MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Susan Jane Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 20, 2022

Court of Appeals Case No. 21A-CR-2687

Appeal from the Sullivan Superior Court

The Honorable Hugh R. Hunt, Judge

Trial Court Cause No. 77D01-2008-MR-425

Weissmann, Judge.

[1] After shooting her ex-husband in a gas station parking lot, Susan Brown pleaded guilty to voluntary manslaughter, a Level 2 felony, and the trial court sentenced her to the advisory sentence of 17 ½ years' imprisonment. Susan appeals, arguing her sentence is inappropriate given her character and the nature of her offense. We disagree and affirm.

Facts

[2] Susan and Faron "Deece" Brown (Deece) divorced in February 2020 after nineteen years of marriage. Afterward, Susan sent Deece numerous voicemails and text messages, berating him and blaming him for ruining her life. Roughly a month before the shooting, Susan left Deece twelve voicemails in one day. She said things like "f**k you" and "I just wonder if you ever feel bad about how you've done me." App. Vol. II, p. 65. Days before the shooting, Susan texted Deece, "You ruined yours and my life" and "You r (sic) such a piece of dirt." *Id.* at 65-66.

[3] In July 2020, Susan pulled her vehicle next to Deece's at a gas station. Deece approached Susan's vehicle, and the two began to argue. Susan then exited her vehicle and, moments later, fired multiple gunshots at Deece. After a struggle, Deece pushed Susan to the ground and threw the gun away from her. Deece—struck by one gunshot—yelled for help. Susan fled the scene.

[4] Later that same day, medical personnel transported Susan to the hospital after she attempted suicide. During transport, she admitted to shooting Deece and

stated that Deece had "made her life a living hell." App. Vol. II, p. 28. Deece died from his gunshot wound seventeen days later.

[5] The State charged Susan with murder, a Level 1 felony, voluntary manslaughter, a Level 2 felony, and a firearm enhancement. Susan eventually entered into a plea agreement. In exchange for her guilty plea to voluntary manslaughter, the State dropped the other charges. The plea agreement required that Susan waive her right to appeal and capped her potential sentence at 17 ½ years.

[6] At Susan's guilty plea hearing, the trial court informed her that she might be able to appeal her sentence, in direct contrast to the waiver in her plea agreement. The court later sentenced Susan to the maximum under the plea agreement, informed Susan, again, that she could appeal her sentence, and appointed appellate counsel. Susan now appeals.

Discussion and Decision

[7] Susan raises two issues on appeal. First, she argues that she did not waive her right to appeal her sentence given the trial court's statements at the guilty plea hearing. Second, she argues that her sentence is inappropriate under Indiana Appellate Rule 7(B).We find that Susan retained her right to appeal her sentence, but has failed to show her sentence was inappropriate. Accordingly, we affirm.

I. Right to Appeal

[8] The State does not address whether Susan waived the right to appeal. Accordingly, we "will treat this issue as one where no appellee's brief was filed." *Thompson v. State*, 82 N.E.3d 376, 380 (Ind. Ct. App. 2017) (quoting *Wharton v. State*, 42 N.E.3d 539, 541 (Ind. Ct. App. 2015)). The State's failure to address a claim does not relieve us of our duty to correctly apply the law to the facts in the record. *Wharton*, 42 N.E.3d at 541. We will apply a less stringent standard of review and analyze it for prima facie error, which is error— "at first sight, on first appearance, or on the face of it." *Id*.

[9] Susan did not waive her right to appeal her sentence. "The plea agreement, guilty plea and sentencing hearing colloquy, and sentencing order must be *clear and consistent*." *Williams v. State*, 164 N.E.3d 724, 725 (Ind. 2021) (emphasis added). That standard was not met here. The plea agreement specified Susan was waiving her right to appeal, but the trial court advised her at the guilty plea and sentencing hearings that she retained her right to appeal. As the plea agreement, guilty plea, and sentencing colloquy were not clear and consistent, Susan did not waive her right to appeal her sentence. *See id.*

II. Inappropriate Sentence

[10] Susan next asserts that her 17 ½-year sentence is inappropriate under Appellate Rule 7(B). That rule allows this Court to revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence "inappropriate in light of the nature of the offense and the character of the

offender." Ind. Appellate Rule 7(B). We conduct this review with substantial deference to the trial court's sentencing decision. *Scott v. State,* 162 N.E.3d 578, 584 (Ind. Ct. App. 2021). The purpose of this review is not to achieve a "correct sentence" but to "attempt to leaven the outliers." *Id.* Susan has the burden of persuading us her sentence is inappropriate. *See Gerber v. State*, 167 N.E.3d 792, 797 (Ind. Ct. App. 2021).

[11] First, we turn to the nature of the offense. The legislature determined that advisory sentences are the starting point for an appropriate sentence based on the crime committed. *Id.* Susan's 17 ½-year sentence is the designated advisory sentence for voluntary manslaughter, a Level 2 felony. Ind. Code § 35-50-2-4.5. We cannot find the trial court's decision to sentence Susan to the advisory sentence for voluntary manslaughter inappropriate given the nature of the offense. After days of sending Deece multiple berating messages, Susan and Deece got into a verbal altercation. Susan then chose to shoot at him at least three times in a public parking lot, not only causing his death but also endangering at least two other people in the vicinity.

[12] Susan suggests that she acted with "sudden heat" when she shot Deece, so she is less culpable. But sudden heat is an element of voluntary manslaughter. Ind. Code § 35-42-1-3. By pleading to voluntary manslaughter rather than murder, which carries a sentence of 45 to 65 years imprisonment, Susan already received the benefit "sudden heat" provides in the form of sentencing on a lesser offense. Ind. Code § 35-50-2-3; *see Watts v. State*, 885 N.E.2d 1228 (Ind. 2008) ("voluntary manslaughter is a lesser-included offense to murder").

[13] Next, we turn to the character of the offender. When analyzing the "character of the offender," we broadly consider the defendant's qualities, including age, criminal history, background, and remorse. *S.B v. State.*, 175 N.E.3d 1199, 1207 (Ind. Ct. App. 2021) (quoting *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019); *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007)). As the trial court did, we acknowledge that Susan, in her late 60s, has no prior criminal record. She also has a history of depression. Many friends, family members, and coworkers were willing to testify to her good character and excellence as a nurse.

However, though Brown was kind to others, she failed to extend the same charity to her ex-husband. In the days leading up to Deece's murder, she berated him with expletives, referred to him by offensive names, and blamed him for the state of her life. Even as she was being transported to the hospital after the shooting, Brown continued to blame the victim for the offense, stating he "made her life a living hell." At sentencing, Brown again aired grievances about Deece from prior to the shooting, including frustrations about Deece's inability to keep a job. Given these facts, the trial court was well within its discretion to weigh Brown's character less favorably than she would wish.

[14] Susan has not met the burden of persuading this Court that her sentence is inappropriate according to Appellate Rule 7(B). We therefore affirm the trial court's sentence.

Robb, J., and Pyle, J., concur.