

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Andrew J. Placke, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 12, 2023

Court of Appeals Case No.
22A-CR-2864

Appeal from the
Ripley Superior Court

The Honorable
Jeffrey L. Sharp, Judge

Trial Court Cause Nos.
69D01-2011-F6-173
69D01-2103-CM-48

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Andrew J. Placke, Jr. (“Placke”) pleaded guilty to attempted resisting law enforcement¹ as a Level 6 felony and to being a habitual offender² under cause number 69D01-2011-F6-173 and to driving while suspended³ as a Class A misdemeanor under cause number 69D01-2103-CM-048. He was sentenced to an aggregate executed sentence of 730 days enhanced by 1095 days. Placke appeals his sentence arguing that it is inappropriate in light of the nature of the offense and the character of the offender. Finding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] On October 30, 2020, in Ripley County, Indiana, Placke was observed driving his vehicle at a speed of seventy-two miles per hour, which was greater than the posted speed limit of fifty-five miles per hour. An Indiana State Trooper, who was in full uniform and driving a fully marked police vehicle, attempted to initiate a traffic stop of Placke’s vehicle. However, Placke continued to drive his vehicle and reached a speed of ninety miles per hour while attempting to flee the trooper. In his attempt to flee from the trooper, Placke weaved in and out of traffic and almost hit another motorist who was driving on the road. After driving erratically for some distance, Placke’s vehicle left the road, and it crashed into an embankment near a creek. Placke exited his vehicle and was

¹ Ind. Code § 35-44.1-3-1(a), (c)(1)(a); I.C. § 35-41-5-1.

² I.C. § 35-50-2-8.

³ I.C. § 9-24-19-2.

found a short distance from the vehicle attempting to hide from law enforcement. When Placke was taken into custody, it was learned that he had a suspended driver's license.

[3] At the time of these offenses, Placke had accumulated at least three prior unrelated felony convictions and had committed an unrelated Level 6 felony with not more than ten years having elapsed between the time that he was released from imprisonment, probation, or parole and the time he committed the current offense. Placke committed Class D felony theft on August 27, 2012, and was convicted and sentenced for that offense on April 2, 2013. He committed Class D felony auto theft on August 20, 2012, and was sentenced on January 16, 2013. On July 5, 2012, and July 10, 2012, Placke committed Class C felony forgery and Class C felony fraud on a financial institution, and he was convicted and sentenced for those offenses on March 22, 2013. On February 26, 2019, Placke committed Level 6 felony theft and Level 6 felony auto theft and was convicted and sentenced for those offenses on May 20, 2019. On July 18, 2019, he committed Level 6 felony theft and was sentenced for that on December 5, 2019.

[4] On November 2, 2020, in cause number 69D01-2011-F6-173 ("F6-173"), the State charged Placke with attempted resisting law enforcement, a Level 6 felony, driving while suspended, a Class A misdemeanor, reckless driving, a Class C misdemeanor, and with being a habitual offender.

[5] On January 23, 2021, in Ripley County, Indiana, Placke was observed operating his vehicle, and when the police officer approached Placke, he admitted that his driver's license was suspended. At that time, he was driving with a suspended license, and it had been less than ten years after he was convicted of a prior, unrelated violation for driving while suspended. On March 11, 2021, in cause number 69D01-2103-CM-048 ("CM-48"), the State charged Placke with Class A misdemeanor driving while suspended.

[6] On February 8, 2022, Placke entered a guilty plea in F6-173 to Level 6 felony attempted resisting law enforcement and to being a habitual offender. On November 1, 2022, Placke entered a guilty plea in CM-48 to Class A misdemeanor driving while suspended. In CM-48, the State agreed to a sentence of 365 days suspended and a one-year license suspension. In F6-173, the trial court sentenced Placke to 730 days for his conviction for Level 6 felony attempted resisting law enforcement enhanced by 1095 days for being a habitual offender. The sentences in CM-48 and F6-173 were ordered to be served consecutively, resulting in an aggregate five-year executed sentence. Placke now appeals.

Discussion and Decision

[7] Placke argues that his aggregate five-year sentence is inappropriate. The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due

consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[8] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Faith*, 131 N.E.3d at 160. Thus, we generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “Such deference should prevail 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).

