

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Jessica Lynn Hinton,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 11, 2023

Court of Appeals Case No.  
22A-CR-2582

Appeal from the  
Henry Circuit Court

The Honorable  
Bob A. Witham, Judge

Trial Court Cause No.  
33C01-2205-F5-36

**Memorandum Decision by Judge Foley**  
Judges Vaidik and Tavitav concur.

**Foley, Judge.**

[1] Jessica Hinton (“Hinton”) appeals her sentence of five years imprisonment, contending that it is inappropriate in light of the nature of her offense and her character. Hinton pleaded guilty to operating a vehicle while intoxicated resulting in serious bodily injury.<sup>1</sup> We conclude that her sentence is not inappropriate, and, accordingly, affirm.

## **Facts and Procedural History**

[2] Early on the morning of November 4, 2021, Hinton was driving her two young children<sup>2</sup> to school on State Road 234 in Shirley, Indiana. Unbeknownst to her, Devin Jarvis’s vehicle was disabled in the eastbound lane and, because there was no shoulder, was at least partially in the lane itself. Jarvis’s father had arrived to assist and was standing between his own car and the hood of Jarvis’s car. Hinton rear-ended Jarvis’s car, pinning his father between the two vehicles. Both of his legs subsequently required amputation.

[3] Hinton cooperated with authorities and consented to a blood draw, which revealed therapeutic levels of hydrocodone<sup>3</sup> and alprazolam.<sup>4</sup> Hinton did not have an active prescription for the hydrocodone, though she had been

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<sup>1</sup> Ind. Code § 9-30-5-4.

<sup>2</sup> Ages seven and eleven as of the date of the sentencing hearing.

<sup>3</sup> Hydrocodone, sometimes referred to by its common brand name (Vicodin) is a “narcotic analgesic,” used to treat severe pain. <https://www.mayoclinic.org/drugs-supplements/hydrocodone-and-acetaminophen-oral-route/description/drg-20074089> (last accessed Apr. 5, 2022).

<sup>4</sup> Alprazolam, of which Xanax is one common brand name, is a benzodiazepine commonly used to treat symptoms of anxiety. <https://www.mayoclinic.org/drugs-supplements/alprazolam-oral-route/description/drg-20061040> (last accessed Apr. 5, 2022).

prescribed it in the past. She did have an active prescription for the alprazolam. The State charged Hinton with operating a vehicle while intoxicated as a Level 5 felony. Hinton plead guilty and proceeded to sentencing.

[4] At Hinton’s sentencing hearing, the trial court heard testimony from the director of House of Shifra (“Director Smith”), a halfway house in Anderson, Indiana. Director Smith testified that she also worked as a “peer recovery coach” working with people “with addictions or homelessness or mental health issues.” Tr. Vol. II p. 11. Director Smith testified that Hinton had been accepted to House of Shifra, where Hinton would engage in programming both for addiction and of a religious nature, chores, and mandatory employment. The House of Shifra enforces a curfew seven days a week, and Director Smith testified that it is a “very intensive program with accountability.” *Id.* at 13. The program also reports any positive drug or alcohol screens to probation departments, given its zero-tolerance drug policy.

[5] The trial court next heard testimony from Pastor Susan Jones, who founded the of House of Shifra in 2016. Pastor Jones testified that they were holding a bed specifically for Hinton, and that she had known Hinton “ever since she was born.” *Id.* at 16. She testified that it was not in Hinton’s character to intentionally harm another human, and that Hinton being in jail had worked significant hardship upon Hinton’s children. Pastor Jones testified to her ongoing commitment to meet with Hinton for purposes of counselling and support. Finally, Pastor Jones alluded to her awareness that Hinton had struggled with drug addiction in the past.

[6] Hinton herself testified that she had taken alprazolam the night before the accident at approximately 8:00 p.m. and submitted a copy of her valid prescription into evidence. She testified that the prescription was given to address her depression and anxiety, which she had suffered from since she was fifteen years old.<sup>5</sup> She testified that she suffers from endometriosis and a blood clotting disorder, which had resulted in tubal ligation surgery and stents being inserted into her legs, causing pain for over a decade. Further evidence showed that Hinton consumed hydrocodone the night before the accident, a medication for which she had received prescriptions previously for many years but was not prescribed at the time. Further evidence showed that the levels of the drugs in her system were “therapeutic.” *Id.* at 26. Hinton testified that Jarvis’s vehicle did not have its emergency lights engaged, and that she did not see the vehicle, in the dark, until it was too late.

