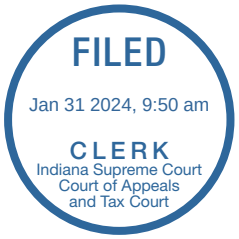
MEMORANDUM DECISION



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IN THE
COURT OF APPEALS OF INDIANA

Jayme Lopez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2024

Court of Appeals Case No. 23A-CR-1225

Appeal from the Newton Superior Court

The Honorable Daniel J. Molter, Judge

Trial Court Cause No. 56D01-2207-F2-618

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge

Case Summary

[1] Jayme Lopez appeals his convictions for two counts of burglary, as Level 2 felonies;[1] escape, as a Level 4 felony;[2] criminal recklessness, as a Level 5 felony;[3] theft of a firearm, as a Level 6 felony;[4] pointing a firearm, as a Level 6 felony;[5] and resisting law enforcement, as a Level 6 felony.[6] He also challenges the enhancement for pointing a firearm at a police officer during the commission of an offense[7] and his corresponding eighty-two-year aggregate sentence. We affirm.

Issues

[2] Lopez raises three issues for our review, which we revise and restate as the following four issues:

1. Whether the trial court abused its discretion when it denied his motion to hire a medical expert.

2. Whether the court abused its discretion when it denied his motion for a continuance.

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[1] Ind. Code § 35-43-2-1(3)(A) (2023).

[2] I.C. § 35-44.1-3-4.

[3] I.C. § 35-42-2-2(b)(2)(A).

[4] I.C. § 35-43-4-2(a).

[5] I.C. § 35-47-4-3(b).

[6] I.C. § 35-44.1-3-1(c)(1)(B)(i).

[7] I.C. § 35-50-2-11(e).

3. Whether the trial court abused its discretion when it sentenced him.

4. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] On May 11, 2022, David Kessler, the Newton County Jail Commander, picked Lopez up from the Iroquois County Jail in Illinois to transport him to Newton County on a warrant. Kessler placed Lopez in a "belly chain" and handcuffs but did not put him in leg shackles. Tr. Vol. 2 at 24. During the ensuing fifteen-minute drive from the jail in Illinois to Newton County, Lopez and Kessler engaged in "small talk," and Lopez "seemed like any other inmate" Kessler had transported. *Id*. at 27. When they arrived at the Newton County Jail, Kessler let Lopez out of the car. Kessler then went to retrieve Lopez's bag from the car. At that point, Lopez "took off." *Id*. at 28. Kessler chased Lopez, but Kessler tripped and fell and ultimately lost sight of him. Kessler called dispatch, and officers began a search for Lopez.

[4] Lopez ran from the jail and broke into a house belonging to Joshua Willis on Carrol Street. Willis was not home at the time. While there, Lopez shaved his head and then took a knife, a gun, some boots, and some clothes before leaving. Lopez then went by bike to a nearby motel, where he encountered the Assistant Manager, Sandra Schulthes. Lopez asked Schulthes if he could use her phone, which request Schulthes granted. Lopez called an individual and asked for a

ride. Lopez's demeanor "seemed fine" to Schulthes. *Id*. at 59. When Schulthes received her phone back, she noticed that she had text messages indicating that a local inmate had escaped. Schulthes believed that Lopez may have been that inmate, so she called the police.

[5] Lopez left the motel, went to a nearby apartment complex, and entered Apartment 15 located on the second floor. Logan Adams, his fiancée, and his baby resided in that apartment, which is on the second floor. That day, however, the three individuals were visiting with friends in an apartment on the first floor. At some point, the baby needed a new diaper, so Adams and his fiancée, who was carrying the baby, walked up to their apartment. When Adams opened the door, he saw Lopez in his apartment, and he observed that Lopez had a gun. Adams told his fiancée to go back downstairs with the baby. Adams then told Lopez that he "could have the apartment" and left. *Id*. at 97. The police, in their search for Lopez, eventually arrived at the apartment complex. Adams informed the officers that Lopez was in his apartment, and the police proceeded to evacuate the building.

[6] Ultimately, a SWAT team made up of officers from multiple agencies arrived and asked Lopez to exit the apartment. When Lopez did not comply, officers shot gas canisters into the apartment. Approximately fifteen minutes later, Lopez fired three shots into a hallway outside of Apartment 15 where officers were stationed. Lopez then left Adams' apartment and entered Apartment 16, which belonged to Filemon Pizano who was not home at the time. The SWAT team removed the officers from the hallway and deployed snipers. At some

point, Lopez exited Apartment 16 with a gun in his hand, and a sniper shot at him. The sniper hit the gun that Lopez was holding, and shrapnel deflected into Lopez's face, blinding him in one eye. Officers were then able to detain Lopez and transport him to a medical facility to receive treatment.

