ATTORNEY FOR APPELLANT

David W. Stone IV
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Evan Matthew Comer
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Orlando Terrill Sutton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 20, 2022

Court of Appeals Case No. 21A-CR-996

Appeal from the Madison Circuit Court

The Honorable Andrew R. Hopper, Judge

Trial Court Cause No. 48C03-1808-MR-2096

Baker, Senior Judge.

Statement of the Case

[1] Orlando Terrill Sutton and an acquaintance shot two people during a marijuana deal, killing Bryce Patterson and injuring Micheal Kincade. Sutton appeals the eighty-five-year aggregate sentence the trial court imposed after a jury determined

he was guilty of murder, a felony,[1] and attempted murder, a Level 1 felony.[2] We affirm.

Issues

[2] Sutton raises two issues, which we restate as:

I. Whether the trial court abused its discretion in the course of identifying aggravating and mitigating sentencing circumstances.

II. Whether Sutton's sentence is inappropriate in light of the nature of the offenses and Sutton's character.

Facts and Procedural History

[3] Sutton used to date Ryan Green's sister, and Green had met him several times when Sutton visited Green's parents' house. On August 18, 2018, Green was at home in Pendleton, Indiana, when he received a message from Sutton, via a social media app, asking if Green knew how "to get any weed." Tr. Vol. I, p. 153. Green contacted his brother, Micheal[3] Kincade, who offered to sell a quarter pound of marijuana to Sutton for $550. Green conveyed the offer to Sutton, who accepted it. Sutton gave Green an address in Anderson, Indiana, where Green and Kincade could meet him and conduct the deal.

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[1] Ind. Code § 35-42-1-1 (2018).

[2] Ind. Code §§ 35-42-1-1, 35-41-5-1 (2014).

[3] The record contains several different spellings of Kincade's first name. We use the spelling Kincade provided when he testified at trial.

[4] Next, Kincade arrived at Green's home with his then-girlfriend, Makenzie Ford, and the marijuana, which he had concealed. Neither Green nor Kincade had told Ford about the marijuana transaction. None of the trio were armed. They traveled to Anderson in Green's car, a black Volkswagen Jetta, with Kincade driving. Green texted Sutton when they arrived at the address Sutton had provided, which was located in a residential neighborhood.

[5] Sutton and a man later identified as Michael Fleming walked out of an alley and approached the car. Kincade and Ford did not know Sutton, and Green, Kincade, and Ford did not know Fleming. Sutton and Fleming both got in the car, and Sutton said he needed to go to an ATM to get money.

[6] Kincade drove a short distance to a gas station, where an ATM was located inside the store. The gas station had surveillance cameras inside the store, and other cameras covered the gas pumps and parking lot. Upon arriving, Green noticed that one of his car's tires was flat. Kincade drove over to an air pump, while Green and Sutton entered the store. Green got change for the air pump. Surveillance camera footage revealed that Sutton approached the ATM but did not withdraw any money.

[7] Green and Kincade discovered that the tire was too damaged to reinflate. In addition, Green's rims had wheel locks that required a specific tool to unlock and remove the wheels. Green's friend, Bryce Patterson, had the required tool. Green first called his friend Jason Stephens, who lived in the area, in hopes that he could

bypass the wheel lock. Stephens arrived and tried to remove the tire, but he was unsuccessful. Green next called Patterson, who agreed to bring the tool to Green.

[8] Approximately one hour later, Patterson arrived at the gas station in a white Volkswagen Jetta. Patterson was accompanied by his cousin, Dorien Patterson ("Dorien"). Dorien, who was under eighteen years of age, knew Sutton from past encounters, and he had heard of Fleming through social media. Neither Patterson nor Dorien knew about the marijuana deal, and neither of them were armed. As Patterson and Dorien pulled up, Kincade heard Sutton and Fleming talking to one another. Sutton told Fleming, "[I]t looks like [Patterson] has money." Tr. Vol. II, p. 52.

