

# MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



---

## ATTORNEY FOR APPELLANT

R. Patrick Magrath  
Alcorn Sage Schwartz & Magrath, LLP  
Madison, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana

Jennifer B. Anwarzai  
Deputy Attorney General  
Indianapolis, Indiana

---

# IN THE COURT OF APPEALS OF INDIANA

---

Jacob D. Gates,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

December 8, 2023

Court of Appeals Case No.  
23A-CR-1396

Appeal from the Decatur Superior  
Court

The Honorable Matthew D.  
Bailey, Judge

Trial Court Cause No.  
16D01-2209-F2-918

**Memorandum Decision by Judge Mathias**  
Judges Riley and Crone concur.

**Mathias, Judge.**

[1] Jacob D. Gates appeals his sentence after he pleaded guilty to Level 2 felony burglary and Level 3 felony robbery. Gates raises a single issue for our review, namely, whether his aggregate sentence of ten years with six months suspended to probation is inappropriate in light of the nature of the offenses and his character. We affirm.

## **Facts and Procedural History**

[2] In the late evening hours of September 18, 2022, Gates and another person broke into the residence of Ronald and Marita McCulley in Greensburg. Gates was armed with a crowbar, and he told the McCulleys “to stay where they were.” Appellant’s App. Vol. 2, p. 79. Gates and his companion stole cash, electronics, credit cards, and cellphones from inside the residence and then fled on foot. Greensburg Police Department officers apprehended Gates shortly thereafter.

[3] The State charged Gates with Level 2 felony burglary, Level 3 felony robbery, and Class A misdemeanor theft. Gates pleaded guilty to the Level 2 and Level 3 felony charges pursuant to a written plea agreement, and the State dismissed the Class A misdemeanor charge. Gates’s plea agreement imposed a maximum aggregate sentence of ten years with Gates’s placement left open to the trial court’s discretion.

[4] After accepting the plea agreement and holding a sentencing hearing, the court found as follows:

I consider first, the mitigating circumstances. His plea of guilty was early in the process. However, he did make a deal wherein he got the minimum exposure for a Level 2 felony. It also reduces exposure on a Level 3 felony. So he made a deal for himself that was a pragmatic decision. I don't find that to be a significant mitigating circumstance.

Next, [I] turn to remorse. . . . I don't find him to be remorseful . . . .

Next, it would be substance abuse . . . . I don't believe that his choice to abuse substances [namely, marijuana and alcohol] is a mitigator in this case. The case is unrelated to any drug possession or dealing or anything of that nature . . . .

The final mitigating circumstance to consider . . . might be called a difficult childhood. . . . I am going to find that to be mitigating, but not a significant mitigating circumstance.

As far as aggravators, there is the history of his juvenile delinquent behavior and the escalatory trend pointed out by the State. That is a significant aggravating circumstance. Also, the fact that he has been considered to be a high risk to reoffend.

Tr. Vol. 2, pp. 32-33. The court concluded that the aggravating circumstances outweighed the mitigating circumstances, and the court sentenced Gates to an aggregate term of ten years with six months suspended to probation. This appeal ensued.

## Discussion and Decision

- [5] On appeal, Gates argues that his sentence is inappropriate. Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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 v. State](#), 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” [Livingston v. State](#), 113 N.E.3d 611, 612 (Ind. 2018) (*per curiam*).
- [6] When conducting this review, we generally defer to the sentence imposed by the trial court. [Conley v. State](#), 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. [Stephenson v. State](#), 29 N.E.3d 111, 122 (Ind. 2015).
- [7] The sentencing range for a Level 2 felony is ten to thirty years, with an advisory term of seventeen and one-half years. [Ind. Code § 35-50-2-4.5 \(2022\)](#). The sentencing range for a Level 3 felony is three to sixteen years, with an advisory

term of nine years. I.C. § 35-50-2-5(b) (2022). Here, again, the trial court sentenced Gates, in accordance with Gates’s plea agreement, to an aggregate term of ten years with six months suspended to probation, well below the maximum term Gates would have faced had he gone to trial.

[8] Gates “recognizes that . . . he received the minimum sentence allowed by law for the offenses,” but, nonetheless, he “seeks revision of his sentence from a nearly fully executed term.” Appellant’s Br. at 10. In support of his argument on appeal, Gates notes that he did not injure anyone in the commission of the offenses; he did not threaten to injure anyone; and there was no evidence of damage to real or personal property. He also notes that he was nineteen years of age at the time of the offenses; he had a G.E.D. and was employed; he acknowledged the seriousness of the offenses and expressed remorse; and his aunt expressed her willingness to support Gates. He also identifies his parents’ early deaths; exposure to their drug use; and his own history with illicit substances.

[9] But we cannot say that Gates’s sentence is inappropriate. Although the facts of these offenses could certainly have been worse, Gates disregards the implied threat of his crowbar as well as the fear he put the McCulleys in during his late-night invasion of their home. Further, there is no dispute that Gates has an extensive juvenile record, which includes delinquency allegations of battery, conversion, resisting law enforcement, intimidation, and dangerous possession of a firearm. And we will not ignore the fact that his aggregate sentence is well below the maximum sentence for Level 2 and Level 3 felony convictions.

[10] Gates’s argument on appeal is simply a request for this Court to substitute its sentencing judgment for the trial court’s, which we will not do. Sentencing revision under [Appellate Rule 7\(B\)](#) is reserved for “a rare and exceptional case,” which is not this one. *Livingston*, 113 N.E.3d at 612. We therefore affirm Gates’s sentence.

[11] Affirmed.

Riley, J., and Crone, J., concur.