[7] On May 16, Indiana State Police Trooper Chris Campione interviewed Lopez. During the interview, Lopez indicated that, when he and Kessler arrived at the Newton County Jail, he "saw an opportunity" and "took it." *Id*. at 221. Lopez also stated that he remembered going to the motel and the apartment complex and that he recalled firing three gunshots with a firearm, though he stated that he did not remember where he had obtained the firearm. The State charged Lopez with two counts of burglary, as Level 2 felonies (Counts 1 and 2); escape, as a Level 4 felony (Count 3); criminal recklessness, as a Level 5 felony (Count 4); theft of a firearm, as a Level 6 felony (Count 5); pointing a firearm, as a Level 6 felony (Count 6); and resisting law enforcement, as a Level 6 felony (Count 7). The State also filed an enhancement alleging that Lopez had pointed a firearm at a police officer during the commission of an offense.

[8] On March 29, 2023, Lopez filed a motion to hire a medical expert at public expense. In his motion, Lopez alleged that he needed to hire Dr. David Fletcher as an expert in order to "properly represent and defend" himself. Appellant's App. Vol. 2 at 84. In particular, Lopez asserted that Dr. Fletcher would "testify as to the potential adverse interactions of medications [Lopez] was prescribed at the time of the alleged crimes." *Id*. at 85.

[9] The court held a hearing on Lopez's motion on April 3. During the hearing, Lopez argued that he had been given medications while at the Iroquois County Jail and that he sought to introduce the testimony of a physician who would testify that the medications "may interaction and cause . . . troubles." Tr. Vol. 2 at 3. Lopez argued that he had spent "countless hours" trying to find an expert he felt was qualified to testify on the matter. *Id*. at 5. Lopez also indicated that he planned to subpoena the prescribing physician as well. The State responded that the "timing" of Lopez's motion was "problematic" because the information regarding Lopez's medications had been "available [to Lopez] for months[.]" *Id*. at 4. The court found that Lopez had "never filed an insanity defense" and denied Lopez's request. Lopez then clarified that he did not "plan to assert a diminished capacity defense." *Id*. at 5.

[10] Lopez filed a motion to correct error and a motion to continue. Lopez asserted that "continuing the trial is necessary to allow [him] an opportunity to secure an expert witness to testify at trial." Appellant's App. Vol. 2 at 99. The State objected to the motion to continue and argued that Lopez had already had "ample time for an expert to be identified." *Id*. at 101. The State also asserted that it would be "substantially prejudiced" if the continuance were granted because it had subpoenaed twenty-four witnesses, all of whom had "made adjustments to their schedules to be available for the trial" as scheduled. *Id*. The court denied Lopez's motions.

[11] The court held a three-day, bifurcated jury trial beginning on April 17. At the conclusion of the State's case-in-chief and outside the presence of the jury,

Lopez made a record regarding his motion to hire an expert witness. He argued that his defense strategy involved "potential medications that Mr. Lopez had been administered" in the Illinois jail, which was "dependent on a medical expert coming and testifying as to those medications and those interactions." *Id*. at 230. The State responded that the medications had been prescribed at least four days "in advance of the date in question," that Lopez was being treated by a doctor that he contemplated calling as a witness, and that his blood test from the day of the offense was positive for cocaine, benzodiazepines, and opiates. *Id*. The court reiterated that it had denied Lopez's request for a medical expert and that Lopez had the option of calling the prescribing physician as a witness to testify "about what the effects of the medications he's taking will have on him." *Id*. Lopez then presented evidence but did not call the prescribing physician because the physician "would have admitted to committing some sort of potential malpractice." *Id*. at 231.

