MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Noah Wells,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 31, 2023

Court of Appeals Case No. 23A-CR-174

Appeal from the Hendricks Circuit Court

The Honorable Daniel F. Zielinski, Judge

Trial Court Cause No. 32C01-2201-F4-1

Memorandum Decision by Judge Bailey
Judges Tavitas and Kenworthy concur.

Bailey, Judge.

Case Summary

[1] Noah Wells appeals his aggregate eighteen-year sentence following his guilty plea to two counts of operating a vehicle with an alcohol concentration equivalent ("ACE") to at least 0.08 gram of alcohol per 100 milliliters of blood, causing death, each a Level 4 felony.[1] Wells raises one issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] At approximately 5:30 p.m. on December 6, 2021, twenty-year-old Wells was driving seventy-five miles per hour in a forty mile-per-hour zone when he "lost control" of his car. Tr. at 40. Wells struck a vehicle that was driven by Bryce King and in which Abigail Scheibelhut was a passenger. The "bare minimum" that Wells was traveling at the time of impact was sixty-seven miles per hour. *Id*. Wells sustained minor injuries, but King died instantly, and Scheibelhut died in route to the hospital.

[3] Officers transported Wells to the hospital. After he arrived, hospital personnel drew Wells' blood. The results demonstrated that Wells had a blood alcohol concentration of 0.189. Officers then obtained a search warrant to perform a subsequent test of his blood. The second blood draw occurred at 8:19 p.m. and

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[1] Ind. Code § 9-30-5-5 (2022).

showed a blood alcohol concentration of 0.12. Officers subsequently arrested Wells, and the State charged him with two counts of operating a vehicle with an ACE to at least 0.08 per 100 milliliters of blood causing death, each a Level 4 felony.

[4] While Wells was incarcerated, officers listened to "numerous" phone calls between Wells and his mother. During these calls, Wells stated that "this didn't seem [to be] a big deal" and that "this kind of thin[g] happens every day in the U.S." *Id*. at 43. He also said that he "couldn't understand why he was in jail[.]" *Id*. Based on those conversations, officers believed that Wells "did not express remorse." *Id*. at 45.

[5] Wells pleaded guilty as charged without a plea agreement, and the court entered judgment of conviction accordingly. Following a sentencing hearing, the court identified as aggravating Well's history of delinquent behavior, that he had engaged in the "criminal behavior of drinking," that he is a "danger to himself and others," and that he did not show remorse. Appellant's App. Vol. 3 at 228. And the court identified as mitigating the fact that Wells had pleaded guilty, which saved "the family a trial[.]" *Id*. The court found that the aggravators outweighed the mitigator and sentenced Wells to consecutive terms of nine years for each count, for an aggregate sentence of eighteen years in the Department of Correction. This appeal ensued.

Discussion and Decision

[6] Wells 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 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 recently 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).

[7] 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).

[8] The sentencing range for a Level 4 felony conviction is two years to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5 (2022). Following a sentencing hearing, the court identified as aggravating factors Wells' history of delinquent behavior, that he had engaged in the "criminal behavior of drinking," that he is a "danger to himself and others," and that he did not show remorse. Appellant's App. Vol. 3 at 228. And the court identified as mitigating the fact that Wells had pleaded guilty. The court found that the aggravators outweighed the mitigator and sentenced him to nine years on each count to run consecutive, for an aggregate sentence of eighteen years.

[9] On appeal, Wells "concedes that consecutive sentences were appropriate." Appellant's Br. at 9 n.2. However, he contends that the imposition of "enhanced nine-year sentences" on each count was inappropriate in light of the nature of the offenses because, while "senseless and tragic," there is nothing to "show that there was anything more egregious about the present offenses that would distinguish it from a typical case of drunk driving resulting in death." *Id.* at 9-10. And he contends that his sentence is inappropriate in light of his character because he has "struggled" with mental health problems, which "have

some bearing on [his] substance abuse problems[.]" *Id*. at 14. He maintains that, "if his substance abuse is under control, there is no reason to believe [he] is dangerous." *Id*.

[10] However, Wells has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Wells, at only twenty years old, had a blood alcohol level well over the legal limit when he chose to operate his vehicle. Indeed, by the time the officers obtained a warrant for a blood test three hours after the incident, his blood alcohol concentration was still 0.12. In other words, Wells not only illegally consumed alcohol, but he drank to excess and then drove his car. Further, Wells was going almost twice the speed limit when he lost control of his car, and he was driving at least twenty-seven miles per hour above the limit when he crashed into the car occupied by Scheibelhut and King. Wells has not presented any evidence to show any restraint or regard on his part. He has therefore not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.3d at 122.

[11] As for his character, Wells was twenty-one years old at the time the court sentenced him. At that young age, Wells had already been adjudicated a juvenile delinquent for having operated a vehicle while intoxicated endangering a person. But despite the prior adjudication and corresponding punishment for a similar offense, Wells continued to illegally consume alcohol and drive his car while intoxicated, which reflects poorly on his character. Further, as the trial court found, Wells had conversations with mother while incarcerated that

demonstrated that he did not show any remorse for his actions that resulted in the death of two individuals. Wells has not presented compelling evidence of substantial virtuous traits or persistent examples of good character. We therefore cannot say that Wells' sentence is inappropriate in light of his character.

[12] In sum, Wells' aggregate eighteen-year sentence in not inappropriate in light of the nature of the offenses or his character. We therefore affirm his sentence.

[13] Affirmed.

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