

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Cary B. Buroff, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

April 14, 2023

Court of Appeals Case No.
22A-CR-2446

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2109-F4-97

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Cary B. Buroff, Jr. (“Buroff”) appeals, following a jury trial, his aggregate sentence for Level 4 felony unlawful possession of a firearm by a serious violent felon¹ and an habitual offender enhancement.² Buroff’s sole argument on appeal is that his twenty-five-year sentence is inappropriate. Concluding that Buroff’s sentence is not inappropriate, we affirm the trial court’s sentence.

[2] We affirm.

Issue

Whether Buroff’s sentence is inappropriate.

Facts

[3] In September 2021, Fort Wayne Police Department Detective David Wilkins (“Detective Wilkins”) observed a Blue Ford Fusion (“Ford Fusion”) turn without signaling. Detective Wilkins initiated a traffic stop on the Ford Fusion. When Detective Wilkins got out of his car to approach the Ford Fusion, the driver of the Ford Fusion quickly drove away from the scene. Detective Wilkins returned to his car and initiated a chase. Additional officers arrived on the scene to assist Detective Wilkins. The Ford Fusion sped onto a dead-end street, and the driver and passenger of the Ford Fusion got out and continued

¹ IND. CODE § 35-47-4-5.

² I.C. § 35-50-2-8.

fleeing from Detective Wilkins on foot. Officers chased the passenger of the Ford Fusion, later identified as Buroff, until he reached a fence. Buroff then turned to face the officers, and the officers ordered Buroff to get on the ground. Buroff ignored the officers' commands. The officers knocked Buroff to the ground and arrested him. When officers searched the Ford Fusion, they found a bag containing a collapsible rifle and three fully-loaded magazines of ammunition on the floorboard directly in front of the passenger side seat where Buroff had been sitting.

[4] The State charged Buroff with Level 4 felony unlawful possession of a firearm by a serious violent felon and alleged that he was an habitual offender. The trial court held a jury trial in August 2022. At the conclusion of the jury trial, the jury found Buroff guilty of Level 4 felony unlawful possession of a firearm by a serious violent felon and adjudicated him to be an habitual offender.

[5] The trial court held a sentencing hearing in September 2022. At the hearing, the trial court found as an aggravating circumstance that Buroff had pending charges in Madison County, had a criminal history, had failed efforts at rehabilitation, and was on parole at the time of the offense. The trial court specifically noted Buroff's criminal history, which contained eight prior felonies and eight prior misdemeanors. Specifically, Buroff has prior convictions for unlawful possession of a firearm and robbery. Buroff has also had his probation revoked multiple times and has violated his parole multiple times. The trial court sentenced Buroff to ten (10) years for his Level 4 felony unlawful possession of a firearm by a serious violent felon conviction and enhanced that

sentence by fifteen (15) years for his habitual offender adjudication. The trial court ordered Buroff to serve his aggregate twenty-five-year sentence at the Indiana Department of Correction (“the DOC”).

[6] Buroff now appeals.

Decision

[7] Buroff contends that his aggregate twenty-five-year sentence is inappropriate. He asks this Court to reduce his sentence to “no more than the advisory[.]” (Buroff’s Br. 18).

[8] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived correct result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008) (internal quotation marks omitted). Whether a sentence is inappropriate ultimately turns on “the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Id.* at 1224. “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is

inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[9] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. A jury convicted Buroff of Level 4 felony unlawful possession of a firearm by a serious violent felon and adjudicated him to be an habitual offender. A person who commits a Level 4 felony “shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years.” I.C. § 35-50-2-5.5. A person found to be an habitual offender who is convicted of a Level 4 felony shall be sentenced to an additional fixed term of between “six (6) years and twenty (20) years[.]” I.C. § 35-50-2-8(i)(1). Here, the trial court sentenced Buroff to an aggregate sentence of twenty-five years for his Level 4 felony and his habitual offender enhancement. Specifically, the trial court ordered Buroff to serve a ten-year sentence for his Level 4 felony enhanced by fifteen years for his habitual offender enhancement, which is below the possible maximum sentence.

[10] Turning first to the nature of the offense, we note that Buroff attempted to evade the police after the Ford Fusion he was a passenger in fled from a traffic stop. After the Ford Fusion reached a dead-end street, Buroff exited the car and continued fleeing from officers on foot. After Buroff reached a fence, he turned around to face the pursuing officers. When the officers ordered Buroff to get on the ground, he ignored their orders, which resulted in officers having to knock

Buroff prone before arresting him. In the Ford Fusion, Buroff abandoned a bag, which contained a collapsible rifle and three fully loaded magazines of ammunition. The nature of the offense in no way merits a reduction of Buroff's sentence.

[11] Turning to Buroff's character, we note his criminal history to be troubling. Buroff has an extensive criminal history, which includes eight prior felony convictions and eight prior misdemeanor convictions. These include convictions for robbery and unlawful possession of firearms. Buroff has also had his probation revoked multiple times and has violated his parole multiple times. Furthermore, at the time of this offense, Buroff was on parole from a previous offense and had pending charges in Madison County. Buroff has clearly shown that attempts at rehabilitation have failed.

[12] Buroff has not persuaded this Court that his aggregate twenty-five-year sentence for his Level 4 felony unlawful possession of a firearm by a serious violent felon and his habitual offender adjudication is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[13] Affirmed.

Altice, C.J., and Riley, J., concur.