[12] At the conclusion of the first phase of the trial, the jury found Lopez guilty as charged. Then, following the second phase of the trial, the jury found that Lopez had pointed a firearm at a police officer during the commission of an offense. The court entered judgment of conviction accordingly. At the subsequent sentencing hearing, the court found that, while Lopez was not "the worst of the worst," he was "not far off from it," and he was "quickly . . . working towards that." Tr. Vol. 3 at 35. In its written sentencing order, the court noted that Lopez has "amassed a substantial record of criminal convictions," that he has been given "attempts to rehabilitate through

alternative sentencing options," that his actions "imperiled a substantial portion of the welfare and safety" of the community and resulted in the closure of parts of a four-lane highway, and that his actions "created risk of bodily harm or death to several tenants" of the apartment complex. Appellant's App. Vol. 2 at 161. The court then identified as mitigating Lopez's drug addiction, that he has "shown compassion for the homeless," that he was rendered blind in one eye when he was shot by the sniper, and that a lengthy incarceration would cause a hardship on his dependents. *Id*.

[13] The court then found that the aggravators "substantially" outweighed the mitigators. As a result, the court imposed the following sentence: twenty-two years on Count 1; twenty-six years on Count 2; eight years on Count 3; four years on Count 4; eighteen months on Count 5; eighteen months on Count 6; and two years on Count 7, enhanced by twenty years for the use of the firearm enhancement. The court ordered all sentences to run consecutively, except for the sentences on Counts 5 and 6, which the court ordered to run concurrently, for an aggregate sentence of eight-two years, with seventy-two years executed and ten years suspended to probation. This appeal ensued.

Discussion and Decision

Issue One: Expert Witness

[14] Lopez first asserts that the trial court abused its discretion when it denied his motion to hire an expert witness at public expense.[8] The appointment of experts for indigent defendants is left to the trial court's sound discretion. *Beauchamp v. State*, 788 N.E.2d 881, 888 (Ind. Ct. App. 2003) (citing *Jones v. State*, 524 N.E.2d 1284, 1286 (Ind. 1988)). It is within the trial court's discretion to determine whether the requested service would be needless, wasteful, or extravagant. *Id*. The defendant requesting the appointment of an expert bears the burden of demonstrating the need for the appointment. *Id*.

[15] The central inquiries in deciding this issue are whether the services are necessary to assure an adequate defense and whether the defendant specifies precisely how he would benefit from the requested expert services. *Scott v. State*, 593 N.E.2d 198, 200 (Ind. 1992). A defendant cannot simply make a blanket statement that he needs an expert absent some specific showing of the benefits that the expert would provide. *Id*. Although not an exhaustive list, the following considerations bear on these fact-sensitive inquiries:

> (1) whether the proposed expert's services concern an issue which is generally regarded to be within the common experience of the average person or one for which expert opinion would be necessary; (2) whether the requested services could be performed

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[8] The State contends that Lopez has waived this issue for our review for failing to make a cogent argument. *See* Appellee's Br. at 15-16. We acknowledge that Lopez has conflated his argument on this issue with his argument regarding the denial of his motion to continue. However, we are nonetheless able to adequately discern Lopez's argument on this issue. Because we are able to do so, and given our preference to resolve issues on the merits, we will address the merits of Lopez's claim.

> by counsel; (3) whether the proposed expert could demonstrate that which the defendant desires from the expert; (4) whether the purpose for the expert appears to be exploratory only; (5) whether the expert services will go toward answering a substantial question or simply an ancillary one; (6) the seriousness of the charge(s) and the severity of the possible penalty; (7) the complexity of the case; (8) whether the State is relying upon an expert and expending substantial resources on the case; (9) whether a defendant with monetary resources would choose to hire such an expert; (10) the cost of the expert services; (11) the timeliness of the defendant's request; (12) whether the defendant's request is made in good faith; (13) whether the expert's testimony would be admissible at trial; and (14) whether there is cumulative evidence of the defendant's guilt.

Id. at 200-01.

[16] Here, we acknowledge that some of the factors weigh in favor of appointing an expert. Indeed, the interactions of medications is not within the common experience of the average person, Lopez faced serious charges, and Lopez made his request in good faith. However, those factors are offset and outweighed by the others. First, Lopez did not make his request until March 2023, approximately three weeks before trial, even though he had been prescribed the medications at least four days before May 11, 2022, and had received his medication records months earlier. Thus, Lopez had ample time to make his request. In addition, the court ordered Lopez to provide discovery to the State within thirty days of August 5, 2022. *See* Appellant's App. Vol. 2 at 48. Lopez's motion to hire an expert witness is substantially outside of that deadline and therefore not timely.