[9] Night had fallen by this time, and the marijuana deal had not yet been completed. The group removed the flat tire from Green's car and replaced it with a spare tire. Stephens left to go home. Patterson and Dorien stated that they would follow Green back to his home in Pendleton to ensure he did not have any problems with the spare tire, but Green indicated that he first needed to drive Sutton and Fleming back to where he had met them. Sutton and Fleming got into Green's car. Meanwhile, Kincade and Ford got into the back seat of Patterson's car, with Kincade sitting behind the driver's seat, still carrying the marijuana. Patterson sat in the driver's seat, and Dorien was in the front passenger seat. Patterson followed Green as he drove back to the residential neighborhood where Green, Kincade, and Ford had originally met Sutton and Fleming. Patterson parked his car behind Green's car.

[10] Sutton and Fleming got out of Green's car and walked down the alley from which they had first appeared. While they were out of everyone's sight, Green approached Patterson's car and told him he had a bad feeling about the situation, before returning to his own car. Green then texted Patterson, "[w]hen I leave, be right behind me." Tr. Vol. I, p. 189.

[11] Sutton and Fleming returned about five minutes later, walking up to the driver's side of Patterson's car. They stood by Kincade's open window, with Sutton closer to the front of the car and Fleming closer to the rear.

[12] Inside the car, Kincade was holding the marijuana as Sutton and Fleming approached. Both Kincade and Dorien saw Fleming brandish a handgun, and Kincade also saw Sutton holding a handgun. Fleming pointed his gun at Kincade, and Kincade heard Sutton say, "Give me everything you got." Tr. Vol. II, p. 21. Dorien and Kincade both ducked. Next, Dorien, Kincade, and Ford heard multiple gunshots, and Kincade was shot in his left arm. Another shot passed through Patterson's headrest from back to front and entered the back of his head.

[13] Meanwhile, Green also heard the gunshots, and he and saw flashes of light from the guns' barrels as he looked back at Patterson's car through his rearview mirror. Next, Sutton ran by Green's car holding a handgun. Sutton shot at Green as he ran away. Green drove away, but he soon turned around and drove back. He discovered that Kincade had been shot in the arm, and Patterson was slumped over, unresponsive, with a bleeding wound to the back of his head. Kincade noticed that his marijuana was missing.

[14] Several nearby residents called the police, and at 9:51 p.m., police officers were dispatched to the scene. When the officers arrived, Green and Dorien were moving Patterson to the back seat of his car to drive him to the hospital. Patterson's eyes were open, and he was breathing, but he was nonresponsive. Medics took Patterson and Kincade to a hospital in Anderson. Hospital staff treated Kincade's arm injury. Patterson was later transported to a hospital in Indianapolis, where he died from the gunshot wound.

[15] Officer Bert Chambers of the Anderson Police Department was among the officers who arrived at the scene. He is a trained crime scene technician. Officer Chambers and other officers found shell casings outside Patterson's car, as well as a trail of blood droplets leading away from the car.

[16] Meanwhile, Stephens had arrived at the scene after Green called him. The officers interviewed Green, who identified Sutton as one of the shooters. Based on this information, officers prepared a photographic array that included Sutton, and they showed the array to several witnesses that night. Green, Ford, Kincade, and Stephens each separately identified Sutton in the photographic array.

[17] Later that same night, Sutton and Fleming arrived at Cassondra Woods' house, which was also in Anderson. Sutton was friends with Woods' children. Woods let Sutton and Fleming inside her home. Sutton told her that someone had shot at them, and he had been grazed by a bullet. He showed Woods a wound in his leg, and she urged him to go to the hospital.

[18] The next day, Green examined his car and discovered a bullet hole in the driver's side door frame, near the windshield. He notified the police. Officers came to his home to inspect his car, and they retrieved an intact bullet from the car's dashboard.

[19] Meanwhile, Green had investigated Sutton's contacts on his social media accounts, and he recognized a picture of Fleming. He shared his discovery with the police. In addition, one of Patterson's relatives called one of the detectives investigating the case and asked him to look at Michael Fleming's social media accounts. Based on this information, officers prepared a photographic array that included Michael Fleming. Dorien and Ford separately identified Fleming. At the same time, Dorien also recognized Sutton in a different photographic array.

