

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Katrina Griffith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 18, 2022

Court of Appeals Case No.
21A-CR-1673

Appeal from the Marion Superior
Court

The Honorable Sheila A. Carlisle,
Judge

Trial Court Cause No.
49D29-1910-MR-40051

Crone, Judge.

Case Summary

- [1] Katrina Griffith appeals her conviction for level 2 felony burglary while armed with a deadly weapon, arguing that the trial court committed fundamental error by failing to properly instruct the jury that the State was required to prove the deadly weapon element. She also appeals her aggregate sixty-five-year sentence for her felony murder and level 2 felony burglary convictions, contending that the trial court abused its discretion during sentencing by failing to recognize mitigating circumstances and that her sentence is inappropriate based on the nature of the offenses and her character. We conclude that the jury instructions did not result in fundamental error, that the trial court did not abuse its discretion during sentencing, and that Griffith has not met her burden to demonstrate that her sentence is inappropriate. Therefore, we affirm.

Facts and Procedural History

- [2] In October 2019, thirty-one-year-old Griffith and her four young children were living with William Chin, with whom Griffith had a prior romantic relationship, on Edgemont Avenue in Indianapolis. Chin had asked Griffith to move out sometime in mid-September. Chin lived next door to and was friends with Mike and Mildred Zdenek. Mike and Mildred had been married since 1987. Their house had been built by Habitat for Humanity in 2000 with special attention to Mildred's needs, as she had been born with cerebral palsy. For example, the house was equipped with a ramp, security cameras, a DVR recording system, and several voice-automated devices. Mildred used a

wheelchair and needed assistance getting in and out of bed. Mike worked as an auto mechanic, repairing cars at his home and at a neighborhood church.

[3] On the afternoon of October 4, Griffith was at Chin's home with her children, and Chin was at work. Griffith told Rashaan Lewis, a friend of Chin's, Griffith's, and Mike's, that he could come over to Chin's to wash his work clothes. Lewis came to the house with Daequan "Dae Dae" Adams and Brian Reeves, Jr., and the men sat on the front porch playing various games while Lewis's clothes were being washed. Griffith occasionally came out to the porch to smoke a cigarette. At one point when Griffith was present on the porch, Mike stopped by. He said that he had sold an SUV for \$20,000 and had put some of the proceeds in the bank and had the rest of the money in his pocket. Mike returned home around 7:00 p.m. and put \$12,000 under a cabinet in his bedroom.

[4] When Chin arrived home from work around 7:00 p.m., Lewis, Adams, and Reeves were still on the porch. Chin did not join them but went inside to go to sleep because he worked very early shifts as a security guard. Sometime after that, Griffith told Lewis that she was leaving and asked the men to leave. Lewis retrieved his clean clothes and drove to his apartment with Adams and Reeves. Lewis then went to work, and Adams and Reeves remained in the stairwell of his apartment complex.

[5] Meanwhile, Mike and Mildred watched television and prepared to go to bed. At about 11:21 p.m., Griffith knocked on the Zdeneks' front door. Mildred was

already in bed, and Mike told her that he was going to see who was at the door. Subsequently, he came back into the bedroom to get a T-shirt and said that Griffith wanted him to look at her truck and that he would be right back. Mike left through the front door. Within minutes, Mildred heard four gunshots.

[6] Mike received multiple gunshot wounds. He was shot in the head, with the bullet entering his skull and extruding brain matter. Another bullet entered his body and traveled through his lungs, aorta, and vena cava. A third bullet grazed the outside of his left foot. Mike died as a result of his gunshot wounds. He was shot in the street, but his body was dragged and left next to some bushes between the Zdeneks' house and Chin's.

[7] Mildred called to Mike about ten times without answer. A heavysset man, wearing a "black sweat outfit," a black mask with a design on it, and black gloves came into the bedroom. Tr. Vol. 2 at 235. He pointed a small handgun at Mildred and asked her repeatedly where the money was. She refused to answer, and he eventually left the bedroom and began rummaging around the house. Mildred heard doors open in the kitchen and pots and pans being moved around. At one point, she heard him talking to another person. They tried to go up in the attic. After about forty minutes, whoever was in her house left. They had taken the voice-automated devices, the security camera recording unit, a DVD player, and Mike's gun. *Id.* at 238.