[7] Finally, Hinton admitted to having drug problems and professed an intense desire to seek help and live a life without drugs. She testified that she had never been in treatment before, though she had applied at a treatment center and been denied because there was nothing in her system at the time. Hinton expressed remorse about the accident, specifically that she “would do anything to go back . . .” and avoid the accident. *Id.* at 31. Hinton submitted two letters, one to Jarvis and his family, and one for the Judge, both expressing remorse.

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<sup>5</sup> Hinton was thirty-nine years old at the time of the sentencing hearing.

[8] Hinton asked the trial court to sentence her to six years, four served on home detention and two on probation. The trial court imposed a sentence of five years, all executed in prison. Hinton now appeals.

## Discussion and Decision

[9] The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is “inappropriate in light of the nature of the offense and the character of the offender.”<sup>6</sup> Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court’s sentence; rather, “[o]ur posture on appeal is [ ] deferential” to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in “exceptional cases, and its exercise ‘boils down to our collective sense of what is appropriate.’” *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

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<sup>6</sup> Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant’s character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

[10] “The principal role of appellate review is to attempt to leaven the outliers.” *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is “not to achieve a perceived correct sentence.” *Id.* “Whether a sentence should be deemed inappropriate ‘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.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court’s sentence “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).

[11] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Hinton was charged with operating a vehicle while intoxicated resulting in serious bodily injury, a Level 5 felony. Indiana Code 35-50-2-6(b) provides: “A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” The trial court considered Hinton’s criminal history and protracted substance use to be aggravating factors. It considered the fact that she has accepted responsibility and has two minor children to be mitigating factors. The trial court concluded that the

aggravators outweighed the mitigators and Hinton was sentenced to an aggravated sentence of five years imprisonment.

[12] Our analysis of the “nature of the offense” requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, while driving her children to school in the early morning, Hinton struck a disabled vehicle that was partially in the roadway. The collision caused substantial injuries to Jarvis’s father. A blood draw revealed alprazolam and hydrocodone in Hinton’s system at the time of the accident, though both were at therapeutic levels. We are concerned that Hinton is admittedly aware of the danger of combining those drugs—she testified as such—and of operating a vehicle while doing so, and yet chose to drive anyway. That concern is particularly stark where, as here, the combination of drugs and driving endangers the lives of two children.

[13] We also note that, while the nature of the offense was not depraved,<sup>7</sup> its results were extreme. The victim could have died from blood loss at the scene. One of his legs was amputated, and then his other leg was subsequently amputated as a result of surgery complications. The victim’s daily activities have been severely curtailed: he is unable to work, and he requires assistance for even the most basic of tasks. In light of these consequences, we cannot say that the nature of the offense counsels in favor of revising Hinton’s sentence.

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<sup>7</sup> The State appears to concede that this was an accident.

[14] Our analysis of the character of the offender involves a “broad consideration of a defendant’s qualities,” *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant’s age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). In particular, we often consider a defendant’s criminal history. “The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense.” *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. “Even a minor criminal history is a poor reflection of a defendant’s character.” *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[15] Hinton has two prior convictions for operating a vehicle while intoxicated. Her criminal history is comprised of two felonies and two misdemeanors, all stemming from her substance use. She has, moreover, spurned opportunities for rehabilitation. Hinton has not sought treatment despite being provided with the opportunity during proceedings from one of her prior offenses. She was aware of recovery programs available to her, but did not avail herself of them. Neither probation nor house arrest ordered in prior cases appear to have deterred Hinton from her continued drug use. Finally, we observe that Hinton was out on bond at the time of the offense for a pending possession of contraband charge. Commission of a crime while out on bond is a significant

aggravating factor. We cannot say that Hinton's character militates in favor of a sentence revision.

[16] Last, though not directly reflective of the nature of the offense or of Hinton's character, we recognize that, although the trial court ordered the five-year sentence to be fully executed, it recommended that Hinton participate in the Recovery While Incarcerated program. The trial court's order specifically indicated that, presumably depending on Hinton's successful completion of the program, she may seek a sentence modification in September of 2024. For now, however, her sentence stands as ordered. We conclude that said sentence is not inappropriate in light of the nature of Hinton's offense or her character.

[17] Affirmed.

Vaidik, J. and Tavitas, J, concur.