MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Isiah Barboza,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 24, 2021

Court of Appeals Case No. 20A-CR-2346

Appeal from the Lake Superior Court

The Honorable Samuel L. Cappas, Judge

Trial Court Cause No. 45G04-1810-F1-37

Mathias, Judge.

[1] Isiah Barboza appeals the sixty-year aggregate sentence imposed by the trial court following his guilty plea to Level 1 felony rape and Level 2 felony

burglary. He contends that his sentence is inappropriate in light of the nature of the offenses and his character. Concluding that he has not met his burden to establish that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] Barboza's first interaction with the juvenile justice system occurred in June 2017 when, at age fourteen, he was arrested for unlawful possession of a firearm. Over the next thirteen months, Barboza's criminal activity escalated in both frequency and severity.

[3] After Barboza's June arrest, the juvenile court deferred disposition "for six months with the condition that [Barboza] would complete community service and participate in counseling." Supp. Tr. pp. 28–29. But that October, then-fifteen-year-old Barboza violated the deferral when he was caught "trying to steal a BB gun" from a local sporting-goods store. *Id.* at 29. Barboza was with his mother and two young siblings at the time. State's Ex. 17. And when officers confronted Barboza as he exited the store, the teenager first ran from officers and then fought with them once he was apprehended. *Id.* The State filed a juvenile delinquency petition against Barboza for several offenses. But the parties ultimately reached a plea agreement that resulted in dismissal of those charges. In exchange, Barboza admitted to the firearm offense, and he was placed on formal probation. Also during this time, Barboza spent several days in a juvenile detention center where he met Elias Costello, with whom Barboza's criminal activity intensified in summer 2018.

[4] On July 8, 2018—while Barboza was still on probation—Elias (eighteen years old), his friend Nathaniel Asbury (twenty-one years old), and Barboza allegedly broke into Elias's ex-girlfriend's home and stole several items, including televisions and jewelry.[1] Around this same time, Elias's girlfriend, Alexis Lietz (nineteen years old), concocted a plan to rob her stepmother's house. Believing it was "more than a one-person job," Elias recruited Nathaniel and Barboza. Tr. p. 75. Alexis "drew a map for [the three males] showing them the different rooms of the house -- the layout of the house . . . where certain items would be located, as well as where there would be cameras." *Id.* at 32; *see also* Ex. Vol. at 9–12. And she also "provided them with a key to the front door." Tr. p. 32.

[5] On the morning of July 16—about fourteen hours before Barboza's sixteenth birthday—Alexis dropped the three males off close to the home and parked the car in a nearby alley. Alexis's stepmother, L.L., was at work at the time, but Alexis knew that her twenty-year-old stepsister, F.H., and sixteen-year-old stepbrother, A.H., "would most likely be home." *Id.* at 68. And they were. F.H. was asleep in the front room on a couch, and A.H. was upstairs in his room.

[6] At 9:39 a.m., Barboza, wearing a balaclava-type mask, approached the front door. State's Ex. 12. As he did, he turned to Nathanial and Elias and told them to "hurry the f*** up, come on." *Id.* Both men complied. *Id.* Elias and

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[1] Law enforcement, however, did not learn of Barboza's involvement in this burglary for several weeks. *See* Ex. Vol. at 34–40. And once they did, Barboza had been arrested for the offenses at issue in this appeal and waiver proceedings were ongoing. The State ultimately declined to prosecute Barboza for the July 8 burglary.

Nathaniel also had their faces covered, and Nathaniel carried a shotgun wrapped in a pair of jeans. *Id.* From inside on the couch, F.H. "heard what sounded like someone trying to open the front door," but believing it was a sibling coming home, she tried to go back to sleep. Supp. Tr. p. 8. Upon entering the front room, Barboza and Elias moved through the house while Nathaniel pointed the shotgun at F.H. State's Ex. 12. Nathaniel pushed F.H.'s face down into the couch, repeatedly ordering her to look away. *Id*. A few minutes later, Barboza returned to the front room and took the shotgun while Nathaniel placed stolen items into a backpack. *Id.* Barboza, now holding F.H. at gunpoint, noticed a security camera that had not yet been disabled. *Id.* So, he destroyed it by striking it with the shotgun. *Id.* He then handed the gun to Nathaniel, who remained with F.H., and Barboza again left the front room. *Id.*

[7] At some point, A.H., who was upstairs in his room, called his mom, L.L., wanting "to know if anyone else was in the home." Supp. Tr. p. 9. From work, L.L. accessed a livestream of the home's interior security cameras and quickly realized that all but one had been disabled. The working camera showed the front room where F.H. was being held at gunpoint. L.L. immediately called 911. And officers were dispatched at 9:48 a.m., about ten minutes after the home-invasion began. Meanwhile, Barboza and Elias tried to enter A.H.'s room, threatening to shoot him "if he did not open the door." Conf. App. p. 54. But A.H. did not comply, and Barboza and Elias returned to the front room. From the working security camera's livestream, L.L. watched what happened next "unfold on her phone." Supp. Tr. p. 9.

