MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Adam I. Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 23, 2023

Court of Appeals Case No. 22A-CR-3055

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-2109-F5-4853

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Adam Jackson appeals his sentence following his guilty plea to theft, as a Level 5 felony,[1] and resisting law enforcement, as a Level 6 felony.[2] We affirm.

Issues

[2] Jackson raises the following two issues for our review:

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

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

Facts and Procedural History

[3] At approximately 4:00 a.m. on August 28, 2021, Officer Aaron Graham with the Columbus Police Department observed Jackson driving a bulldozer west on 17th Street. Officer Graham observed Jackson "hanging out of the windows and yelling something[.]" Appellant's App. Vol. 2 at 20. Officer Graham then saw Jackson disregard a red light and enter an intersection. Officer Graham attempted to initiate a traffic stop by activating his emergency lights, but Jackson did not stop. Officer Graham then activated his siren, but Jackson still did not stop, so Officer Graham called for backup. Jackson continued toward a

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[1] Ind. Code § 35-43-4-2(a)(2)(A) (2021).

[2] I.C. § 35-44.1-3-1(c)(1)(A).

parking lot, stopped in a lane of traffic, stuck his head out of the window, and "yelled unintelligible things" at Officer Graham. *Id.* Jackson then "sp[u]n" the bulldozer around and began to travel south. *Id.*

[4] Officer Graham made announcements commanding Jackson to pull over, but Jackson continued to disregard Officer Graham's orders. Jackson drove southbound, and other officers blocked traffic at intersections. At some point, Jackson "climbed over half of the curb," and officers attempted to "steer" Jackson into a nearby parking lot. *Id.* Jackson crossed the northbound lanes of traffic and drove over the curb and onto a sidewalk. Jackson then turned west onto a curb and grass median and continued to drive until he was back on a street.

[5] Jackson again drove onto a median and toward large trees until he entered a parking lot. Jackson then drove over another median and into more trees. Jackson hit one of the trees and knocked a "large" branch off it. *Id.* Jackson then continued to drive until officers in a "MRAP"[3] were able to stop and apprehend him. *Id.*

[6] The State charged Jackson with theft, as a Level 5 felony (Count 1); auto theft, as a Level 6 felony (Count 2);[4] resisting law enforcement, as a Level 6 felony

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[3] It is not clear from the record what an MRAP is, but it appears from context to be some type of tactical vehicle.

[4] I.C. § 35-43-4-2(a)(1)(B).

(Count 3); criminal recklessness, as a Level 6 felony (Count 4);[5] and criminal mischief, as a Class B misdemeanor (Count 5).[6] The court scheduled an initial hearing for October 25. Jackson failed to appear at that hearing, and the court issued a warrant for his arrest. Officers arrested Jackson on June 17, 2022. Thereafter, the court scheduled a status hearing for August 8, but Jackson again failed to appear. As a result, the court again issued a warrant for Jackson's arrest, and officers arrested Jackson on September 23.

[7] On October 27, Jackson and the State entered into a plea agreement. Pursuant to the terms of the agreement, Jackson agreed to plead guilty to Counts 1 and 3, and the State agreed to seek the dismissal of the remaining charges. The parties also agreed that the sentences would run concurrently and that the initial executed portion of Jackson's sentences would not exceed four years for Count 1 and two years for Count 3. The court then held a hearing on October 31 at which Jackson admitted his guilt to Counts 1 and 3. In particular, Jackson acknowledged that he had taken the bulldozer without permission, that he had failed to stop when ordered by Officer Graham, and that he had been "intoxicated" when he committed the offenses. Tr. at 12. The court took the matter under advisement.

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[5] I.C. § 35-42-2-2 (b)(1).

[6] I.C. § 35-43-1-2(a).

[8] On November 7, while incarcerated, the Bartholomew County Jail asserted that Jackson had tampered with an electrical device and that he had possessed a "type of wick" in violation of the jail rules. Appellant's App. Vol. 2 at 58. Jackson admitted to the violations and was sanctioned to twenty-five days of lockdown. Thereafter, the court held a sentencing hearing on Jackson's guilty plea. During that hearing, Jackson admitted that he had consumed methamphetamine prior to taking the bulldozer, that he had been "the most intoxicated" he had ever been, and that he only "very faintly" remembered that night. Tr. at 23.

[9] At the conclusion of the hearing, the court accepted Jackson's guilty plea and entered judgment of conviction accordingly. The court then identified as an aggravating factor "the facts and circumstances of this case[.]" *Id*. In particular, the court noted that this was not "your run of the mill running in a car" but that it was a bulldozer "going through the community with a person who was high," which was "[e]xtremely dangerous" and put the "community at risk." *Id*. The court also identified the jail rule violation as an aggravating factor. The court then identified as a mitigator Jackson's lack of criminal history. As such, the court sentenced Jackson to concurrent sentences of three years on Count 1 and two years on Count 3. This appeal ensued.

Discussion and Decision

Issue One: Abuse of Discretion in Sentencing

[10] Jackson first contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). 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." *Gross v. State*, 22 N..3d 863, 869 (Ind. Ct. App. 2014) (citation omitted).

[11] A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 290-91 (Ind.)), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007).

[12] The sentencing range for Jackson's Level 5 felony conviction is one year to six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). And the sentencing range for his Level 6 felony conviction is six months to two and one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). However, in his plea agreement, Jackson and the State agreed to limit any executed portion of his sentence for the Level 5 felony to four years and to two

years for the Level 6 felony, to run concurrently. Thus, the maximum aggregate sentence the court could have imposed under the terms of the plea agreement was four years. And, based on its identification of aggravators and mitigators, the court sentenced Jackson to an aggregate sentence of three years.

