nature of his offense.

[10] As for Grimes's character, it does not support the conclusion that his sentence is inappropriate. When considering the character of the offender, one relevant consideration is the defendant's criminal history. *Rutherford*, 866 N.E.2d at 874. Not only does Grimes have four prior misdemeanor convictions, but he was also previously incarcerated for ten years after being convicted of attempted murder in Oregon. Grimes has also violated probation three times and had his probation revoked. Further, Grimes admitted to additional criminal behavior, namely using hydrocodone, fentanyl, methamphetamine, and cocaine, in the year prior to his arrest in this case, even using methamphetamine the day prior to this incident.

[11] Grimes argues that that his good character is demonstrated by the fact that he has secured employment and housing. Because most adults are gainfully employed, this does not establish a significant mitigating factor that would demonstrate that the trial court's sentence was inappropriate. *See Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) (observing that "[m]any people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as [the defendant] proposes").

[12] Moreover, Grimes also argues that his sentence is inappropriate because part of it should have been suspended to probation.

> [T]he location where a sentence is to be served is an appropriate focus for application of our review and revise authority. [….] [W]e note that it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. This is because the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. A defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate. As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale.

King v. State, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). In sentencing Grimes, the trial court noted that he had "a history of probation violations[,]" and noted that "when your history indicates that you're going to do whatever you want to do regardless of our attempts to rehabilitate you, then this Court quits looking at rehabilitation. We're wasting our time and our money and we're spinning our wheels[.]" Tr. Vol. II p. 191. Given his history of probation violations and one suspension, Grimes has failed to convince us that the trial court's decision to order him to serve the entirety of his sentence in incarceration was inappropriate.

[13] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.