[8] Elias approached F.H., slapped her buttocks, propped her up on the couch, and ordered her to face the wall. State's Ex. 12. Nathaniel then removed F.H.'s shorts and raped her. *Id.* During the rape, Barboza twice placed his hand around the back of F.H.'s neck, forcing her head down further into the couch cushion. *Id.* Barboza then raped F.H. *Id.* At one point, he grabbed F.H. "so forcefully by her hair in the back of her neck and forced her head into the couch that she was having problems breathing." Supp. Tr. p. 12; *see* State's Ex. 12. Nathaniel then forced F.H. to perform oral sex on him. State's Ex. 12. At some point during these horrific events, law enforcement arrived. Hearing commotion outside, Barboza opened the front door and an officer yelled, "Let me see your hands!" *Id.* Barboza slammed the door, and the three males scrambled to exit the home. *Id.* As Barboza headed toward the back of the house, F.H. rose from the couch. *Id.* Barboza demanded that F.H. "get the f*** down," but she ignored him and ran out the front door. *Id.* The three males were all apprehended nearby and placed under arrest.

[9] The State subsequently filed a delinquency petition against Barboza and moved the juvenile court to waive jurisdiction over him and transfer the case to criminal court.[2] After a hearing on the matter, the court granted the State's motion. In October, the State charged Barboza with seven felonies: Level 1 felony rape; Level 2 felony burglary; Level 3 felony rape; Level 3 felony

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[2] As noted above, the three males broke into L.L.'s home on the morning of July 16 and Barboza turned sixteen the next day. Had Barboza committed the offenses several hours later, waiver would have been automatic. *See* Ind. Code § 31-30-1-4.

criminal confinement; Level 4 felony burglary; Level 6 felony residential entry; and Level 6 felony criminal confinement. Barboza subsequently posted bond, and he was released pending trial.

[10] About two years later, Barboza entered into a plea agreement with the State. He pleaded guilty to Level 1 felony rape and Level 2 felony burglary in exchange for the State's dismissal of the five remaining counts and agreement to cap his maximum total sentence at sixty years. *See* Conf. App. pp. 69–71. Despite the cap, the parties were free to argue the sentence to be imposed on each count and whether the sentences ran consecutively or concurrently.

[11] At Barboza's sentencing hearing, F.H. explained that she had "lost count of the number of panic attacks" suffered since the incident and that she "will have to have therapy and be on medications forever." Tr. pp. 19–20. L.L. told the court that she believed the sole camera not disabled by the assailants "saved [her] kids' lives," remarking, "Before the police arrived, it didn't seem like anyone was in a hurry to leave the house." *Id.* at 26. She also expressed that watching her "daughter with a shotgun to her head and then be raped will forever [be] a haunting memory." *Id.* at 26–27. Each of the three victims asked the court to impose a maximum sentence on Barboza. *Id.* at 22, 24, 27. On Barboza's behalf, Roberto Montes, an employee with the Reclaim our Kids Program who had mentored Barboza for the previous two years, testified to Barboza's commitment to the program and noted that the teenager had been in school and working. *Id.* at 89–94. Barboza's father echoed Montes's observations and told the court that his son had been "helping to take care of his younger brother and

sister while [Barboza's parents] work." *Id.* at 99–102. Barboza expressed remorse and asserted that he had "changed [his] life around for the better." *Id.* at 122.

[12] In pronouncing the sentence, the trial court acknowledged Barboza's young age at the time of the offenses but proclaimed, "the manner in which you raped the victim as depicted in the video negates any argument that you are psychologically underdeveloped or impaired." *Id.* at 127. The court also observed that Barboza was "looking at up to 90 years" had he proceeded to trial, where his odds of success would be "extremely unlikely" due to being "caught on video." *Id.* at 128. And the court highlighted Barboza's escalating criminal behavior, which included a "fascination with guns" and "disdain for authority." *Id.* at 124–25. Ultimately, the trial court imposed the maximum sixty-year sentence under the plea agreement: consecutive sentences of thirty-five years for the Level 1 felony rape and twenty-five years for the Level 2 felony burglary. Barboza now appeals.