[8] At 12:05 a.m. on October 5, Griffith called 911 and told dispatch that Mike had been shot. When the police arrived, they found Griffith outside. Griffith gave

an account of what had occurred on multiple occasions: at the scene, later that day at the police station, and again on October 8. Her stories varied, but basically, she said that she and Mike were outside to talk about her vehicle when they were approached by a man wearing a mask who aimed a handgun at Mike and demanded that Mike go back inside his house with him. When Mike refused, the man shot him. In her various accounts, Griffith claimed that the gunman threatened to hurt her, she ran into Chin's house, and called 911; that she ran into Chin's house, threw her phone on the couch, and hid in the bathroom for about ten minutes; and that the gunman ordered her back into Chin's house, and she went inside to the bedroom. In other conversations with Lewis, Griffith claimed that the gunman had put a gun to her head. Eventually, Griffith told police that she felt that she had been used as a pawn and mentioned that "Dae Dae" had been on the porch that afternoon. *Id.* at 190; Tr. Vol. 3 at 96. Griffith claimed that if Adams was the gunman, he had acted on his own, seizing the opportunity when she went to the Zdeneks' house. Griffith also told the police that she had driven to a B.P. gas station around 10:30 p.m. on October 4, but she did not appear on the station's surveillance video.

[9] Police learned that Griffith had been trying to purchase a vehicle in the days before the shooting. They also retrieved partial data from Griffith's cell phone. One text sent out from her phone on October 3 stated that she was trying to come up with money for a vehicle. Another text sent from her phone offered to sell stamps for money. Her phone showed an outgoing call to Adams at 1:48 p.m. on October 4. Also on October 4, at 11:52 p.m., Griffith's phone sent a

text to “Anthony” to say “Hi.” *Id.* at 249. At 12:02 a.m. on October 5, Griffith’s phone received a call from Anthony that lasted one minute and fifteen seconds. Her phone showed an outgoing call to 911 at 12:04 a.m.

[10] The State charged Griffith with Count 1, felony murder; Count 2, level 2 felony robbery while armed with a deadly weapon resulting in serious bodily injury; and Count 3, level 1 felony burglary of a dwelling while armed with a deadly weapon causing serious bodily injury. A jury trial was held. The State sought to convict Griffith based on the theory of accomplice liability, arguing that she set up the robbery. The jury found Griffith guilty as charged. Following the jury’s verdict, Griffith decided to cooperate with the police regarding the shooter’s identity.

[11] At sentencing, the trial court found, and the parties agreed, that the robbery and burglary charges should be reduced due to the felony murder conviction because they alleged serious bodily injury. The prosecutor stated that the robbery charge should be reduced to a level 3 felony and the burglary charge should be reduced to a level 4 felony, and defense counsel agreed. The trial court then said that burglary with a deadly weapon is a level 2 felony, and the prosecutor agreed. The court then said, “It is a 2, okay.” Tr. Vol. 4 at 53. Defense counsel said, “Yes, I agree.” *Id.* The court stated that it would merge the robbery with the burglary and enter judgment of conviction for level 2 felony burglary and felony murder. The court found that the aggravating factors outweighed the mitigating factors and sentenced Griffith to consecutive terms of fifty years for the felony murder conviction and fifteen years for the burglary

conviction, for an aggregate sentence of sixty-five years. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

Section 1 – The jury instructions did not result in fundamental error.

[12] Griffith asserts that the trial court erred by entering judgment of conviction for level 2 felony burglary and sentencing her accordingly because the jury instructions improperly omitted an element of that offense. She requests that we vacate her level 2 felony conviction and sentence and remand with instructions to enter judgment of conviction for level 4 felony burglary and resentence for that conviction. Recognizing that she failed to preserve any error because she failed to object to the jury instructions, Griffith contends the error is fundamental. *See Batchelor v. State*, 119 N.E.3d 550, 556 (Ind. 2019) (“A party’s failure to object to, and thus preserve, an alleged trial error results in waiver of that claim on appeal.”).¹

