MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jesse Adkins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 27, 2022

Court of Appeals Case No. 22A-CR-166

Appeal from the Morgan Superior Court

The Honorable Peter R. Foley, Judge

Trial Court Cause No. 55D01-2004-F5-554

May, Judge.

[1] Jesse Adkins appeals his three-year aggregate sentence for Level 5 felony burglary[1] and Class A misdemeanor attempted theft.[2] Adkins asserts his fully executed sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

Facts and Procedural History

[2] Around 3:00 a.m. on April 4, 2021, Morgan County Sheriff's Deputy Eric Cheek received a notification from his doorbell security camera while he was on duty. Deputy Cheek was the only person who lived on his cul-de-sac at that time because the neighborhood was still under development, and he found it odd that his security footage showed someone driving around one of the unoccupied homes. Deputy Cheek informed dispatch and went to the unoccupied home to investigate. Although the home was vacant, he found pry marks on the door frame, and he turned the lights on in the home before leaving.

[3] Around 4:00 a.m., Deputy Cheek received a second alert from his doorbell security camera, and he notified the other deputies who were on shift that morning. Deputy Cheek returned to the home, where he noticed the lights were off but he could hear two men, later identified as Adkins and John

[1] Ind. Code § 35-43-2-1 (2014).

[2] Ind. Code § 35-43-4-2(a) (2019) & Ind. Code § 35-41-5-1 (2014).

Sanders, moving around inside. Adkins and Sanders had parked their vehicle in the house's garage, kicked in the back door, and were in the process of carrying a washer and dryer down the stairs from the laundry room when Deputy Cheek and other deputies arrived on the scene. The deputies noticed Adkins and Sanders tracked muddy footprints throughout the home, leading from the back door to the laundry room upstairs. Both Adkins and Sanders were wearing gloves, and they were in possession of a flashlight, a pair of lockjaw pliers, a pocketknife, vice grips, and a butane torch. The deputies then arrested Adkins and Sanders.

[4] On April 6, 2020, the State charged Adkins with Level 5 felony burglary, Class A misdemeanor criminal trespass,[3] Class A misdemeanor attempted theft, and Class B misdemeanor disobeying a declaration of disaster emergency.[4] Before trial, the court granted the State's motion to dismiss the Class B misdemeanor disobeying a declaration of disaster emergency. On November 18, 2021, a jury found Adkins guilty of Level 5 felony burglary, Class A misdemeanor criminal trespass, and Class A misdemeanor attempted theft.

[5] At Adkin's sentencing hearing on December 20, 2021, the trial court found the following aggravating circumstances: (1) Adkins had recently violated conditions of probation; (2) he was convicted of six misdemeanors in six

[3] Ind. Code § 35-43-2-2 (2021).

[4] Inc. Code § 10-14-3-12 (2021).

separate cases; (3) he had three prior felonies in three separate cases; (4) he had seven cases either dismissed or not filed after he was arrested; (5) he had been on probation three times, with two violations; and (6) he was on home detention twice, with one violation. The trial court found no mitigating circumstances. For the Level 5 felony burglary, the court sentenced Adkins to three years executed in the Department of Correction ("DOC"), with ninety-three days accrued time credit. For the Class A misdemeanor attempted theft, the court issued an executed sentence of 186 days, which the court ordered to be served concurrent with his burglary sentence.[5] Therefore, Adkins's aggregate sentence was three years incarcerated.

Discussion and Decision

[6] We are authorized by Indiana Appellate Rule 7(B) to independently review and revise sentences if, after due consideration, we find the trial court's decision inappropriate in light of the nature of the offense and the character of the offender. *Anderson v. State*, 989 N.E.2d 823, 826 (Ind. Ct. App. 2013), *trans. denied*. An appellant bears the burden of demonstrating his sentence is inappropriate. *Id.*

[7] Adkins does not argue his three-year advisory sentence is inappropriate; rather, he argues the order that he serve his sentence executed in the DOC should be

[5] The trial court did not enter a conviction or sentence for Class A misdemeanor criminal trespass to avoid a double jeopardy violation.

revised. "The location where a sentence is to be served is an appropriate focus for application of our review and revise authority." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Nonetheless, we have also noted, "it will be quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate." *Id.* The question under Appellate Rule 7(B) is whether the trial court imposed an inappropriate sentence, not whether another sentence would be more appropriate. *Id*.