[20] On August 21, 2018, the police requested and obtained arrest warrants for Sutton and Fleming. Sutton arrived at the Anderson Police Department that same day. He had a gunshot injury to his right thigh. Detectives arranged for Sutton to be transported by ambulance to the hospital. A doctor diagnosed him with a gunshot wound that had passed through the soft tissue of his right thigh, on the outside of the leg. Sutton told nurses that the wound was "self-inflicted." Tr. Vol. III, p. 141.

[21] The firearms that Sutton and Fleming used were never recovered. Forensic examination of the shell casings that were found at the scene confirmed that two different forty caliber handguns were used, but the forensic examiner was not able to link any bullet fragments found in Patterson's car or his body to specific shell casings.

[22] The State charged Sutton with murder, a felony; murder while committing or attempting to commit a robbery, a felony; attempted murder, a Level 1 felony; and two counts of attempted robbery, one as a Level 2 felony and the other as a Level 3 felony. Early in the case, Sutton filed a notice of intent to raise a claim of self-defense, but during trial he informed the judge he no longer intended to raise that defense. The jury determined he was guilty as charged. The trial court vacated one count of murder and both counts of attempted robbery on double jeopardy grounds and imposed a total sentence of eighty-five years for Sutton's convictions of murder and attempted murder. This appeal followed.

Discussion and Decision

I. The Trial Court Did Not Abuse Its Sentencing Discretion

[23] Sutton claims the trial court erred in the course of identifying aggravating and mitigating sentencing circumstances. In general, a trial court's sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). 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. *Williams v. State*, 997 N.E.2d 1154, 1163 (Ind. Ct. App. 2013).

[24] When a trial court enters a sentence for a felony conviction, the court must issue a statement of the court's reasons for selecting that sentence unless the court imposes the advisory sentence. Ind. Code § 35-38-1-1.3 (2014). Indiana Code section 35-

38-1-7.1 (2019) provides a nonexclusive list of aggravating circumstances and mitigating circumstances that a trial court may consider. With respect to aggravating and mitigating circumstances, a trial court may abuse its sentencing discretion by:

> entering 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, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Anglemyer, 868 N.E.2d at 490-91.

[25] Sutton first argues the trial court erroneously identified as an aggravating circumstance that he had multiple prior encounters with law enforcement. We disagree with his reading of the record. The trial court identified four aggravating factors: (1) Sutton was on bond for a misdemeanor charge of possession of a handgun without a license when he committed the current offenses; (2) Sutton committed the offenses in the presence of a minor; (3) there were multiple victims; and (4) the nature and circumstances of the offenses "displays a callousness towards human life." Tr. Vol. VI, p. 49. The trial court cited Sutton's past experience with law enforcement only to explain why it chose to give less weight to the sole mitigating factor in this case, Sutton's minimal criminal history. We do not review the relative weight the trial court assigns to aggravating and mitigating factors. *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*.

[26] Next, Sutton argues the trial court overlooked mitigating circumstances that were clearly supported by the record, specifically his remorse and his "positive character

traits." Appellant's Br. p. 13. A trial court is not obligated to accept as mitigating each of the circumstances set forth by the defendant. *Green v. State*, 65 N.E.3d 620, 636 (Ind. Ct. App. 2016), *trans. denied*. On appeal, a defendant who claims the trial court erroneously overlooked mitigating circumstances bears the burden of establishing that the mitigating evidence is both significant and clearly supported by the record. *Id.*

[27] Sutton did not argue remorse as a mitigating factor during sentencing,[4] so we need not consider that issue further. *See McSchooler v. State*, 15 N.E.3d 678, 684 (Ind. Ct. App. 2014) (appellant waived appellate review of mitigating sentencing circumstances by failing to present them to the trial court). Waiver notwithstanding, Sutton did generally apologize at sentencing "about what happened." Tr. Vol. VI, p. 39. But he also dodged responsibility for Patterson's death and Kincade's injury, claiming "we did not shoot first. I promise you that." *Id.* At best, the record is mixed as to Sutton's remorse.

