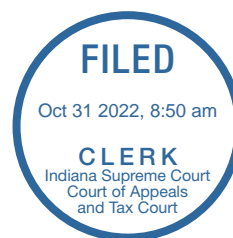


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Daniel Joel Denny,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 31, 2022

Court of Appeals Case No.
22A-CR-1075

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-2106-MR-3016

Crone, Judge.

Case Summary

- [1] Daniel Joel Denny appeals the sentence imposed by the trial court following his plea of guilty but mentally ill to murder. He contends that his fifty-five-year sentence, with five years suspended to probation, is inappropriate in light of the nature of the offense and his character. Concluding that Denny has failed to carry his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] Denny and Eric Cavanaugh had been good friends since elementary school. Sometime in the spring of 2021, Cavanaugh allowed nineteen-year-old Denny, who was homeless, to move in with him and four other roommates. Denny had an extensive history of mental illness and was diagnosed with depression with psychosis, generalized anxiety disorder, bipolar disorder, PTSD, cannabis use disorder, and paranoid schizophrenia. He had been prescribed antipsychotic medications, which “helped with his psychosis and stabilized his mood.” Appellant’s App. Vol. 2 at 35.
- [3] On June 1, 2021, Denny was feeling “very depressed” and crying a lot, was “very manic” and having difficulty sleeping, and “couldn’t get [his] brain to stop running.” *Id.* at 37. Denny had not taken any of his medications for a couple of months because he “thought he didn’t need” them. *Id.* Denny heard voices telling him to “hurt them.” *Id.* at 28. To “stop the voices from getting louder and louder,” Denny went downstairs, grabbed a knife from the kitchen, walked into Cavanaugh’s bedroom, which was next to the kitchen, and stabbed

him approximately thirty times. Tr. Vol. 2 at 69. Two of the roommates heard Cavanaugh’s “intense screams” and ran downstairs to find him “bleeding and screaming.” Appellee’s App. Vol. 2 at 3. They witnessed Denny stab Cavanaugh again before dropping the knife. *Id.* One of the roommates called the police. When police officers arrived, Denny admitted to them that he had stabbed Cavanaugh. *Id.* at 2. In the ambulance on the way to the hospital, Cavanaugh told the police that “[Denny] had stabbed him.” *Id.* at 2-3. Cavanaugh died before the ambulance reached the hospital.

[4] The State charged Denny with murder. He filed a notice of insanity defense, but withdrew it after two court-appointed doctors found that despite his mental illness, he retained an “appreciation of the wrongfulness” of his actions at the time of the alleged offense. Appellant’s App. Vol. 2 at 31, 38. Pursuant to a plea agreement, Denny pled guilty but mentally ill to murder. The agreement left sentencing to the trial court’s discretion.¹

[5] During sentencing, the trial court engaged in an extensive analysis of Denny’s mental illness and the role it played in Cavanaugh’s murder. The trial court observed that there was a “nexus between the mental disorder and the murder.” Tr. Vol. 2 at 68. In determining Denny’s sentence, the trial court found as mitigating circumstances that Denny had significant mental illness, had no juvenile adjudications or convictions for a crime prior to this offense, was

¹ Receiving a sentence within the range agreed to in a plea agreement may be considered as evidence of the appropriateness of the sentence.

remorseful for his actions, and had been assessed as a low risk to reoffend, but the court had concerns regarding the ability of the Indiana Risk Assessment System to project risk in light of Denny's mental health issues. The court found as aggravating circumstances the unexpectedness of the unprovoked killing of Cavanaugh, Denny's noncompliance with managing his mental illness by not taking his prescribed medications or following up with his doctors, concern that his failure to address these issues will continue, the harm and damage suffered by Cavanaugh, and the ongoing trauma to his roommates who witnessed the murder. The trial court sentenced Denny to fifty-five-years, with five years suspended to probation. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

[6] Denny asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The 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." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted)

(disagreeing with majority’s statement that Rule 7(B) “plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character.”). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

- [7] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Id.* at 1222. “Such deference should prevail 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). Ultimately, whether a sentence should be deemed inappropriate “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Cardwell*, 895 N.E.2d at 1224. On review, “the question is not whether another sentence is *more* appropriate; rather, the question is whether the sentence imposed is inappropriate.” *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007).