[9] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Here, Placke was convicted of Level 6 felony attempted resisting law enforcement, which has a sentencing range of between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). Placke was also found to be a habitual offender, which carries a possible enhancement of

between two years and six years, for a person convicted of a Level 5 or Level 6 felony. I.C. § 35-50-2-8(i)(2). Placke received two years for his Level 6 felony conviction, which was enhanced by three years for the habitual offender finding. This resulted in an aggregate sentence of five years executed.

[10] As to the nature of his offense, Placke contends there was no evidence that he caused anyone injury nor was there any evidence that he intended to cause anyone harm. While Placke concedes that his offense was stupid and dangerous, he asserts that it was not so criminal or heinous in nature as to warrant an executed sentence of five years. To show his sentence is inappropriate, Placke must portray the nature of his offense in a positive light, “such as accompanied by restraint, regard, and lack of brutality.” *Stephenson*, 29 N.E.3d at 122.

[11] The nature of the offense shows that, while his license was suspended, Placke was driving at a high rate of speed when law enforcement attempted to initiate a traffic stop. Instead of stopping when the trooper activated his lights and siren, Placke proceeded to attempt to flee the trooper at even higher rates of speed reaching the speed of ninety miles per hour in a fifty-five-miles-per-hour zone. Placke acknowledges on appeal that, in attempting to flee law enforcement, he almost hit another vehicle. The evidence also showed that, in fleeing the police, Placke weaved in and out of traffic, driving in a dangerous fashion. The police deployed two sets of stop sticks in an attempt to get Placke to stop, one of which he drove around, and the second of which he hit, causing him to leave the roadway. When Placke left the roadway, he crashed his

vehicle down an embankment, and he then fled the vehicle on foot, attempting to evade law enforcement further by hiding. Placke's actions endangered others and caused property damage. Placke readily acknowledges that his conduct placed the other drivers on the road in danger, and he has not portrayed the nature of his offense in a positive light, "such as accompanied by restraint, regard, and lack of brutality." *See Stephenson*, 29 N.E.3d at 122.

[12] Further, Placke was found to be a habitual offender. The statute under which he was charged requires that Placke have three or more prior, unrelated felony convictions and a prior Level 6, Class C or Class D felony conviction that occurred not more than ten years between release for the prior offense and the current offense. *See* I.C. § 35-50-2-8. Here, Placke had well over three prior unrelated felony convictions, and more than one prior Level 6 or Class C or Class D felony convictions. Placke had accumulated at least six felony convictions over the course of slightly more than ten years. Placke has not shown that his sentence is inappropriate in light of the nature of the offense.

[13] As to his character, Placke argues that, although the trial court properly considered his criminal history, it neglected information that spoke well of his character and the challenges he had overcome, specifically that he participated in a recovery while incarcerated program while he was awaiting trial and sentencing, was dedicated to living a drug and alcohol-free life, and expressed remorse for his criminal conduct. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current

offense.’” *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant’s character for the purposes of sentencing. *Id.* While we commend Placke for seeking a rehabilitation program while incarcerated awaiting the outcome of his cases, we do not find that this demonstrates his positive character such that his sentence is inappropriate. Placke has an extensive criminal history that includes the prior felony convictions used to prove his habitual offender status. He also has at least five misdemeanor convictions. Further, in the past, he has been given the grace of probation on nine occasions, and probation violations have been filed eight times against him. Additionally, at the time of sentencing, Placke had several pending cases, which occurred when he was out on bond on the attempted resisting law enforcement charge. In fact, his Class A misdemeanor driving while suspended charge occurred when he was out on bond. Placke’s criminal history demonstrates that prior contacts with the criminal justice system have not deterred him from committing further criminal offenses. Consequently, we do not believe that Placke has met his burden to show “substantial virtuous traits or persistent examples of good character” such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. We, therefore, do not find that his sentence is inappropriate in light of his character.

[14] We conclude that Placke’s five-year executed sentence is not inappropriate in light of the nature of the offense and the character of the offender.

[15] Affirmed.

Vaidik, J., and Tavitas, J., concur.