[8] In *King*, the trial court sentenced King to serve six years in the DOC, and King argued the trial court should have allowed him to serve his time in Community Corrections to benefit his mental health. *Id*. at 268. King did not specify why his placement in Community Corrections would be more appropriate or beneficial, nor did King explain why his placement in DOC would be impractical. *Id.* Accordingly, King failed to convince this Court that his placement in DOC was inappropriate. *Id.*

[9] Likewise, Adkins does not provide us with convincing evidence that his placement in the DOC is inappropriate. He asks to be placed on home detention because he believes the commission of his offense was not sufficiently egregious to warrant a fully executed sentence. As mentioned *supra*, Appellate Rule 7(B) requires us to analyze whether the trial court imposed an inappropriate sentence; we do not review whether another sentence would be more appropriate. Adkins is asking us to revise his sentence because he would prefer not to serve his time in the DOC, and he believes he deserves leniency

because no person was physically injured during the commission of his offenses.

[10] When we consider the nature of the offense, "the advisory sentence is the starting point for determining the appropriateness of a sentence." *Pelissier v. State*, 122 N.E.3d 983, 990 (2019), *trans. denied*. "Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment 'should receive considerable deference.'" *Davis v. State*, 173 N.E.3d 700, 706 (Ind. Ct. App. 2021). The advisory sentence for a Level 5 felony is three years, with a sentencing range of one to six years. Ind. Code § 35-50-2-6. A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-2. The trial court sentenced Adkins to the advisory sentence of three years for his burglary offense to be served concurrent with the fixed one-year term for his attempted theft offense.

[11] Regarding the nature of his offenses, Adkins makes three arguments against the trial court's imposition of a fully executed sentence: 1) Adkins did not use force or a threat of force during the commission of his offense; 2) no person suffered physical injury from the offense; and 3) the loss suffered from the offense was not greater than the elements necessary to prove the commission of the offense. Concerning Adkins's first argument, he and Sanders used force when they kicked in and damaged the back door of the house. *See Spangler v. State*, 607 N.E.2d 720, 723 (Ind. 1993) (defining "force" as "the use of strength . . . applied to one's actions, in order to accomplish one's ends"). As for the loss

suffered not being greater than necessary to prove the offenses, we disagree with Adkins's assessment because he and Sanders put pry marks on a door frame, busted in a door, and tracked mud on the carpet throughout the house – none of which were necessary to prove breaking and entering or attempted theft. *See* Ind. Code § 35-43-2-1 (elements of burglary) & Ind. Code § 35-43-4-2 (elements of theft). With respect to his second argument – that no one suffered physical injury because the house was vacant during the commission of the offense – we do not find this argument compelling because simply not committing a higher-level felony does not justify home detention rather than incarceration. Adkins has not demonstrated a fully executed sentence is inappropriate for his crimes.

[12] When considering the character of the offender, "one relevant fact is the defendant's criminal history." *Pelissier*, 122. N.E.3d at 990. "The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id*. Adkins argues a fully executed sentence is not justified because his criminal history is unrelated to his current offenses. However, given that Adkins's criminal history includes six misdemeanor convictions, three prior felonies, and several probation and home detention violations, we cannot say the trial court's decision to impose a fully executed sentence is inappropriate. *See Parrish v. State*, 166 N.E.3d 953, 963 (Ind. Ct. App. 2021) (stating that the trial court did not impose an inappropriate sentence because the defendant was given various opportunities for rehabilitation, including probation and home detention, yet he continuously violated those conditions), *trans. denied*.

Conclusion

[13] Adkins has not carried his burden of persuading us that the placement of his sentence is inappropriate based upon his character and the nature of his offenses. Accordingly, we affirm the trial court's decision.

[14] Affirmed.

Riley, J., and Tavitas, J., concur.