MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jerry W. Allred,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 14, 2023

Court of Appeals Case No. 23A-CR-109

Appeal from the Henry County Circuit Court

The Honorable Kit C. Dean Crane, Judge

Trial Court Cause No. 33C02-2111-MR-1

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Jerry Wyman Allred appeals his thirty-year sentence for Level 2 felony voluntary manslaughter.[1] Allred argues his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

Facts and Procedural History

[2] Allred lived with his parents,[2] Willard and Wilma Allred, and his two granddaughters: fourteen-year-old V.H. and five-year-old I.H. (collectively "the Girls"). Willard and Wilma have guardianship over the Girls because of their parents' substance abuse issues. Late in the evening on November 22, 2021, Misty Hatton ("Misty"), who is Allred's daughter and the Girls' mother, was visiting the Girls in their bedroom. The Girls' father, Richard Hatton Jr. ("Hatton"), called to ask if he could visit, and Willard told him that he could not come over because it was too late to visit. Misty invited Hatton over anyway. Hatton arrived and went into the Girls' bedroom to watch television with Misty and the Girls. While there, Hatton told V.H. that she "looked like a whore, and [is] acting like one." (Tr. Vol. 3 at 41.) V.H. yelled at Hatton and told him to leave. Willard heard V.H. yelling, walked to the Girls' bedroom, and told Hatton that he needed to visit at a more "decent hour" because it was a school night and everyone was getting ready for bed. (*Id.* at 16.)

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[1] Ind. Code § 35-42-1-3(a).

[2] Allred lived with his parents "on and off[,]" (Tr. Vol. 3 at 73), and was staying with them on the night in question.

[3] Hatton followed Willard to the living room, and Willard told Hatton to leave or he would call the police. Allred, who was lying down on the floor in the living room at the time, heard Hatton tell Willard that Hatton loves him more than Willard's own sons do, which "ticked [Allred] off." (*Id.*) Hatton and Allred began fighting in front of Willard, Misty, and Wilma. V.H. heard "a loud thud" and followed the sound out to the living room.[3] (*Id.* at 47.)

[4] Hatton put Allred in a headlock and hit him on the head. Allred pulled out a knife and wounded Hatton four times – one puncture wound to the "upper left body near the nipple[,]" one puncture wound to the left thigh, and two puncture wounds to the right thigh. (App. Vol. 2 at 27.) Willard yelled at the two men to stop. Hatton walked from the living room to the laundry room, where he collapsed. After seeing the extent of Hatton's bleeding, Misty yelled "you've killed him, you've killed him." (Tr. Vol. 3 at 17.) Allred responded, "[w]ell, look what he did to me? Him hitting me." (*Id.* at 25.) Willard called 911 while V.H. compressed Hatton's inner right thigh wound, trying to get the bleeding to stop. Allred did not attempt to render aid to Hatton. The autopsy revealed the wound to Hatton's inner right thigh severed his femoral artery, causing him to bleed out.

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[3] The record is unclear regarding whether I.H., aged five, witnessed the altercation between Allred and Hatton. We know I.H. was in the home but do not know if she followed V.H. to the living room.

[5] The State charged Allred with murder,[4] Level 5 felony reckless homicide[5] as a lesser included offense of murder, and Level 2 felony voluntary manslaughter. On November 17, 2022, a jury found Allred not guilty of murder but guilty of Level 5 felony reckless homicide and Level 2 felony voluntary manslaughter. The trial court merged the reckless homicide finding with the voluntary manslaughter finding and entered a conviction of only Level 2 felony voluntary manslaughter. After a sentencing hearing, the trial court found Allred's criminal history and his violent crime "knowingly committed in presence of person less than 18" as aggravating circumstances. (App. Vol. 2 at 144.) The trial court considered but did not find Allred's PTSD, traumatic brain injury, and post-concussive brain injury diagnosis as mitigating circumstances. The trial court sentenced Allred to thirty years in the Indiana Department of Correction.

