

## MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Donald Gene Dowden, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 25, 2022

Court of Appeals Case No.  
21A-CR-1603

Appeal from the Bartholomew  
Circuit Court

The Honorable Kelly S. Benjamin,  
Judge

Trial Court Cause No.  
03C01-2010-F6-4756

**Mathias, Judge.**

- [1] Donald Gene Dowden, Jr., was convicted in Bartholomew Circuit Court of Level 6 felony theft. The trial court imposed the maximum two and one-half-

year sentence. Dowden appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

### **Facts and Procedural History**

[3] In March 2020, Dowden and an accomplice stole two catalytic converters from HK Auto Repair Center by removing them from a Ford F150 pickup truck. Law enforcement officers discovered Dowden's cell phone at the scene of the theft. When officers questioned Dowden, he admitted that he stole the catalytic converters.

[4] The State charged the theft as a Level 6 felony because Dowden had a 2017 conversion conviction. On June 3, 2021, Dowden pleaded guilty to Level 6 felony theft without the benefit of a plea agreement.

[5] At Dowden's sentencing hearing, the court found the following aggravating circumstances: 1) Dowden's criminal history which consisted of fourteen felonies and five misdemeanors, including convictions for conversion, theft, and robbery; 2) Dowden's prior probation violations; 3) the safety of the community; 4) Dowden's lack of success with treatment and failure to take advantage of all opportunities for treatment; and 5) Dowden's lack of remorse. The court weighed the aggravating circumstances against the mitigating factors of Dowden's guilty plea and cooperation with law enforcement. The court then concluded that the "aggravating circumstances far outweigh the mitigating

circumstance[s].” Appellant’s App. p. 28. The trial court ordered Dowden to serve two and one-half years in the Bartholomew County Jail.

[6] Dowden now appeals his sentence.

## Discussion and Decision

[7] Dowden argues that his sentence is inappropriate pursuant to [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\(B\)](#). Making 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).

[8] 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, deference to the court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing 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).

- [9] The trial court ordered Dowden to serve a maximum sentence for his Level 6 felony theft conviction. The range of sentence for a Level 6 felony conviction is six months to two and one-half years. *I.C. § 35-50-2-7(b)*. Focusing on his guilty plea and cooperation with law enforcement, Dowden claims that his maximum sentence is inappropriate in light of the nature of the offense and the character of the offender.
- [10] Concerning the nature of the offense, Dowden argues that there is nothing about the commission of his offense that would support the imposition of a maximum sentence. Dowden characterizes his offense as fairly ordinary. He trespassed on private property and stole two catalytic converters. While there is nothing horrific about his offense, there is also no evidence that would cast his offense in a “positive light . . . such as accompanied by restraint.” *See Stephenson*, 29 N.E.3d at 122.
- [11] Turning to the character of the offender, Dowden’s criminal history spans thirty years and consists of fourteen felonies and five misdemeanors, including a robbery conviction, a forgery conviction, a fraud conviction, and eight felony theft convictions. Dowden was also convicted of misdemeanor conversion. Despite many years of incarceration, treatment, and probation, Dowden continues to commit criminal offenses. And many of those offenses are similar to the theft committed in this case.

[12] Dowden has not been able to lead a law-abiding life and also has not exhibited remorse for his criminal behavior. Although he pleaded guilty, cooperated with officers, and apologized for committing the theft in this case, the court concluded that his “apology is not believable” when considered against his thirty-year history of committing thefts and similar crimes. Appellant’s App. pp. 27-28. Finally, the court noted that Dowden attempted to “justify his actions for his own needs.” *Id.* at 28. We will not second guess the trial court’s assessment of Dowden’s expression of remorse. For all of these reasons, we cannot say that Dowden’s character demonstrates that his sentence is inappropriate.

### **Conclusion**

[13] Although the nature of Dowden’s offense might not be exceptional, Dowden’s character more than supports the trial court’s decision to impose the two-and-one-half year sentence in this case. Therefore, we cannot say his sentence is inappropriate under [Appellate Rule 7\(B\)](#), and we affirm his sentence.

[14] Affirmed.

Brown, J., and Molter, J., concur.