[13] On appeal, Jackson contends that the court abused its discretion when it identified the facts and circumstances of the offense as an aggravator. Our Supreme Court has stated that, "when evaluating the nature of the offense, the trial court may properly consider the particularized circumstances of the factual elements as aggravating factors." *McElroy v. State*, 865 N.E.2d 584, 589-90 (Ind. 2007) (quotation marks omitted). Nonetheless, Jackson contends that the court's identification of the facts and circumstances of the case as an aggravator constituted an abuse of discretion because the court's characterization of the offenses as "being more severe or endangering than a high[-]speed chase" is "contrary to the actual facts" of the case. Appellant's Br. at 11. In particular, Jackson contends that the offense occurred at approximately 4:00 a.m., that he was only driving five miles per hour, and that "there is no indication that the road was busy or that other motorists were put in any actual imminent harm by Jackson's actions." *Id*. at 12.

[14] However, during the sentencing hearing, the court stated:

> I find the facts and circumstances of this case as an aggravator, in that specifically uh this was not just a, your run of the mill running in a car. Uh, like the Duke boys or something like that, this was a bulldozer, going through the community with a person who was high. Extremely dangerous circumstances, put uh, put

> our community at extreme risk. Uh thankfully Law Enforcement [had] the equipment to stop you[.]

Tr. at 33-34. Thus, it is clear that the court's concern was not the speed with which Jackson was driving or the number of people in the street.

[15] Rather, in identifying the facts of the case as an aggravator, the court relied on the fact that Jackson, while very high, stole a piece of heavy machinery and recklessly drove it through the city. While Jackson did not hurt anyone, it was clear that the trial court recognized that he easily could have. Indeed, Jackson drove a bulldozer through at least one red light, over medians, and onto sidewalks. And the fact that Jackson drove slowly or in the early hours of the morning does not negate the fact that, as the trial court found, Jackson's actions were dangerous and the potential for harm was great. We cannot say that the court abused its discretion when it identified the facts and circumstances of the case as an aggravator.[7]

Issue Two: Appropriateness of Sentence

[16] Jackson next 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

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[7] In its written sentencing order, the court stated that Jackson had driven "through an extremely busy road." Appellant's App. Vol. 2 at 71. To the extent this statement was contrary to the evidence, it is nonetheless apparent that the actual basis for the court's reliance on the facts of the case as an aggravator was the potential for harm caused by Jackson recklessly driving a bulldozer through the city streets.

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 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).

[17] 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).

[18] As discussed above, pursuant to the terms of his plea agreement, the maximum sentence the court could have imposed was four years on the Level 5 felony—two years below the maximum allowed under the statute—and two years on Count 3—one-half year below the maximum allowed by statute. And the plea agreement provided for the sentences to run concurrently, so Jackson's maximum exposure under the agreement was four years. However, after it identified aggravators and mitigators, the court sentenced Jackson to an aggregate term of three years.

[19] On appeal, Jackson contends that his sentence is inappropriate in light of the nature of the offenses because his offenses, while "unusual," were "not particularly heinous." Appellant's Br. at 14. He further argues that his "actions were a product of his intoxication, and not of some more sinister underlying intent" and that "there was no chance that [he] would successfully escape with the bulldozer in hand." *Id*. He also contends that his "flight from law enforcement occurred at around 4:00 a.m., with light traffic, and at a speed of five miles an hour." *Id*. And Jackson maintains that his sentence is inappropriate in light of his character because he has "no criminal history," he "accepted responsibility" by pleading guilty, he "stated he would not be using drugs in the future," and his failures to appear "were a product of" his living conditions. *Id*. at 15.

[20] However, Jackson has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Jackson stole a bulldozer and drove it through the streets of Columbus, through at least one red light, over medians and curbs, and into trees. In addition, Jackson had ingested methamphetamine and was the "most intoxicated" he had ever been and did not remember the events in question. Tr. at 23. Stated differently, Jackson voluntarily ingested an illegal substance, stole a piece of heavy machinery, and recklessly drove it around the city. And he repeatedly ignored officers' orders to stop. While we acknowledge that Jackson did not actually harm anyone, that does not alter the fact that he endangered anyone who may have been on the road that night. Jackson has not presented any evidence to show any restraint or regard on his part or any compelling evidence portraying the nature of the offense in a positive light. *See Stephenson*, 29 N.E.3d 111, 122.

[21] As for his character, we recognize that Jackson does not have any prior convictions. However, after the State filed its charges against Jackson, he failed to appear for two hearings, which resulted in the court issuing two different warrants for his arrest. And, in the short time between the plea hearing and sentencing, Jackson violated the rules of his placement and received twenty-five days of "lockdown time." Appellant's App. Vol. 2 at 58. In addition, by his own admission, Jackson used methamphetamine on a weekly basis, and he failed to complete an in-patient treatment program, which reflects poorly on his character. *See* Appellant's App. Vol. 2 at 65. We cannot say that Jackson's sentence is inappropriate in light of his character.

Conclusion

[22] The trial court did not abuse its discretion when it sentenced Jackson. And Jackson's three-year sentence, which was one year less than maximum he agreed to in his plea, is not inappropriate in light of the nature of the offenses or his character. We therefore affirm Jackson's sentence.

[23] Affirmed.

Tavitas, J., and Kenworthy, J., concur.