¹ We note that Griffith agreed that the burglary count should be reduced to a level 2 felony, but the State does not contend that her agreement resulted in invited error. We find that the invited error doctrine does not apply because Griffith’s agreement does not appear to have been an affirmative act that was part of a deliberate, well-formed trial strategy. *See Batchelor*, 119 N.E.3d at 558 (“[T]o establish invited error, there must be some evidence that the error resulted from the appellant’s affirmative actions as part of a deliberate, ‘well-informed’ trial strategy.”) (quoting *Brewington v. State*, 7 N.E.3d 946, 954 (Ind. 2014)); *see also Martin v. State*, 134 N.E.3d 1033, 1037 (Ind. Ct. App. 2019) (declining to apply invited error doctrine where defense counsel agreed to conviction for level 2 felony robbery but counsel’s acquiescence “was not part of a deliberate trial strategy and amounted only to mere neglect”).

[13] “Fundamental error is an extremely narrow exception to the waiver rule where the defendant faces the heavy burden of showing that the alleged errors are so prejudicial to the defendant’s rights as to make a fair trial impossible.” *Ryan v. State*, 9 N.E.3d 663, 668 (Ind. 2014).

In other words, to establish fundamental error, the defendant must show that, under the circumstances, the trial judge erred in not sua sponte raising the issue because alleged errors (a) constitute clearly blatant violations of basic and elementary principles of due process and (b) present an undeniable and substantial potential for harm. The element of such harm is not established by the fact of ultimate conviction but rather depends upon whether the defendant’s right to a fair trial was detrimentally affected by the denial of procedural opportunities for the ascertainment of truth to which he otherwise would have been entitled.

Id. (citations, quotation marks, and brackets omitted). In determining whether the jury was improperly instructed, we consider jury instructions “as a whole and in reference to each other; error in a particular instruction will not result in reversal unless the entire jury charge misleads the jury as to the law in the case.” *Pattison v. State*, 54 N.E.3d 361, 365 (Ind. 2016) (quoting *Whitney v. State*, 750 N.E.2d 342, 344 (Ind. 2001)).

[14] Burglary is defined in Indiana Code Section 35-43-2-1, which provides,

A person who breaks and enters the building or structure of another person, with intent to commit a felony or theft in it, commits burglary, a Level 5 felony. However, the offense is:

(1) a Level 4 felony if the building or structure is a dwelling;

(2) a Level 3 felony if it results in bodily injury to any person other than a defendant;

(3) a Level 2 felony if it:

(A) is committed while armed with a deadly weapon; *or*

(B) results in serious bodily injury to any person other than a defendant; and

(4) a Level 1 felony if:

(A) the building or structure is a dwelling; and

(B) it results in serious bodily injury to any person other than a defendant.

(Emphasis added.)

[15] Griffith was charged in Count 3 with level 1 felony burglary under Indiana Code Section 35-43-2-1, -1(3), and -1(4) as follows:

On or about October 8, 2019, KATRINA GRIFFITH, while armed with a deadly weapon, that is, a handgun, did break and enter the dwelling of Michael J. Zdenek and/or Mildred Zdenek; with the intent to commit a felony within, to-wit: robbery; said act resulting in serious bodily injury to Michael J. Zdenek, to-wit: multiple gunshot wounds[.]

Appellant's App. Vol. 2 at 44.

[16] Griffith acknowledges that preliminary jury instruction 5 accurately reproduced the burglary charge against her. Appellant's App. Vol. 3 at 8-9. However, she maintains that the preliminary and final instructions that informed the jurors what the State must prove before they could find her guilty of burglary omitted the element of being armed with a deadly weapon. Preliminary instruction 8 provided,

The crime of burglary is defined by law as follows:

A person who breaks and enters the building or structure of another person, with intent to commit a felony and it results in serious bodily injury to any person other than a defendant, commits burglary, a level 1 felony.

Before you may convict the Defendant, the State must have proved each of the following beyond a reasonable doubt:

1. The Defendant, Katrina Griffith
2. Knowingly
3. Broke and entered
4. The building or structure and dwelling of Michael J. Zdenek and/or Mildred Zdenek
5. With the intent to commit a felony, robbery, in it, by
 - A. The Defendant, Katrina Griffith
 - B. Knowingly
 - C. Took property, to wit: handgun and/or a DVR
 - D. By using or threatening the use of force on Mildred Zdenek
6. And the offense resulted in serious bodily injury to Michael J. Zdenek

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of burglary, a level 1 felony, as charged in Count III.

