

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Michelle Lynn Kooistra,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 5, 2024

Court of Appeals Case No.
23A-CR-2743

Appeal from the DeKalb Superior Court
The Honorable Monte L. Brown, Judge

Trial Court Cause No.
17D02-2202-F6-28

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Michelle L. Kooistra appeals her sentence for forgery, a Level 6 felony.¹ The only issue she raises is whether her sentence is inappropriate in light of the offense and her character. We affirm.

Facts and Procedural History

- [2] On August 3, 2021, while on probation, Kooistra provided alleged medical paperwork from Saint Joseph Hospital to the Dekalb County Probation Department after failing a drug test for fentanyl. The date on the paperwork was April 21, 2021, and it stated that Kooistra was given fentanyl for treatment during a hospital visit. The Dekalb County Probation Department suspected that the paperwork “was fake” and investigated. App. v. II at 12. On January 13, 2022, the probation department received paperwork from Saint Joseph Hospital regarding Kooistra’s hospital visit on February 3, 2021, which had the same billing number as the paperwork Kooistra had provided dated April 21, 2021. Saint Joseph Hospital also confirmed that Kooistra was not seen on April 21, 2021, and was never given fentanyl on the February 3, 2021, visit.

¹ Ind. Code § 35-43-5-2(b).

- [3] On February 8, 2022, the State charged Kooistra with forgery, based on the falsified paperwork she had provided to the probation department. Kooistra pled guilty, without a plea agreement. On July 10, 2023, Kooistra failed to appear for her sentencing hearing, and the court issued a warrant for her arrest. Kooistra was eventually apprehended, and her sentencing hearing was held on October 23, 2023.
- [4] Kooistra was forty-three years old at the time of her sentencing. Her entire criminal history involves fraud-related offenses. As an adult, Kooistra had convictions for four felonies, including obtaining a controlled substance by fraud, obtaining a controlled substance by fraud or deceit, and attempting to commit a felony by fraud. Kooistra has a history of probation violations, and she violated probation again by committing the present fraud-related offense.
- [5] Kooistra also has a history of addiction to prescription medication dating back to 2015 and explained her addiction by saying that she needed to “deal with the pain associated with her medical problems.” App. v. II at 59. After being charged with the present offense and pleading guilty, Kooistra still maintained to the probation department that she could “confirm” that Saint Joseph Hospital gave her fentanyl during her February 3, 2021, visit. *Id.* at 58. A pre-sentence investigation report stated that Kooistra was at “High” risk to reoffend and had been denied eligibility for Community Based Supervision both because of previous probation violations and due to “[m]ultiple lock downs while in DeKalb County Jail.” *Id.* at 58, 60.

[6] The sentencing court found it mitigating that Kooistra pled guilty and had some mental health issues. The court found the following aggravating factors: Kooistra’s adult criminal history with four felony convictions all relating to “some sort of fraud, forgery, [or] dishonesty;” Kooistra’s history of multiple probation violations; Kooistra’s commission of the instant offense while on probation; Kooistra’s “history of drug abuse;” the finding that she was not eligible for Community Corrections; and Kooistra’s failure to benefit from multiple past rehabilitative services. *Tr. v. II* at 41-42. The trial court sentenced Kooistra to two and one-half years in the Indiana Department of Correction (“DOC”). This appeal ensued.

Discussion and Decision

[7] Kooistra contends that her sentence is inappropriate in light of the nature of the offense and her character. Article 7, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[8] 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 v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to “leaven the outliers.” *Id.* at 1225. 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 factors 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).

[9] The sentencing range for Kooistra’s Level 6 felony conviction is between six months and two and one-half years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7(b). Thus, Kooistra’s two and one-half years sentence was within the statutory range.

[10] When considering the nature of the offense, we look at the defendant’s actions in comparison to the elements of the offense. *Cannon v. State*, 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. Here, Kooistra did not just commit forgery; rather, she committed forgery while she was on probation for two prior

fraud convictions. Kooistra argues that this was a “typical” case of forgery. Appellant Br. at 15. However, she falsified medical records to her probation officer and continued to claim to probation—even after having pled guilty on May 8, 2023—that she “had been administered fentanyl” while in the hospital in February, 2021. App. v. II at 58. Kooistra admits that she forged the documents in order to avoid “having her probation violated.” Appellant Br. at 15. Kooistra fails to offer any compelling positive facts about the nature of her offense to prove that her sentence is inappropriate.

[11] Nor does Kooistra’s character warrant a sentence reduction. She has a criminal history that includes four felony convictions related to fraud; that reflects poorly on her character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted) (observing that even a minor criminal history reflects poorly on a defendant’s character). In addition, she has already been shown leniency in the past by being ordered to probation, rather than incarceration, three times. Despite this leniency, Kooistra has violated her probation repeatedly and has had probation “terminated unsatisfactorily.” Appealed Order at 2. And, in another demonstration of her poor character, Kooistra was found ineligible for Community Based Supervision due to “multiple lock downs in DeKalb County Jail.” App. v. II at 60. Moreover, Kooistra initially failed to appear at her sentencing hearing in the instant cause, and she appeared at the rescheduled sentencing hearing only after she had been apprehended pursuant to an arrest warrant.

[12] In short, there was no evidence that Kooistra has “substantial virtuous traits or persistent examples of good character.” *Stephenson*, 29 N.E.3d at 122.

Kooistra has failed to demonstrate that her sentence is inappropriate in light of her character.

Conclusion

[13] Kooistra’s sentence is not inappropriate in light of the nature of her offense and her character.

[14] Affirmed.

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

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