MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

James M. Nipple,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 5, 2024
Court of Appeals Case No.
23A-CR-2004
Appeal from the Benton Circuit Court
The Honorable John C. Wright, Judge
Trial Court Cause No.
04C01-2211-F3-318

Memorandum Decision by Judge Tavitas
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

[1] James Nipple appeals his conviction and sentence for leaving the scene of an accident, a Level 6 felony. Nipple argues that: (1) the evidence is insufficient to sustain his conviction; (2) the trial court abused its discretion when sentencing him; and (3) his two-year sentence is inappropriate in light of the nature of the offense and the character of the offender. We disagree, and accordingly, we affirm.

Issues

[2] Nipple raises three issues, which we restate as:

I. Whether the evidence is sufficient to sustain his conviction.

II. Whether the trial court abused its discretion when sentencing him.

III. Whether his two-year sentence is inappropriate.

Facts

[3] At one time, Nipple and Ryan Richardson were friends, but their friendship soured in the last few years. Nipple had a relationship with Richardson's now ex-wife, and Nipple's wife was now Richardson's girlfriend.

[4] On November 9, 2022, Richardson was driving a motorcycle near Nipple's residence in Otterbein.[1] Nipple was driving his car on First Street, and the men passed each other. Richardson turned around and followed Nipple onto U.S. 52. When Nipple turned onto a county road, Richardson again followed. Richardson pulled alongside Nipple's vehicle and looked at Nipple. According to Richardson, Nipple swerved and hit Richardson's motorcycle. Nipple claimed that he was merely "crowd[ing] the road." Tr. Vol. II p. 240. Richardson lost control of his motorcycle and slid on the road. Richardson lost consciousness and sustained other injuries and was taken to the hospital.

[5] Nipple later admitted to law enforcement that he was at the scene of Richardson's crash, admitted to "crowd[ing]" Richardson's motorcycle, and admitted that he was aware Richardson crashed. *Id.* at 240. Nipple also admitted that he stopped a short distance away but did not go back to check on Richardson and did not call 911.

[6] A week or so later, Richardson's mother sent Nipple "an angry message on Facebook," and Nipple responded, in part, as follows:

> It's not my fault you birthed a mentally challenged person. Maybe he should leave his gun at home or get training wheels for his scooter. If you can't ride in the ditch, you can't really ride.

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[1] Nipple claims that the interaction began with Richardson revving his motorcycle engine and yelling at Nipple while Nipple was in his garage. According to Nipple, when he left his residence, Richardson followed him, kept pulling alongside Nipple's vehicle, and repeatedly gestured toward his waistband as if he had a gun.

* * * * *

> If I were to run him down, where's the damage to my vehicle? . . . Please try to channel your anger in the direction needed though. Help Ryan pull up his big girl panties and use his brain. Maybe ground him from his bb guns. . . have a better day knowing that [I] didn't stop n back up n stomp his brains in . . . .

Ex. Vol. IV pp. 33-34 (errors in original).

[7] The State charged Nipple with: (1) criminal recklessness, a Level 6 felony; (2) aggravated battery, a Level 3 felony; (3) battery, a Level 5 felony; and (4) leaving the scene of an accident, a Level 6 felony. At the jury trial, Nipple testified and admitted to "crowd[ing]" Richardson. Tr. Vol. III pp. 60, 78. Nipple denied touching Richardson with his vehicle but admitted that he knew Richardson had fallen. Nipple testified that he stopped fifty yards down the road and left when he saw another vehicle approaching. The jury found Nipple not guilty of the first three charges but guilty of leaving the scene of an accident.