Discussion and Decision

[13] Barboza argues that his aggregate sixty-year sentence is inappropriate under Indiana Appellate Rule 7(B). Under this rule, we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B). This determination "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). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[14] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, we will not disturb the court's sentence unless the defendant produces compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[15] Here, Barboza pleaded guilty to two felonies: Level 1 felony rape, which carries a sentencing range of twenty to forty years, with an advisory term of thirty years; and Level 2 felony burglary, which carries a sentencing range of ten to thirty years, with an advisory term of seventeen-and-one-half years. Ind. Code §§ 35-50-2-4(a), -4.5. Though Barboza faced a maximum statutory sentence of seventy years for these two offenses, his plea agreement capped his sentence at sixty years. *Cf. Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020) (quoting *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring)) (emphasizing that a defendant's decision "to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive

evidence of sentence reasonableness and appropriateness"). And in exchange for Barboza's guilty plea, the State dismissed five felony counts. So while the court imposed on Barboza the maximum sentence under the plea agreement when it sentenced him to an aggregate sixty-year term, Barboza's sentence is far less than what he could have received had he proceeded to trial. And considering most of Barboza's reprehensible conduct was caught on camera, proceeding to trial was not a particularly viable option. With this relevant context in mind, we now consider whether Barboza has demonstrated that his sentence is inappropriate in light of the nature of his offenses and his character.

[16] In analyzing the nature of the offenses, we look at the extent and depravity of the defendant's conduct. *See, e.g.*, *Crabtree v. State*, 152 N.E.3d 687, 704 (Ind. Ct. App. 2020), *trans. denied*. As detailed above, the extent and depravity of Barboza's conduct is horrifying. Barboza acknowledges the egregious nature of his behavior but argues that it "must be viewed from the spectrum of his juvenile status," noting that Alexis planned the burglary and that he was nothing more "than a participant." Appellant's Br. at 18. This argument falls on deaf ears. The video establishes that Barboza exuded calculation and callousness: he approached the door wearing a mask, telling his two cohorts to "hurry the f*** up" so they would not be seen; he destroyed at least one of the cameras inside the home; he threatened to kill A.H.; he twice grabbed F.H.'s neck as Nathaniel raped her; he forced F.H.'s head into the couch, while he violently raped her, with such force that she had trouble breathing; and he yelled at F.H. to "get the f*** down" when he fled the house after police

arrived. State's Ex. 12. Simply put, the vile facts underlying Barboza's convictions support the sentence imposed by the trial court. And our evaluation of his character—taking his youth into consideration—does not alter this conclusion.

[17] Turning to Barboza's character, we recognize that "age is a major factor that requires careful consideration" under this prong. *Wilson v. State*, 157 N.E.3d 1163, 1182 (Ind. 2020). Indeed, caselaw has identified three primary differences between juvenile and adult offenders: (1) juveniles lack maturity; (2) juveniles are more susceptible to negative influences; and (3) juveniles have less developed character. *See, e.g.*, *Brown v. State*, 10 N.E.3d 1, 7 (Ind. 2014). At the same time, these differences vary from case to case and do not necessarily render lengthy sentences imposed on juveniles inappropriate. *See, e.g.*, *Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021) (recognizing that a defendant's young age at the time of an offense may be negated by prior, violent offenses and a lack of response to rehabilitative placements).

[18] In arguing that his "juvenile status" warrants a reduction in his sentence, Barboza cites to five opinions from our supreme court in which the court revised the sentences of juveniles convicted of murder: *Brown*, 10 N.E.3d at 4–8; *Fuller v. State*, 9 N.E.3d 657–59 (Ind. 2014); *Taylor v. State*, 86 N.E.3d 157, 164–67 (Ind. 2017); *Wilson*, 157 N.E.3d at 1181–84; *State v. Stidham*, 157 N.E.3d

1185, 1194–98 (Ind. 2020). We find Barboza's reliance on those cases unavailing for two reasons.[3]