[28] As for Sutton's character, he presented to the trial court numerous witnesses and letters discussing positive aspects of his character and life, and he argued that a minimal sentence, followed by probation, was appropriate. The trial court determined that his actions on the night of August 18, 2018 displayed "callousness towards human life," Tr. Vol. VI, p. 49, effectively disagreeing with the evidence of

[4] Sutton also filed a sentencing memorandum prior to the hearing. The copy Sutton has included in his Appellant's Appendix appears to be incomplete, and pages from his pretrial motion in limine have been mixed in with the memorandum.

Sutton's positive character. The evidence most favorable to the jury's verdict shows that, despite the many kind things Sutton did for family and friends, on the night in question he took Patterson's life and attempted to take Kincade's. The trial court did not abuse its sentencing discretion.

II. Sutton's Sentence is Not Inappropriate

[29] Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of sentencing decisions. *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019) (citing Indiana Constitution article 7, sections 4 and 6). This sentencing authority is implemented through Indiana Appellate Rule 7(B), which provides that we "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."

[30] The principal role of sentencing review under Rule 7(B) is to attempt to leaven the outliers. *Shepherd v. State*, 157 N.E.3d 1209, 1224 (Ind. Ct. App. 2020), *trans. denied*. The defendant bears the burden of persuading the reviewing court that the sentence imposed is inappropriate. *Id.* Our review under Indiana Appellate Rule 7(B) is "very deferential to the trial court." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012).

[31] At the time Sutton committed his offenses, the maximum sentence for murder was sixty-five years, the minimum sentence was forty-five years, and the advisory sentence was fifty-five years. Ind. Code § 35-50-2-3 (2015). And the maximum

sentence for Level 1 felony attempted murder was forty years, the minimum sentence was twenty years, and the advisory sentence was thirty years. Ind. Code § 35-50-2-4 (2014).

[32] The trial court determined that the aggravating circumstances outweighed the sole mitigating circumstance but imposed the advisory sentence on each conviction, to be served consecutively, for a total sentence of eighty-five years. Sutton's sentence is well short of the maximum possible sentence of 105 years. Since the advisory sentence is the starting point the General Assembly has selected as an appropriate sentence for the offense committed, the defendant bears a particularly heavy burden in persuading us that the sentence is inappropriate when the trial court imposes the advisory amount. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[33] The nature of the offenses reflects particularly poorly on Sutton. He and his acquaintance ambushed Patterson, Kincade, Dorien, Ford, and Green. Sutton planned the robbery in advance, as he demonstrated when he pretended to withdraw money from the ATM at the gas station. He had many opportunities to abandon his robbery scheme, even after he got out of Green's car and walked away, but he continued with it. And, in the course of shooting at Patterson and Kincade, Sutton put Dorien and Ford in grave danger, along with people in nearby homes. Sutton further shot at Green as he fled, endangering his life as well. Sutton did not conduct himself with the sort of "restraint, regard, and lack of brutality" that would merit a sentence below the advisory amount. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[34] Turning to the character of the offender, Sutton was nineteen years old when he committed his offenses. He claims that, even considering his young age, his eighty-five-year sentence effectively amounts to a life sentence. Sutton concludes his lengthy sentence is inappropriate in light of the positive evidence of his character that he submitted at sentencing.

[35] When reviewing the appropriateness of a sentence, our deference to the trial court's sentencing authority can be overcome if a defendant presents "compelling evidence" of "substantial virtuous traits or persistent examples of good character." *Id.* Sutton presented to the trial court letters and testimony from family and friends, all of whom attested to his kind character and positive attitude. But his two friends conceded that they did not know Fleming, and they had seen less of Sutton since he and Fleming began hanging out. Further, it is undisputed that Sutton was out of jail on bond for a pending charge of misdemeanor possession of a handgun without a license. Thus, Sutton was already potentially in trouble with the law for a handgun-related offense when he chose to arm himself again and rob Green and his companions. Finally, Sutton harmed two victims, justifying consecutive sentences.

[36] We cannot conclude that the evidence of Sutton's character is sufficiently compelling to overcome our deference to the trial court. He has failed to demonstrate that his sentence is inappropriate.

Conclusion

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

[38] Affirmed.

Crone, J., and Altice, J., concur.