MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nathan F. Morrow,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 24, 2022

Court of Appeals Case No. 22A-CR-377

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-2002-F4-823

Tavitas, Judge.

Statement of the Case

[1] After Nathan Morrow caused a head-on collision resulting in the death of another driver, he pleaded guilty to operating a vehicle while intoxicated causing a death, a Level 4 felony. The trial court sentenced Morrow to eleven years in the Department of Correction ("DOC"). Morrow now contends that his sentence is inappropriate in light of the nature of his offense and his character. We disagree. Accordingly, we affirm.

Facts and Procedural History

[2] Morrow was involved in a two-car collision in Bartholomew County on December 5, 2019. Officers responding to the scene discovered Richard Walters slumped over his airbag, and he was pronounced dead shortly thereafter. Morrow, the driver of the other vehicle, was combative, screamed at first responders, and acted with hostility and aggression. Police handcuffed Morrow and searched his vehicle. The search revealed marijuana and oxycodone as well as a glass smoking device. Officers subsequently obtained a search warrant to draw Morrow's blood and the lab results revealed the presence of oxycodone, THC (the active compound in marijuana), amphetamine, and midazolam.[1]

[1] Midazolam is a benzodiazepine and, therefore, acts on the central nervous system, inducing feelings of relaxation and sleepiness.

[3] The results of an accident reconstruction analysis were as follows: (1) the cause of the accident was Morrow's car travelling from the westbound lane and crossing the center median into the eastbound lane; (2) the median was ten inches tall; (3) under these conditions an unimpaired driver would have felt a jolt when crossing the median; (4) it would have required effort to mount the center median, drive over it, and dismount it on the other side; (5) the wheel would have to be turned to perform such a maneuver; and (6) in the eight seconds prior to the collision, Morrow failed to depress the brake pedal.

[4] The State charged Morrow with: (1) reckless homicide, a Level 5 felony; (2) operating a vehicle while intoxicated causing death, a Level 4 felony; (3) possession of a narcotic drug, a Level 6 felony; (4) possession of marijuana, a Level 6 felony; and (5) possession of paraphernalia, a Class A misdemeanor.

[5] Morrow entered into a plea agreement wherein he agreed to plead guilty to operating a vehicle while intoxicated causing death, a Level 4 felony. The State agreed to dismiss the other charges. Sentencing was left entirely to the discretion of the trial court pursuant to the plea agreement.

[6] The trial court found the following mitigating factors: (1) Morrow's mental and physical health; (2) Morrow pleaded guilty to the highest offense with which he was charged; and (3) the fact that Morrow pleaded guilty. The trial court also found the following aggravating factors: (1) Morrow's criminal history; (2) Morrow's prior violations of probation; (3) Morrow's failure to take advantage of treatment options in the past; (4) the impact on the victim's

family; and (5) Morrow was hostile at the scene of the accident and attempted to interfere with first responders who were attending to both Morrow and the victim. The trial court sentenced Morrow to eleven years in the DOC. This appeal followed.

Discussion and Decision

[7] Morrow contends that his sentence is inappropriate in light of the nature of his offense and his character. The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[2] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986,

[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[8] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "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.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[9] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Morrow pleaded guilty to operating a vehicle while intoxicated causing death, a Level 4 felony. "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." Ind. Code § 35-50-2-5.5.

[10] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, Morrow took multiple illegal drugs—to the point where he could not remember driving prior to the accident or the accident itself. Morrow drove over a ten-inch high median and collided head on with another driver, resulting in the death of the other driver. He fought and resisted first responders at the scene. The victim's family has suffered greatly, both emotionally and financially, as a result of Morrow's offense. Several witnesses testified at the sentencing hearing as to the major impact from the loss of the victim. We find nothing in the record to suggest that Morrow's actions were accompanied by restraint or regard. To the contrary, this was a senseless crime with a particularly tragic result. We decline to find that the nature of the offense counsels a revision of Morrow's sentence.

[11] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). Morrow's aunt offered testimony favorable to Morrow's character at the sentencing hearing.[3] And it is clear from the record that he experiences deep

[3] Morrow's aunt testified that Morrow was "one of the sweetest and the nicest young people that I have ever known." Tr. Vol. II p. 56. She testified that he regularly assisted with elderly family members and that Morrow had experienced deep remorse and suffered medical issues as a result of the accident.

remorse and suffers from health problems apparently brought about by the grief resulting from the accident.

[12] Nevertheless, we must also consider Morrow's criminal history. We note that "[t]he significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[13] Morrow's criminal history is not minor. He was arrested twice as a juvenile: once for possession of paraphernalia and marijuana, as well as resisting arrest; and once for trafficking a controlled substance within 1,000 yards of a school. As an adult, he was convicted of possession of marijuana and paraphernalia in 2006; operating under the influence of alcohol or drugs in 2009; disorderly conduct in 2011; and possession of marijuana in 2012. Along the way, Morrow had his probation revoked. Morrow has a long history of substance abuse and an escalation in Morrow's criminal history, resulting in the death of the victim in the case at bar. On balance, we cannot say that Morrow's sentence is inappropriate in light of his character.

Conclusion

[14] Morrow's sentence is not inappropriate in light of the nature of his offense and his character. We affirm.

[15] Affirmed.

Riley, J., and May, J., concur.