[8] At the sentencing hearing, the trial court found that "the harm, injury, loss, or damage suffered by the victim of [the] offense was significant and greater than the elements necessary to prove the commission of the offense." *Id.* at 168. The trial court also found that Nipple has a history of criminal behavior and has "recently violated the conditions of probation, parole, pardon, community corrections placement, or pre-trial release." *Id.* The trial court found one mitigating factor—that the victim induced the offense. The trial court

sentenced Nipple to two years in the Department of Correction ("DOC"). Nipple now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[9] Nipple first challenges the sufficiency of the evidence to sustain his conviction. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018)). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[10] The offense of leaving the scene of an accident is governed by Indiana Code Section 9-26-1-1.1, which provides:

> (a) The operator of a motor vehicle involved in an accident shall do the following:
>
> > (1) Except as provided in section 1.2 of this chapter, the operator shall immediately stop the operator's motor vehicle:
> >
> > > (A) at the scene of the accident; or
> > >
> > > (B) as close to the accident as possible;
> >
> > in a manner that does not obstruct traffic more than is necessary.
> >
> > (2) Remain at the scene of the accident until the operator does the following:
> >
> > > (A) Gives the operator's name and address and the registration number of the motor vehicle the operator was driving to any person involved in the accident.
> > >
> > > (B) Exhibits the operator's driver's license to any person involved in the accident or occupant of or any person attending to any vehicle involved in the accident.
> >
> > (3) If the accident results in the injury or death of another person, the operator shall, in addition to the requirements of subdivisions (1) and (2):

(A) provide reasonable assistance to each person injured in or entrapped by the accident, as directed by a law enforcement officer, medical personnel, or a 911 telephone operator; and

(B) as soon as possible after the accident, immediately give notice of the accident, or ensure that another person gives notice of the accident, by the quickest means of communication to one (1) of the following:

(i) The local police department, if the accident occurs within a municipality.

(ii) The office of the county sheriff or the nearest state police post, if the accident occurs outside a municipality.

(iii) A 911 telephone operator.

* * * * *

(b) An operator of a motor vehicle who knowingly or intentionally fails to comply with subsection (a) commits leaving the scene of an accident, a Class B misdemeanor. However, the offense is:

* * * * *

(2) a Level 6 felony if:

(A) the accident results in moderate or serious bodily injury to another person;

[11] Nipple argues that he was not "involved" in the accident because Richardson was involved in a single-vehicle accident.[2] Nipple contends that interpreting the statute to include those who do not collide or make contact with another vehicle would "suggest that all bystanders, witnesses, or people within eyeshot of an accident should be considered 'involved.'" Appellant's Br. p. 13. Nipple, however, was not a mere bystander or witness to the accident. Nipple admittedly "crowd[ed]" Richardson so that Richardson would "either stop[] or [go] into a ditch." Tr. Vol. III p. 83. The statute does not require Nipple's vehicle to actually collide with Richardson or his motorcycle; rather, the statute merely requires that Nipple be "involved" in the accident. The common definition of "involved" is "having a part in something." https://www.merriam-webster.com/dictionary/involved [https://perma.cc/FCZ9-MWPT] (last visited Jan. 23, 2024). Nipple had a part in the accident and, thus, was involved. Richardson was injured in the accident, and Nipple did not stop to provide assistance or report the accident to the authorities. Accordingly, the evidence is sufficient to sustain Nipple's conviction for leaving the scene of an accident, a Level 6 felony.

[2] Nipple also argues that the evidence is insufficient because the jury found Nipple not guilty of battery and criminal recklessness. To the extent Nipple is arguing that the jury's verdicts are inconsistent, we note that our Supreme Court has held "[j]ury verdicts in criminal cases are not subject to appellate review on grounds that they are inconsistent, contradictory, or irreconcilable." *Beattie v. State*, 924 N.E.2d 643, 649 (Ind. 2010).

II. Abuse of Discretion in Sentencing

[12] Next, Nipple challenges the trial court's sentencing decisions. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse occurs only if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[13] A trial court abuses its discretion in a number of ways, including:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91).

[14] Nipple first argues that the trial court's sentencing statute was inadequate because the written sentencing order does not provide an explanation for the sentence. In reviewing sentences in non-capital cases, we "examine both the written and oral sentencing statements to discern the findings of the trial court."

McElroy v. State, 865 N.E.2d 584, 589 (Ind. 2007). At the sentencing hearing, the trial court explained the aggravators and mitigator. Accordingly, we do not find the trial court's sentencing statement to be inadequate.