- [8] Turning first to the nature of the offense, we observe that the “advisory sentence is the starting point the Legislature selected as appropriate for the crime

committed.” *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). Here, Denny pled guilty but mentally ill to murder. Indiana Code Section 35-36-2-5(a) provides that when a defendant enters such a plea, the trial court “shall sentence the defendant in the same manner as a defendant found guilty of the offense.” The sentencing range for murder is between forty-five and sixty-five years, with the advisory sentence being fifty-five years. Ind. Code § 35-50-2-3. The trial court imposed the advisory sentence of fifty-five years and suspended five of those years to probation. A defendant who is found guilty but mentally ill and is committed to the Department of Correction “shall be further evaluated and then treated in such a manner as is psychiatrically indicated for the defendant’s mental illness.” Ind. Code § 35-36-2-5(c). “A defendant who receives an advisory sentence has a particularly heavy burden to prove it inappropriate under Appellate Rule 7(B).” *Kincaid v. State*, 171 N.E.3d 1037, 1042 (Ind. Ct. App. 2021), *trans. denied*.

[9] Denny does not dispute that this crime was “terrible,” but he contends that the murder was not “premeditated or motivated by evil,” and that the sudden compulsion to hurt someone was “the unfortunate result of his serious mental illness.” Appellant’s Br. at 12. He further claims that “the voices in his head insist[ed] on violence.” *Id.* at 9.

[10] Our review of the record indicates that two months before Cavanaugh’s murder, Denny stopped taking his medications because he did not feel that he needed them. He admitted to self-medicating with marijuana because it made him “happier” but that sometimes it made him “paranoid.” Appellant’s App.

Vol. 2 at 35. He disclosed that he last used marijuana just days before his arrest. On the day of Cavanaugh's murder, Denny sat in his bedroom listening to the voices in his head for over an hour. Instead of asking for help or going to a hospital, Denny acted on the voices telling him to hurt someone and, in an unprovoked attack, stabbed Cavanaugh approximately thirty times even while he laid there screaming. One of Denny's roommates, who witnessed the murder, indicated that he is "more anxious and easily depressed," "wakes up in the middle of the night scared," and "can't walk at night without checking over [his] shoulder." Tr. Vol. 2 at 48. Another roommate stated that he has "nightmares" and that "[Cavanaugh's] screaming start[s] to ring in my ears and I see his bloody body collapsed on the floor." Appellant's App. Vol. 2 at 130.

[11] While we are mindful of Denny's significant history of mental illness, the attack on Cavanaugh was horrific. We cannot overlook that the harm and damage suffered by Cavanaugh, as well as the ongoing trauma to his roommates, is significant. We also acknowledge that the record is replete with letters from family and friends regarding the impact that Cavanaugh's death has had on them. Denny has not persuaded us that the nature of the offense warrants a sentence reduction.

[12] Turning next to an assessment of Denny's character, we observe that an offender's character is "found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here,

Denny focuses on his lack of criminal history, his remorse, his young age, and his low risk to reoffend. He maintains that he was neglected and abused by his parents and that he has family members who have been diagnosed with schizophrenia.

[13] We are not unsympathetic to the abuse and neglect that Denny endured as a child, his lack of family support, as well as his struggles with mental illness throughout much of his young life, including multiple suicide attempts. The trial court observed that, unlike “some families that would surround their love[d] one with care, support, if they had a mental illness in order to assure that they were getting the help that they needed and were managing it[,] Mr. Denny did not have that type of support.” Tr. Vol. 2 at 68. We also acknowledge Denny’s lack of any juvenile adjudications or convictions for crimes prior to this offense, and that he was remorseful for his actions.

[14] We recognize that Denny is certainly not the worst of the worst. However, we find it troubling that Denny has been less than compliant with taking his medications and following up with his doctors, especially considering his family’s history of schizophrenia. When Denny decided to stop taking his medications, he began hearing voices telling him to hurt someone, and then acted on those violent thoughts by stabbing Cavanaugh to death. The record indicates that while Denny was in jail for Cavanaugh’s murder, he resumed taking his medications and reported that he was “hearing less voices,” his depression had improved, and he was “not crying as much.” Appellant’s App. Vol. 2 at 35. We agree with the trial court’s observation that Denny’s “inaction

to address his mental illness and that decision making, causes concern that the same type of failure to address his mental health will occur again and that would be a danger to this community, to others and to himself.” Tr. Vol. 2 at 70. Under the circumstances, Denny has not persuaded us that a reduction in his advisory sentence is warranted based upon his character. Therefore, we affirm.

[15] Affirmed.

May, J., and Weissmann, J., concur.