[17] In addition, according to Lopez's own arguments, it is clear that the testimony of the medical expert would be speculative at best. Indeed, in his motion to hire the medical expert, Lopez indicated that Dr. Fletcher would testify to the "potential adverse interactions" of the medications. Appellant's App. Vol. 2 at 84. And during the hearing on Lopez's motion, Lopez argued that the medications "may" interact and "cause troubles." Tr. at 3. Dr. Fletcher was not Lopez's doctor, and Lopez had the opportunity to call the physician who had prescribed the medication as a witness, though he did not avail himself of that opportunity. Lopez has not made any argument to explain what the medications were, what the possible interactions may be, or whether he indeed suffered any adverse interactions from the medications.

[18] Also, it is not clear whether Dr. Fletcher's testimony would go toward answering a substantial question or merely an ancillary one. Lopez sought to introduce testimony that he was on medications that had possible interactions with one another. But Lopez does not explain how that would help his defense. Lopez informed the trial court that he did not intend to "assert a diminished capacity defense." *Id*. at 5. And since he was not attempting to raise any defense regarding his capacity, it is not clear—and he does not explain—what defense he hoped to raise and prove by showing that his medications had interacted and caused adverse effects.

[19] Further, the independent evidence of Lopez's guilt is overwhelming. Multiple individuals, including officers and civilian witnesses, identified Lopez as the person who fled from Kessler, broke into homes and apartments, stole items,

and fired three shots at police officers. Indeed, Lopez admitted to Detective Campione five days after the offenses that he had fled, entered an apartment, and fired three shots. Finally, the case against Lopez was not complex. The jury could readily decide from the evidence presented whether Lopez had committed the charged offenses.

[20] Lopez did not specify precisely how he would benefit from Dr. Flether's testimony or explain how Dr. Fletcher's testimony would support his defense. Rather, he simply made a blanket, vague statement that he needed Dr. Fletcher's testimony. As such, we hold that the trial court did not abuse its discretion when it denied Lopez's motion to appoint an expert witness.

Issue Two: Denial of the Continuance

[21] Next, Lopez asserts that the court abused its discretion when it denied his motion for a continuance to hire the expert witness. He contends that the denial of the continuance prevented him from fully developing his drug interaction defense.

[22] Rulings on non-statutory motions for continuance lie within the discretion of the trial court and will be reversed only for an abuse of that discretion and resulting prejudice. *Maxey v. State*, 730 N.E.2d 158, 160 (Ind. 2000); *Jackson v. State*, 758 N.E.2d 1030, 1033 (Ind. Ct. App. 2001). An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances before the trial court. *Maxey*, 730 N.E.2d at 160.

[23] Every defendant has the fundamental right to present witnesses in his or her own defense. *Roach v. State*, 695 N.E.2d 934, 939 (Ind. 1998). "This right is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Id*. (quotation marks omitted). "At the same time, while the right to present witnesses is of the utmost importance, it is not absolute." *Id*. "In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id*. (quotation marks omitted).

[24] "There is no question that trial courts have the discretion to exclude belatedly disclosed witnesses." *S.T. v. State*, 764 N.E.2d 632, 635 (Ind. 2002). However, this discretion is limited to instances where there is evidence of bad faith on the part of counsel or a showing of substantial prejudice to the State. *Id*. Indeed, in light of a defendant's right to compulsory process under the Sixth Amendment to the United States Constitution and Article 1, Section 13 of the Indiana Constitution, there is a strong presumption in favor of allowing the testimony of even late-disclosed witnesses. *Id*. at 636. Where a party fails to timely disclose a witness, courts generally remedy the situation by providing a continuance rather than disallowing the testimony. *Id*.

[25] Lopez did not disclose his expert witness until March 23, 2023, approximately three weeks before the trial was scheduled to begin. Nonetheless, he contends that the "record is devoid of any indication that [he] acted in bad faith in

requesting" the continuance and that the State "failed to articulate any other way it would be prejudiced" by the continuance. Appellant's Br. at 17. We cannot agree.

[26] As discussed above, Lopez has not explained how evidence regarding the potential interactions of medications would help his defense. Indeed, other than his bald assertion that it was critical to his defense, he did not explain what his defense was or how the expert's testimony would bolster that defense. Rather, the only information Lopez provided to either the trial court below or this Court on appeal is that he did not intend to assert a defense of diminished capacity. *See* Tr. Vol. 2 at 5. In addition, Lopez indicated that he planned to subpoena the physician who had prescribed the medication.[9] Thus, Lopez had the opportunity to present evidence from his prescribing physician, who could have testified to the *actual* effects the medications had on Lopez, instead of an expert who would have only been able to testify to *potential* effects. As such, Lopez was not prevented from presenting evidence in support of his defense.

