MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Levi T. Woosley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 29, 2021

Court of Appeals Case No. 21A-CR-1001

Appeal from the Wayne Circuit Court

The Honorable David A. Kolger, Judge

Trial Court Cause No. 89C01-2004-F5-30

Najam, Judge.

Statement of the Case

[1] Levi Woosley appeals his sentence following his conviction for failure to register as a sex offender, as a Level 5 felony, pursuant to a guilty plea. Woosley presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] On April 17, 2020, the State charged Woosley with failure to register as a sex offender, as a Level 5 felony. The State alleged that Woosley had been convicted in 2012 of sexual misconduct with a minor and that, as a result, he was required to register as a sex offender. The State alleged that in September 2019, Woosley resided at a different address than that listed on the registry. The State further alleged that Woosley had a prior, unrelated conviction of failure to register as a sex offender in 2017, which elevated the instant alleged offense to a Level 5 felony.

[3] In May 2021, Woosley pleaded guilty as charged without a plea agreement. At sentencing, the trial court identified three aggravators and one mitigator and sentenced Woosley to three and one-half years executed in the Department of Correction. This appeal ensued.

Discussion and Decision

[4] Woosley contends that his sentence is inappropriate in light of the nature of the offense 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).

[5] 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).

[6] The sentencing range for a Level 5 felony is one year to six years, with an advisory sentence of three years. *See* Ind. Code § 35-50-2-6(b) (2021). Here, the court identified as aggravating factors Woosley's criminal history, his recent probation violation, and his lack of remorse. And the court identified a single mitigator, namely, the undue hardship on his family. Accordingly, the trial court imposed a sentence of three and one-half years executed.

[7] Woosley asserts that his sentence is inappropriate in light of the nature of the offense because no one was harmed and none of the circumstances of his failure to register were egregious. And Woosley maintains that his sentence is inappropriate in light of his character because in the past six years he has made big life changes, including raising his three young children, working, buying a vehicle, and avoiding associations with people "who engaged in criminal activities." Appellant's Br. at 9. Woosley also points out that he accepted responsibility for the offense without the benefit of a plea agreement.

[8] However, Woosley has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offense, we agree with Woosley that there is nothing particularly egregious about his failure to register. But that is not enough, without more, to overcome the considerable deference we owe to the trial court's imposition of his sentence.

[9] With respect to Woosley's character, we acknowledge that Woosley has worked hard to become a positive force in the lives of his fiancée and his children. But the trial court noted that, at the time of sentencing, Woosley was twenty-eight years old and had, since the age of eighteen, been convicted of four felonies, including a prior failure to register as a sex offender in 2017, and three misdemeanors, and he has had his probation revoked three times. The trial court stated, "I think that's pretty significant." Tr. at 43. The trial court also noted Woosley's history of juvenile adjudications, including a 2010 adjudication for what would be sexual battery, as a Class D felony, if committed by an adult.

[10] And at sentencing, while Woosley expressed some regret, he also expressed frustration with having to register as a sex offender for life when he initially only had to register for ten years.[1] He said, "does that make me want to do the registry because now I'm life and originally it was ten? No, it doesn't. . . . I just feel like I'm getting kind of screwed over I guess." *Id.* at 29. The trial court noted Woosley's apparent disdain for the registry requirement as follows:

> he felt like he had been on the registry long enough and he decided he just wasn't going to comply anymore. So I don't see how that person gets credit for, you know, I don't know how the Court would find that he would not commit another offense. I

[1] The record is unclear why Woosley's registration requirement was increased from ten years to life.

> think the next time he gets tired of it, he will likely do the same thing, at least that's what all the evidence indicates.

Id. at 41. And the trial court found that Woosley's "I don't care" attitude indicated a "significant" lack of remorse. *Id.* at 46.

[11] Again, the question on appeal is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King*, 894 N.E.2d at 268. Here, the trial court imposed a sentence only six months over the advisory sentence of three years. Given Woosley's significant criminal history, including three probation violations, and given the trial court's assessment that Woosley had intentionally failed to register in this case and would likely do so again, we cannot say that his sentence is inappropriate in light of the nature of the offense and his character. We therefore affirm Woosley's sentence.

[12] Affirmed.

Riley, J., and Brown, J., concur.