[15] Nipple also argues that the trial court abused its discretion by weighing the aggravators more heavily than the one mitigator. The trial court no longer has any obligation to "weigh" aggravating and mitigating factors against each other when imposing a sentence. *Anglemyer*, 868 N.E.2d at 491. A trial court, thus, cannot "now be said to have abused its discretion in failing to 'properly weigh' such factors." *Id.* Accordingly, Nipple's argument fails.

[16] Finally, Nipple argues that the trial court abused its discretion by considering that "the harm, injury, loss, or damage suffered by the victim of [the] offense was significant and greater than the elements necessary to prove the commission of the offense." Tr. Vol. III p. 168. Nipple contends that use of this aggravator was an abuse of discretion because the jury acquitted Nipple of battery.

[17] Pursuant to Indiana Code Section 35-38-1-7.1(a), "[i]n determining what sentence to impose for a crime, the court may consider the following aggravating circumstances: (1) The harm, injury, loss, or damage suffered by the victim of an offense was: (A) significant; and (B) greater than the elements necessary to prove the commission of the offense." Leaving the scene of an accident is a Level 6 felony if "the accident results in moderate or serious bodily injury to another person." I.C. § 9-26-1-1.1. Accordingly, the jury found that

Richardson suffered moderate or serious bodily injury as a result of the accident. Richardson, however, testified to his significant injuries and lasting issues from the accident. Given the severity of Richardson's injuries, we cannot say the trial court abused its discretion by determining that Richardson suffered more harm than the elements necessary to prove the offense. *See, e.g.*, *Patterson v. State*, 846 N.E.2d 723, 728 (Ind. Ct. App. 2006) (holding that the trial court did not abuse its discretion by considering, as an aggravator, the fact that the injury exceeded that necessary to constitute serious bodily injury).

III. Inappropriate Sentence

[18] Next, Nipple argues that his two-year sentence is inappropriate. 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."[3] 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*, 6 N.E.3d at 946). We exercise our

[3] 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 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

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

[19] "'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).

[20] 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, Nipple was convicted of a Level 6 felony. Indiana Code Section 35-50-2-7(b) provides that a person who commits a Level 6 felony shall be imprisoned "for a fixed term of between six (6) months and two and one-half (2 1/2) years,

with the advisory sentence being one (1) year." The trial court sentenced Nipple to two years in the DOC.

Nature of the Offense

[21] Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). Here, Nipple and Richardson had a very contentious relationship. As Nipple was driving, Richardson drove his motorcycle next to Nipple's vehicle. Nipple "crowded" Richardson with his vehicle, and Richardson lost control of his motorcycle and slid on the road. Tr. Vol. II p. 151; Tr. Vol. III pp. 60, 78. Although Nipple saw the accident, he left the area without stopping to assist Richardson or notifying the authorities.

Character of the Offender

[22] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence vary based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). "Even a minor criminal history is a poor reflection of a defendant's character." *Id.*

[23] Nipple's criminal history includes convictions for possession of marijuana; theft; operating a vehicle while intoxicated; battery, a Level 5 felony; neglect of a dependent, a Level 6 felony; and operating a vehicle while intoxicated. Multiple petitions to revoke Nipple's probation have been filed. Moreover, at the time of sentencing, Nipple had pending charges for multiple counts of possession of methamphetamine, possession of paraphernalia, reckless driving, resisting law enforcement, and operating a vehicle while intoxicated. Nipple admitted to having a substance abuse issue with alcohol and methamphetamine.

[24] Nipple argues that his conduct was reasonable because he thought Richardson had a firearm and Richardson was "looking for trouble that day." Appellant's Br. p. 18. We acknowledge that Richardson was an active participant in the altercation between the two men, and Richardson's conduct may have been less than stellar. Given Nipple's actions and significant criminal history, however, we cannot say that the two-year sentence is inappropriate.

Conclusion

[25] The evidence is sufficient to sustain Nipple's conviction for leaving the scene of an accident; the trial court did not abuse its discretion when sentencing Nipple; and Nipple's two-year sentence is not inappropriate. Accordingly, we affirm.

[26] Affirmed.

Mathias, J., and Weissmann, J., concur.

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