

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher T. Chance,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 19, 2021

Court of Appeals Case No.
21A-CR-1068

Appeal from the Ripley Circuit
Court

The Honorable Ryan J. King, Judge

Trial Court Cause Nos.
69C01-2010-F5-10
69C01-1910-F4-10

Friedlander, Senior Judge.

[1] Christopher T. Chance appeals the twenty-year sentence the trial court imposed after he pleaded guilty to two counts of burglary in one case and a third count of burglary in a second case. He asks the Court to exercise its constitutional

authority to revise his sentence. We affirm the trial court's judgment because Chance's sentence is not inappropriate.

- [2] Chance was placed on probation in late July 2019. On August 2, 2019, a police officer was dispatched to a church in Milan, Ripley County, to investigate a reported burglary. The officer spoke with a member of the congregation and determined that the burglar had entered through a window in a stairwell and that two laptop computers and two tablet computers had been stolen. A nearby business gave the officer recordings of surveillance camera videos. The officer learned that a person, later identified as Chance, had entered the church via the stairwell and stayed inside for several hours. Chance then carried several items out of the church and hid them under nearby bushes before leaving the scene. Later, Chance returned to the church and retrieved the items.
- [3] On the afternoon of October 3, 2019, a homeowner returned from work to his home in rural Ripley County, where he discovered Chance in his kitchen. Chance was eating the homeowner's food and wearing his clothing. Chance told the homeowner his name and claimed to have entered the home through an unlocked side door under the mistaken belief that it was a friend's house. The homeowner told Chance to remove the stolen items of clothing and took a picture of him. He then escorted Chance out of the house and called 911. Subsequent investigation revealed that all of the home's doors were locked, but a window had been opened.

- [4] On October 25, 2019, the State opened Case Number 69C01-1910-F4-10 (“F4-10”), charging Chance with Level 4 felony burglary of a dwelling (the home) and Level 5 felony burglary of a structure (the church). The State also filed an habitual offender sentencing enhancement.
- [5] Meanwhile, on October 3, 2019, an officer was dispatched to a different home in rural Ripley County to investigate a reported burglary. The officer spoke with the homeowners, who stated that someone had entered their pole barn and removed some items. The homeowners further discovered that someone had entered their car, which was parked outside. Chance was later arrested and prints from the boots that he was wearing matched a boot print found outside the barn. Officers also found a bag that contained property that was stolen from the barn, along with a notebook that bore Chance’s name. On October 27, 2020, the State opened Case Number 69C01-2010-F5-10 (“F5-10”), charging Chance with Level 5 felony burglary of a structure and Level 6 felony unauthorized entry of a motor vehicle.
- [6] The State and Chance negotiated a plea agreement for F4-10 and F5-10. In F4-10, Chance agreed to plead guilty to both counts of burglary, and the State agreed to dismiss the habitual offender enhancement. In F5-10, Chance agreed to plead guilty to burglary, and the State agreed to dismiss the count of unauthorized entry of a vehicle. Chance further agreed to admit to a probation violation in a prior case, in which his period of probation would be terminated. In F4-10 and F5-10, the parties left sentencing to the trial court’s discretion,

with the understanding that the court could order concurrent or consecutive sentences on all three counts.

[7] The trial court accepted the parties' plea agreement. In F4-10, the trial court sentenced Chance to ten years on the Level 4 felony and five years on the Level 5 felony, to be served consecutively. In F5-10, the trial court imposed five years on the Level 5 felony, to be served consecutively to sentence in F4-10, for an aggregate sentence of twenty years. This appeal followed.

[8] Chance asks the Court to reduce his sentence to an amount "closer to the advisory sentence." Appellant's Br. p. 16. Article 7, section 6 of the Indiana Constitution authorizes the Court to review and revise criminal sentences. This constitutional authority is carried out under Indiana Appellate Rule 7(B), which states the Court may revise a sentence "if, after due consideration of 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."

[9] A trial court's sentencing judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). As a result, the Court's principal role when addressing an Appellate Rule 7(B) claim is to "attempt to leaven the outliers" rather than to achieve a perceived correct result in each case. *Id.* at 1225. We consider not only the aggravators and mitigators considered by the trial court, but also any other factors appearing in the record. *Pelissier v. State*, 122 N.E.3d 983 (Ind. Ct. App. 2019), *trans. denied*. The

appellant bears the burden of persuading the Court that the sentence is inappropriate. *Id.*

[10] At the time Chance committed his offenses of Level 4 felony burglary and two counts of Level 5 felony burglary, the maximum sentence for a Level 4 felony was twelve years, the minimum sentence was two years, and the advisory sentence was six years. Ind. Code § 35-50-2-5.5 (2014). The maximum sentence for a Level 5 felony was six years, the minimum sentence was one year, and the advisory sentence was three years. Ind. Code § 35-50-2-6 (2014). Chance received sentences of ten years for the Level 4 felony, and five years for each Level 5 felony, to be served consecutively, for a total of twenty years. The sentence for each offense was above the advisory but, in the aggregate, short of the maximum possible sentence of twenty-four years.

[11] Turning to the nature of the offenses, Chance argues that nothing about them was “more egregious than the average burglary offense.” Appellant’s Br. p. 11. We disagree. In F4-10, security camera recordings demonstrate that Chance spent several hours inside the church before carrying out numerous items, hiding them under a bush, and leaving the scene, only to return several hours later to retrieve them. He had ample opportunity to reconsider and abandon his criminal conduct, but he continued. As for the circumstances of F5-10, he entered multiple structures and vehicles on the property, not just the barn and car described in the charges. In addition, Chance returned to the property a day after the burglary was reported, possibly to commit additional crimes. Further,

Chance had been placed on probation shortly before burglarizing the church at issue in F4-10.

[12] Chance notes that he did not threaten or commit violence in connection with any of his offenses, but the absence of violence was already taken into consideration in the charges. If Chance had committed violence during any of the burglaries, he would have been charged with more severe crimes. *See* Ind. Code § 35-43-2-1 (2014) (burglary that results in bodily injury is a Level 2 or 3 felony, depending upon the degree of harm inflicted).

[13] As for the character of the offender, Chance was fifty-one years old at sentencing. His criminal record is extensive, consisting of eight prior felony convictions and fourteen prior misdemeanor convictions. The felony convictions include burglary, receiving stolen auto parts, several charges of domestic battery, and criminal mischief. It reflects poorly on Chance that his numerous past encounters with the justice system have not deterred him from committing additional crimes. In addition, Chance has been put on probation nine times, including during the period of time in which he committed the offenses at issue here, and he violated the terms of his probation six times.

[14] Chance has two children, but he did not have custody of either child at the time the charges were filed and is not subject to a court order to pay child support. In addition, he has a minimal work history, which he attributes to physical disability and substance abuse issues. Chance argues that he is ready to seek treatment for his substance abuse issues, which he claims developed “within the

past few years.” Appellant’s Br. p. 14. The record reflects that he first committed an offense involving a controlled substance in 1995, and he admitted to committing several alcohol-related offenses in his youth, so his substance abuse issues appear to be more longstanding in nature. In any event, Chance admitted that he has used controlled substances since at least 2018, and he did not seek help before committing the offenses at issue. He has failed to convince us that his sentence is an outlier in need of correction under Appellate Rule 7(B).

[15] For the reasons stated above, we affirm the judgment of the trial court.

[16] Judgment affirmed.

Bradford, C.J., and Robb, J., concur.