[27] Further, and importantly, a continuance would have caused undue prejudice to the State. As the State indicated in its objection to Lopez's motion, it had already subpoenaed twenty-four witnesses, including both civilians and law enforcement officers from multiple jurisdictions, "all of whom ha[d] made

[9] Lopez asserts that he did not call his physician as a witness because his physician "would have admitted to committing some sort of potential malpractice." Tr. Vol. 2 at 231. Be that as it may, Lopez still had the option to call his physician but chose not to.

adjustments to their schedules to be available for this week[-]long trial." Appellant's App. Vol. 2 at 102. Because the testimony Lopez sought to elicit from the expert was merely speculative, because he had the opportunity to present actual evidence of the effects of his medication from his prescribing physician, and because the State would have been unduly burdened by having to coordinate a new trial date with twenty-four witnesses, we cannot say that the trial court abused its discretion when it denied his motion for a continuance.[10]

Issue Three: Sentencing

[28] Lopez next contends that the trial court abused its discretion when it sentenced him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind.), *clarified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*.

Valid Aggravator

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[10] Lopez's reliance on this Court's opinion in *Barber v. State*, 911 N.E.2d 641 (Ind. Ct. App. 2009), is misplaced. In that case, this Court reversed the trial court's denial of a motion for a continuance. In so holding, this Court relied on the fact that Barber's trial was a mere two months after her arrest, that her late-disclosed witnesses would bolster her defense of involuntary intoxication, and because the only prejudice the State alleged was the inconvenience of four witnesses. *Id*. at 646-47. Unlike in that case, Lopez's trial was almost one year after his arrest, he did not articulate a defense he wanted to support with the expert's testimony, and the State had subpoenaed twenty-four witnesses.

[29] On this issue, Lopez first argues that "several aggravating factors are not appropriate." Appellant's Br. at 18. However, while Lopez purports to challenge multiple aggravators found by the court, he only asserts that the court abused its discretion when it found that there "were children and adults occupying" other apartments and that he had taken "a shot at a police officer[.]" Tr. Vol. 3 at 37. Lopez contends that the "evidence at [t]rial simply does not support this" because the only person he encountered at the apartment complex was Adams, an encounter for which he was not charged with a crime, and the only bullet hole was found in the door of Apartment 15, "where officers were not located." Appellant's Br. at 19.

[30] However, while Lopez may not have been charged for any of his actions related to his encounter with Adams, the trial court may properly consider the nature and circumstances of the offense. *See Weaver v. State*, 189 N.E.3d 1128, 1135 (Ind. Ct. App. 2022). And, here, the evidence demonstrates that Lopez stole a firearm and entered Adams' apartment, where Adams subsequently encountered Lopez while accompanied by his fiancée and baby. The evidence further shows that officers had to evacuate the apartment complex because there were numerous bystanders who could have been injured had Lopez fired his gun. And multiple witnesses testified that Lopez fired three shots into a hallway where police were located. Contrary to Lopez's argument, that aggravator is supported by the evidence, and the court did not abuse its discretion when it identified it as an aggravator.

Consecutive Sentences

[31] Lopez also argues that the court abused its discretion when it ordered his sentences on Counts 1, 2, 3, 4, and 7 to run consecutively. "'[T]o impose consecutive sentences, a trial court must find at least one aggravating circumstance.'" *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003) (quoting *Ortiz v. State*, 766 N.E.2d 370, 377 (Ind. 2002)), *trans. denied*. Moreover, if a trial court imposes consecutive sentences when not required to do so by statute, the trial court must explain its reasons for selecting the sentence imposed, including: (1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence. *Id*. (citing *Ortiz*, 766 N.E.2d at 377).

[32] Lopez asserts that the trial court "failed to properly explain why it imposed consecutive sentences[.]" Appellant's Br. at 18. And he contends that the trial court did not "articulate that it evaluated []or balanced the mitigating circumstances against the aggravating circumstances in imposing its sentence." *Id*. at 20. Again, we cannot agree.

[33] The trial court in its written sentencing order clearly outlined the aggravators and mitigators and specifically found that "the aggravating conditions substantially outweigh the mitigating conditions." Appellant's App. Vol. 2 at 161. In addition, the court's rationale for imposing consecutive sentences is apparent on the face of the record. As the trial court found, Lopez has an

extensive criminal history that includes adjudications as a juvenile delinquent, ten prior misdemeanor convictions, one prior felony conviction, and six prior revocations of his placement on probation. Lopez does not challenge his criminal history as a valid aggravator, and, as discussed above, the court properly identified the nature and circumstances of the offense to be a valid aggravating factor. The trial court identified all aggravating and mitigating factors, stated why it identified them as such, and specifically stated that it had balanced the aggravators against the mitigators. As such, the court did not abuse its discretion when it imposed consecutive sentences.