[19] First, the court here did not impose on Barboza a sentence that "forswears altogether the rehabilitative ideal," a core consideration by our supreme court in the cases identified above. *Brown*, 10 N.E.3d at 8 (quoting *Miller v. Alabama*, 567 U.S. 460, 472 (2012)); *see also Fuller*, 9 N.E.3d at 658; *Taylor*, 86 N.E.3d at 166; *Wilson*, 157 N.E.3d at 1182; *Stidham*, 157 N.E.3d at 1193–94. Barboza is set to be released in his early sixties, and he could be released much earlier if he earns credit time while incarcerated. *Cf. Wilson*, 157 N.E.3d at 1184 (recognizing that a juvenile's eligibility "for release in his mid-to-late sixties" provides a "reasonable hope for a life outside prison").

[20] Second, several additional circumstances supported revising the juveniles' sentences in those cases that are not applicable here. For example, in *Brown*, *Fuller*, and *Wilson*, the juveniles' conduct was not particularly heinous. *Brown*, 10 N.E.3d at 5; *Fuller*, 9 N.E.3d at 658; *Wilson*, 157 N.E.3d at 1181–82. Yet, as detailed extensively above, the same is not true here. We agree with the State's

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[3] Barboza's reliance on *Jordan v. State*, 62 N.E.3d 401 (Ind. Ct. App. 2016), *trans. denied*, is likewise misplaced. There, fifteen-year-old Jordan and two others broke into a home where they stole several items and raped the female homeowner while her children slept. *Id.* at 404. On appeal, a panel of this court found that Jordan's aggregate forty-year sentence was not inappropriate. *Id.* at 407–08. Barboza analogizes the circumstances in *Jordan* to those in this case, arguing that "[t]here is no practical difference" to support Barboza's greater sentence. Appellant's Br. at 16. We, however, find at least three significant differences: (1) Barboza's offenses involved a weapon; (2) Barboza's offenses involved multiple victims; and (3) Barboza had a criminal history. The more factually analogous case is *Rose v. State*, 810 N.E.2d 361, 364 (Ind. Ct. App. 2004). And there, we concluded that the juvenile's 135-year sentence was not inappropriate. *Id.* at 368–69.

observation that the "brutal nature of Barboza's actions belie his youth." Appellee's Br. at 18. Additionally, in *Brown*, *Taylor*, and *Stidham*, the juveniles' culpability was diminished due to difficult childhoods or substance-abuse issues. *Brown*, 10 N.E.3d at 6; *Taylor*, 86 N.E.3d at 166; *Stidham*, 157 N.E.3d at 1195–96. As for Barboza, the record reveals that quite the opposite is true: he was raised "in a low crime area" by two, loving, hard-working parents; he has a good relationship with his parents and younger siblings as well as a strong family-support system; and he has never used drugs and tried alcohol only once. *See* Conf. App. pp. 62–64, 75, 78–79; Tr. pp. 99, 101–03; Supp. Ex. Vol. at 11–14. Finally, in *Brown* and *Wilson*, the juveniles' criminal histories were minimal and did not include offenses related to the ultimate convictions. *Brown*, 10 N.E.3d at 5–6; *Wilson*, 157 N.E.3d at 1182. Barboza, on the other hand, exhibited a concerning thirteen-month pattern of escalating criminal behavior that included violence, guns, and theft.

[21] Other evidence in the record further reveals that Barboza's character does not warrant downward sentence revision. Despite prior attempts at rehabilitation in the juvenile system, Barboza failed to change his criminal behavior. In fact, he participated in a burglary while on probation, and he committed the instant offenses only eight days after being released from probation. Barboza's conduct in each successive case also reflects an alarming increase in severity. And there is no evidence that he suffers from mental-health issues or diminished capacity that could otherwise reduce his culpability. *See* Supp Ex. Vol. at 15–21.

[22] In sum, though we acknowledge Barboza's youth, he has failed to produce compelling evidence that his sentence is inappropriate.[4]

Conclusion

[23] Barboza has not met his burden of establishing that his aggregate sixty-year sentence is inappropriate based on the nature of his offenses or his character.

[24] We affirm.

Tavitas, J., and Weissmann, J., concur.

[4] We acknowledge that Barboza, after being released on bond, engaged in therapy, participated in the Reclaim our Kids Program, attended school, worked multiple jobs, watched his siblings while his parents worked, and exhibited remorse. While these post-arrest actions reflect positively on Barboza, they do not render this a rare and exceptional case warranting sentence revision.