Discussion and Decision

[6] Allred contends his thirty-year sentence is inappropriate given the nature of his offense and his character. We evaluate inappropriate sentence claims using a well-settled standard of review. Our Indiana Supreme Court has stated:

> The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. Ind. Const. art. 7, §§ 4, 6; *Serino v. State*, 798 N.E.2d 852, 856 (Ind. 2003). This

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[4] Ind. Code § 35-42-1-1(1).

[5] Ind. Code § 35-42-1-5.

> authority is implemented through Indiana Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender. *Serino*, 798 N.E.2d at 856. The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The burden is on the defendant to persuade the reviewing court that the sentence is inappropriate. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

Robinson v. State, 91 N.E.3d 574, 577 (Ind. 2018) (per curiam).

[7] When considering the nature of the offense, we first look to the advisory sentence for the crime. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007) (regarding guilty plea as mitigator). Allred was convicted of a Level 2 felony. Indiana Code section 35-50-2-4.5 states: "A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17 1/2) years." Thus, the trial court imposed the maximum sentence statutorily allowed.

[8] When determining if a sentence that deviates from the advisory sentence is inappropriate, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Allred contends the nature of his offense does not merit the maximum sentence

because Hatton was drunk and "hurled a particularly hurtful insult at [him], and [Hatton] overtook [him] by placing him in a headlock and cutting off his airway." (Appellant's Br. at 10.) The jury rejected Allred's claim of self-defense, and we agree with the trial court's determination that the evidence is not "indicative of strong provocation warranting the Court to consider that as a mitigating circumstance." (Tr. Vol. 5 at 14.) Allred's act of repeatedly stabbing Hatton was a dramatically disproportionate response to Hatton's behavior. Allred stabbed Hatton four times. Dr. Jolene Clouse performed Hatton's autopsy and testified that the initial stab wound to the chest broke Hatton's fourth rib. (Tr. Vol. 4 at 22.) The second stab wound to Hatton's right thigh "lacerated the right femoral artery and vein" and extended "[a]pproximately three-and-a-half-inches into the thigh." (*Id.* at 24.) The third stab wound, also to Hatton's right thigh, injured no vital structures but was "[a]pproximately two inches" deep. (*Id.*) The fourth stab wound to Hatton's left thigh "did not involve any vital structures" . . . and was "[a]pproximately two inches" deep. (*Id.*)

[9] Moreover, Hatton's then-fourteen-year-old daughter, V.H., was present during the crime and watched her father die. Allred did not attempt to provide aid to Hatton, leaving V.H. to attempt to stop the bleeding while Willard called 911. Based thereon, we cannot say Allred's sentence is inappropriate based on the nature of his offense. *See Eversole v. State*, 873 N.E.2d 1111, 1114 (Ind. Ct. App. 2007) (maximum sentence not inappropriate because crime was "extreme under

the circumstances" considering there was very little provocation and a violent reaction), *trans. denied.*

[10] Allred also contends his sentence is inappropriate in light of his character. When assessing the defendant's character, we first consider the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). "The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id.* Allred has an extensive criminal history spanning three decades. Allred has at least ten felony convictions[6] and five misdemeanor convictions[7] in Indiana.

[11] In addition, Allred has had numerous other contacts with the criminal justice system. For example, Allred attempted community corrections or treatment in

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[6] In 1991, Allred was convicted of Class C felony burglary, Class D felony operating a vehicle while intoxicated – defendant has a prior conviction within the last five years, and Class D felony operating a vehicle while intoxicated. Allred initially entered a guilty plea to receive treatment instead of sentencing, but that was revoked and Allred was sentenced to the Indiana Department of Correction. In 1992, Allred was convicted of Class D felony operating a vehicle while intoxicated – defendant has a prior conviction within the last five years. In 1993, Allred was convicted of Class D felony operating a vehicle while intoxicated – defendant has a prior conviction within the last five years. Also in 1993, Allred was convicted of Class D felony operating a vehicle while intoxicated – defendant has a prior conviction within the last five years. Allred initially entered a guilty plea to receive Community Corrections instead of sentencing, but that was revoked, and Allred was sentenced to house arrest. Later in 1993, Allred was convicted of Class D felony operating a vehicle while intoxicated – defendant has a prior conviction within the last five years. Community Corrections was attempted again, but it was revoked, and Allred was sentenced to Tippecanoe County Jail. In 1994, Allred was convicted of Class D felony intimidation and Class C felony battery committed by means of a deadly weapon, with the victim being his wife, P.A. Allred was also convicted of Class D felony battery resulting in bodily injury, with the victim being a law enforcement officer.