Issue Four: Appropriateness of Sentence

[34] Finally, Lopez contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he Court 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." This Court has recently held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v.*

> *State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[35] 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." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate 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 facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). 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).

[36] The sentencing range for a Level 2 felony is ten years to thirty years, with an advisory sentence of seventeen and one-half years. Ind. Code § 35-50-2-4.5. The sentencing range for a Level 4 felony is two years to twelve years, with an advisory sentence of twelve years. I.C. § 35-50-2-5.5. The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). The sentencing range for Lopez's Level 6 felony convictions is six months to two and one-half years, with an advisory sentence

of one year. I.C. § 35-50-2-7(b). And Lopez faced an additional fixed term of five to twenty years for having pointed a firearm at an officer during the commission of an offense. I.C. § 35-50-2-11(h).

[37] Here, the court identified as aggravating factors Lopez's criminal history, that prior alternative sentencing options have been ineffective, that his convictions have grown more serious over time, that he caused the closure of a four-lane highway, and that he endangered several tenants of the apartment complex. As mitigating, the court identified his drug addiction, his compassion for the homeless, that he was rendered blind in one eye during the offense, and that his incarceration will cause a hardship on his dependents. The court found that the aggravators outweighed the mitigators. Accordingly, the court sentenced Lopex to: twenty-two years on Count 1 (a Level 2 felony); twenty-six years on Count 2 (a Level 2 felony); eight years on Count 3 (a Level 4 felony); four years on Count 4 (a Level 5 felony); eighteen months on Counts 5 and 6 (Level 6 felonies); and two years on Count 7 (a Level 6 felony) enhanced by twenty years for the use of a firearm. The court then ordered the sentences for all Counts but 5 and 6 to run consecutively, for an aggregate term of eighty-two years, with ten of those years suspended to probation.

[38] On appeal, Lopez contends that his sentence is inappropriate in light of the nature of the offenses because he had simply taken an "opportunity" to run, no one was harmed, and he had only fired the gun into an area that "had been evacuated." Appellant's Br. at 21-22. He also contends that his sentence is inappropriate in light of his character because he provides for his five children,

he is "a kind and supportive person," he helps the homeless, and he agreed to speak to Detective Campione five days after the offenses. *Id*. at 22.

[39] However, Lopez has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Lopez fled from law enforcement and then entered Willis' home, where he altered his appearance and stole a gun and some clothes. At that point, Lopez took the gun to Adams' apartment, where he encountered Adams, Adams' fiancée, and Adams' baby. While Lopez was in Adams' apartment, officers deployed gas canisters and, in response, Lopez fired three shots into the hallway where officers were located. Lopez then left Adams' apartment and went to Pizano's apartment to further attempt to evade police. It was not until a sniper was ultimately able to shoot and injure Lopez that he was taken back into custody. Lopez's actions resulted in a multi-agency search for him, the shutdown of a portion of a four-lane highway, the evacuation of an apartment complex, and the utilization of a SWAT team. While Lopez may have been the only person to be injured during the offenses, many people were placed in danger by his actions. Lopez has not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.3d 111, 122.

[40] As for his character, Lopez has an extensive criminal history. As a juvenile, Lopez was twice adjudicated a delinquent, and he had his placement on probation revoked once. As an adult, Lopez has ten prior misdemeanor convictions and one prior felony conviction. In addition, he has had his placement on probation revoked on six occasions. Further, at the time the

presentence investigation report was prepared, Lopez faced additional charges for thirteen misdemeanors and three felonies. And, as the court found, Lopez's actions have escalated into more serious crimes. We cannot say that Lopez's sentence is inappropriate in light of his character.

Conclusion

[41] The trial court did not abuse its discretion when it denied Lopez's motion to hire an expert witness or when it denied his motion to continue. The court also did not abuse its discretion when it identified aggravating circumstances encompassing the nature of the offenses, or when it imposed consecutive sentences. Finally, Lopez's sentence is not inappropriate in light of the nature of the offenses or his character. We therefore affirm Lopez's convictions and sentence.

[42] Affirmed.

Crone, J., and Pyle, J., concur.