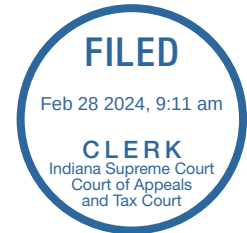


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Bertha L. Gray,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 28, 2024

Court of Appeals Case No.
23A-CR-2281

Appeal from the Allen Superior Court
The Honorable Steven O. Godfrey, Judge
Trial Court Cause No.
02D04-2210-F6-1245

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Bertha Gray appeals her sentence for resisting law enforcement as a level 6 felony and resisting law enforcement as a class A misdemeanor and claims her sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On October 8, 2023, Bryan Davis called 911 and reported that Gray had threatened to kill him and threw a knife at him.¹ An officer arrived at the scene and spoke with Davis, who informed him that Gray fled in a vehicle and had an active warrant. The officer located the vehicle, conducted a stop, the driver exited the vehicle, and Gray remained in the passenger seat. The driver then threw the keys back into the truck, and Gray moved into the driver's seat and instigated a chase with police. During the chase, she ignored a stop sign and eventually crashed in an alley, where she abandoned the vehicle and fled on foot for two blocks before she was apprehended.
- [3] On October 13, 2022, Gray was charged with Count I, resisting law enforcement as a level 6 felony; and Count II, resisting law enforcement as a class A misdemeanor. The court scheduled a jury trial for June 27, 2023. On June 27, 2023, before the court began jury selection, Gray arrived late, conferred with her attorney, and informed the court that she wished to plead

¹ On appeal, Gray cites to the probable cause affidavit.

guilty. The court questioned Gray, and she pled guilty as charged. The court scheduled a sentencing hearing for August 15, 2023.

[4] On August 15, 2023, Gray failed to appear for the scheduled sentencing hearing, and the court issued a warrant. On September 7, 2023, the court held a sentencing hearing. The court asked Gray if there was anything she would like to say, and she stated: “I apologize for the inconvenience of this Court,” “I apologize for who I became, but I don’t apologize for who I am today,” “I’m not gonna apologize for that because my son is now a DEA,” “[y]ou can choose, you can judge me all you want,” “I could’ve fled last year because this wasn’t my residence,” “I’m not perfect, and I apologize,” and “[i]t’s in God’s hands, not mine.” Transcript Volume II at 52-54. The court found the aggravating factors included Gray’s criminal history and that prior efforts at rehabilitation had failed. It found the mitigating factors included her guilty plea and her physical and mental health. The court found the aggravators outweighed the mitigators and sentenced her to two years and 183 days on Count I and one year on Count II to be served concurrently. After the court pronounced its sentence and after some discussion, Gray stated “[y]ou got this black lady up here gonna judge me,” “[h]er son is probably a dope dealer, you understand what I’m saying,” and she told the prosecutor: “I hope your son dies, your grandchild.” *Id.* at 56-57.

Discussion

[5] Gray argues that the sentence of two and one-half years is inappropriate. *Ind. Appellate Rule 7(B)* provides that we “may revise a sentence authorized by

statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

- [6] Ind. Code § 35-50-2-7(b) provides that a person who commits a level 6 felony shall be imprisoned for between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-3-2 provides that a person who commits a class A misdemeanor shall be imprisoned for not more than one year.
- [7] Our review of the nature of the offense reveals that Gray fled from officers in a vehicle and led them on a chase in which she ignored a stop sign before crashing in an alley and fleeing on foot.
- [8] Our review of the character of the offender reveals that Gray pled guilty on the day of her scheduled trial to two counts of resisting law enforcement, one as a level 6 felony and the other as a class A misdemeanor, without the benefit of a plea agreement and apologized. The presentence investigation report ("PSI") indicates Gray was born in November 1965 and reported a difficult childhood, including "suffering from physical, mental, emotional, and verbal abuse" from "various family members" and had "suffered from sexual abuse by an uncle at age 6; her stepfather at age 7; and by another uncle at age 13." Appellant's Appendix Volume II at 69. She reported that she was diagnosed with

dementia, paranoid schizophrenia, bipolar disorder, and post-traumatic stress disorder as a juvenile and that she was diagnosed with Alzheimer's Disease in 2017 or 2018. She stated that she "began using marijuana at age 10, using daily until age 18" and had stopped using marijuana at eighteen, and she reported in a PSI from 1997 that she "terminated her use of marijuana and moved onto LSD, cocaine, heroin, 'Speed,' Tylenol 3, Valium, 'Tussin,' 'Crystal T. and Blue's.'" *Id.* at 70. She stated that she previously attended alcoholics and narcotics anonymous and had not done drugs in years, but also that marijuana "is her drug of choice, using on rare occasion until her last known use in July 2023." *Id.*

- [9] The PSI indicates Gray's juvenile history includes being placed on probation in 1977 and being adjudicated delinquent as a runaway in 1982. It documents her extensive criminal history including convictions for escape, prostitution, and fleeing in 1985; theft and two counts of prostitution in 1986; prostitution and "Prostitution with Prior" as class D felonies in 1987;² criminal mischief as a class B misdemeanor and burglary as a class B felony in 1990; theft and two counts of "Theft, Receiving Stolen Property" as class D felonies in 1996; "Theft/Receiving Stolen Property" as a class D felony and battery as a class C felony in 1998; twelve counts of "Fraudulent Check of \$500 or Less," shoplifting, and petty larceny as misdemeanors in 2006; "Fraudulent Check of

² The PSI notes that the prior convictions were gathered from a prior PSI that did not always list the severity of the offenses.

\$500 or Less” and forgery as misdemeanors in 2007; “Theft/Receiving Stolen Property” as a felony in 2008; aiding auto theft as a class D felony in 2009; identity deception as a class D felony and false informing as a class B misdemeanor in 2013; unlawful use of the 911 service and criminal trespass as class A misdemeanors and disorderly conduct as a class B misdemeanor in 2015; possession of a synthetic drug or synthetic drug lookalike substance as a class A misdemeanor, possession of paraphernalia as a class C misdemeanor, and false informing as a class B misdemeanor in 2016; possession of a synthetic drug or synthetic drug lookalike substance as a class A misdemeanor in 2017; two counts of theft as level 6 felonies and one count of battery as a class B misdemeanor in 2018; and operating a motor vehicle without ever receiving a license as a class C misdemeanor and conversion as a class A misdemeanor in 2022. *Id.* at 62-65. She had her parole revoked in February and December 2013 and had her probation revoked in 2010 and 2014.

[10] After due consideration, and in light of her extensive criminal record, we conclude that Gray has not sustained her burden of establishing that her concurrent aggregate sentence of two and one-half years is inappropriate.

[11] For the foregoing reasons, we affirm Gray’s sentence.

[12] Affirmed.

Riley, J., and Foley, J., concur.

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