[7] In 1988, Allred was convicted of Class A misdemeanor operating a vehicle while intoxicated. In 1992, Allred was convicted of Class B misdemeanor public intoxication and Class A misdemeanor operating a vehicle while intoxicated, endangering another person. In 1993, Allred was convicted of Class B misdemeanor battery, with the victim being his wife, P.A. In 2021, Allred was convicted of Class B misdemeanor leaving the scene of an accident.

lieu of sentencing three times, but the placement was revoked each time. Allred "absconded from Indiana parole" (App. Vol. 2 at 162) and moved to Michigan in the early 2000s. While in Michigan, Allred assumed his brother's identity and accumulated charges in Michigan[8] before returning to Indiana. Allred received four separate probation terms in Michigan but continued to commit offenses while on probation. Allred has an extensive history of dismissed offenses.[9] Allred also was arrested three or four times for public intoxication as a juvenile and was "was arrested for OVWI once when he was 17 years old." (App. Vol. 2 at 160.) *See Cotto v. State,* 829 N.E.2d 520, 526 (Ind. 2005) a lengthy arrest record is relevant to the court's assessment of character because it reveals police authority was not a deterrent to future crimes).

[12] Wilma told the police that this was not the first time Hatton and Allred fought. Allred has a history of harming family members and loved ones, including his father, his wife, and his girlfriend in Michigan. Furthermore, this was not Allred's first charge involving a knife – in 1995, Allred was convicted of Class C felony battery with a deadly weapon after he cut his wife, P.A., with a knife. (App. Vol. 2 at 158.) Allred's continued criminal behavior, even after repeated

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[8] While in Michigan, Allred was convicted of operating while under the influence, domestic violence against an unnamed girlfriend, operating under the influence of intoxicating liquor, operating under the influence of intoxicating liquor – 2nd offense, flee and elude – fourth degree, unlicensed/license not valid, operating under the influence of intoxicating liquor – 3rd offense, perjury and habitual offender – 2nd offense notice, two counts of controlled substances – dealing and manufacturing (schedule 1, 2, & 3 except Marijuana), and driving with a suspended license. The record is unclear whether each charge was a misdemeanor or felony.

[9] Most notably, in 1990, Allred was charged with Class D felony criminal recklessness with a deadly weapon after shooting his father with a 12-guage shot gun, leaving his father in critical condition. Both parties had been drinking and the "[c]ase was reportedly dismissed at victim's request." (App. Vol. 2 at 155.)

contacts with the justice system in two states, reflects poorly on his character. *See*, *e.g.*, *Weiss v. State*, 848 N.E.2d 1070, 1073 (Ind. 2006) (holding defendant's sentence was not inappropriate because "[h]is repeated contacts with the criminal justice system have had no impact on persuading him to reform"). We cannot say that Allred's sentence is inappropriate in light of his character. *See*, *e.g.*, *Murray v. State*, 182 N.E.3d 270, 279 (Ind. Ct. App. 2022) (sentence not inappropriate considering defendant's extensive criminal record and "repeated failures to abide by the terms of probation and home detention").

Conclusion

[13] Allred's sentence was not inappropriate based on the nature of his offense and his character. Accordingly, we affirm Allred's thirty-year sentence for Level 2 felony voluntary manslaughter.

[14] Affirmed.

Altice, C.J., and Foley, J., concur.