Appellant's App. Vol. 3 at 12-13 (capitalization altered).

[17] As trial progressed, the State informed the trial court that it was seeking conviction on all three charges based on accomplice liability and tendered jury instructions for each charge based on that theory, which the court accepted.

Final instruction 24 provided as follows:

Aiding, inducing or causing burglary is defined by law as follows:

A person who, knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense.

Before you may convict the Defendant, the State must have proved each of the following elements beyond a reasonable doubt:

1. The Defendant, Katrina Griffith
2. Knowingly
3. Aided
4. Another person to commit the offense of burglary defined as:
 - A. Another person
 - B. Knowingly
 - C. Broke and entered
 - D. The building or structure and dwelling of Michael J. Zdenek and/or Mildred Zdenek

- E. With the intent to commit a felony, robbery, in it, by
 - I. Another person
 - II. Knowingly
 - III. Took property, to wit: handgun and/or a DVR
 - IV. By using or threatening the use of force on Mildred Zdenek
- F. And the offense resulted in serious bodily injury to Michael J. Zdenek

If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of aiding, inducing, or causing burglary, a level 1 felony as charged in Count III.

Id. at 39 (capitalization altered).

[18] Preliminary instruction 8 and final instruction 24 do not include the element of being armed with a deadly weapon. “[I]t is bedrock law that a defendant in a criminal case is entitled to have the jury instructed on all of the elements of the charged offense.” *Thomas v. State*, 827 N.E.2d 1131, 1134 (Ind. 2005). Griffith contends the omission of the deadly weapon element constitutes fundamental error, citing *Kingery v. State*, 659 N.E.2d 490 (Ind. 1995). There, Kingery was charged with murder by inflicting gunshot wounds and class A felony robbery resulting in serious bodily injury. *Id.* at 495. After Kingery was found guilty as charged, the trial court sentenced Kingery for murder and class B felony robbery based on Kingery’s use of a deadly weapon. On appeal, Kingery argued

that because the jury was never instructed on class B felony robbery, his class B felony sentence must be vacated.

[19] In addressing Kingery’s argument, our supreme court observed that he was charged with committing class A felony robbery resulting in serious bodily injury and that class B felony robbery while armed with a deadly weapon is not a lesser included offense of class A felony robbery. Further, the jury instructions did not advise the jury that Kingery could be convicted of class B felony robbery while armed with a deadly weapon. The *Kingery* court concluded that the class B felony “requisite element, committing robbery while armed with a deadly weapon” was absent from the jury instruction and a “person cannot be sentenced for a crime for which that person has not been convicted.” *Id.* at 496. The court vacated the class B felony sentence and remanded for a new sentencing hearing for class C felony robbery, which was a lesser included offense of class A felony robbery. *Id.*

[20] We do not agree that *Kingery* requires reversal of Griffith’s level 2 felony burglary conviction. Kingery was charged with robbery resulting in serious bodily injury, but the charge did not allege that he committed robbery while armed with a deadly weapon, and thus he could only be convicted of class B felony robbery resulting in bodily injury as a lesser included offense of class A felony robbery resulting in serious bodily injury. Here, unlike in *Kingery*, Griffith was charged with committing burglary resulting in serious bodily injury and while armed with a deadly weapon. Thus, she could be convicted of level 2 felony burglary while armed with a deadly weapon without it being a lesser

included offense of level 1 felony burglary. Nevertheless, we agree that preliminary instruction 8 and final instruction 24 failed to properly instruct the jury that the State was required to prove that the burglary was committed while armed with a deadly weapon. However, the omission does not result in fundamental error because whether the person who committed the burglary had a gun was not a central issue at trial. See *Winkleman v. State*, 22 N.E.3d 844, 850 (Ind. Ct. App. 2014) (“[A]n error in an instruction does not rise to the level of fundamental error where the issue was not a central issue at trial.”), *trans. denied* (2015).

[21] In *Winkleman*, the charging information alleged that Winkleman knowingly, while hijacking a car, removed the victim by fraud, enticement, force, or threat of force from one place to another, thereby committing class A felony kidnapping. *Id.* at 849. The kidnapping instruction advised the jury that the State had to prove that the defendant knowingly removed the victim while hijacking a vehicle. On appeal, Winkleman contended that the instruction’s omission of the element of force or threat of force resulted in fundamental error. The *Winkleman* court disagreed, observing that the element of force or threat of force was clearly established at trial where the victim testified that Winkleman beat and robbed him in a parking lot, dragged him to a hotel room where Winkleman continued to threaten him, and threatened to cut his throat if he did not cooperate. *Id.* at 850. The court concluded that because the element of force or threat of force was not a central issue for the kidnapping charge, its omission from the jury instruction did not rise to the level of fundamental error. *Id.*

[22] Here, as in *Winkleman*, the omitted element was not a central issue at trial. Mildred's uncontradicted testimony shows that the person who came into her bedroom pointed a gun at her and demanded to know where the money was. Instead, as the State asserts, the central issue was the extent of Griffith's participation in the armed burglary as an accomplice. Accordingly, we conclude that the error in the jury instructions did not result in fundamental error. As such, we affirm her conviction for level 2 felony burglary.

Section 2 – The trial court did not abuse its discretion during sentencing.

[23] Prior to sentencing, Griffith filed a sentencing memorandum with the court prepared by a social worker reporting Griffith's history and information regarding mitigating factors. Appellant's App. Vol. 3 at 58. The sentencing memorandum and presentence investigation report show that Griffith experienced childhood trauma in that her mother abused drugs, Griffith was placed in foster care at age seven, she was separated from her siblings, and she experienced mental, physical, and sexual abuse. Eventually, Griffith was adopted by James and Sharon Griffith. Griffith left home and had her first child at age nineteen. Griffith had difficulty finding stable employment and housing. She also suffered from mental illness.

[24] At the sentencing hearing, Mike's son, Michael Zdenek Jr., testified that Mike was killed a week before Michael was to be married, that Mildred had had to move in with Michael and his new wife, that it was stressful dealing with a new marriage and having to care for his mother, "to wash her, clean her, to dress

her,” and that his wife had noticed a change in his behavior and attitude as a result of the stress. Tr. Vol. 4 at 71-72. Mildred testified as to the wonderful husband and father Mike had been and his willingness to marry her despite her significant needs. She also testified that she had to sell her home and move in with her son. She testified that her life had been destroyed and that she wanted “to be dead.” *Id.* at 68.

[25] Griffith’s seventy-six-year-old father testified that Griffith’s children were living with him and that Griffith was a good mother. *Id.* at 57. Griffith testified that she was really sorry and that she did not mean for any of this to happen. She stated that she made “a bad mistake” that she wished she “could take back.” *Id.* at 64. She said that she wished she had done something to help Mike, but that “at the same time, I was scared for my life.” *Id.* She also testified that she would testify against the shooter if he was brought to trial. *Id.*

[26] Griffith argued that there were mitigating circumstances that the court should recognize, including that she did not anticipate that the crime would result in murder, she was unlikely to commit another crime, her life circumstances, the hardship to her dependents, and she had cooperated with the State after trial. *Id.* at 74-75, 79. The State contended that the loss to Mike’s family and community and Mildred’s infirmity were aggravating circumstances. *Id.* at 77. The State noted Griffith’s cooperation with police and that it would have otherwise sought an aggravated sentence. *Id.* The State expressed its appreciation for her help but explained that at this point, it had lost some of the evidence it could have accessed to help catch and prosecute the shooter. The

State also observed that Griffith had implicated a man, Adams, who she knew was innocent, and that man sat in jail for eleven months before the State was able to discover evidence that led to the dismissal of the charges against him.

[27] The trial court noted that although Griffith was convicted as an accomplice, she had played a significant role in the commission of the crime and that but for her actions, Mike would still be alive, Mildred would still be living in the home built specifically for her, and Griffith's children would still be living with her. The court also observed that Griffith had not chosen to cooperate with the police regarding the actual shooter's identity until after she was found guilty. The trial court found that Griffith's life circumstances, childhood trauma, and mental illness challenges were mitigating factors. The court expressed concern that Griffith continued to use marijuana and cocaine and that her most recent use of those substances was the day she was arrested for the current offenses. Further, the court noted that Griffith acted independently in choosing her role in the crimes and that she was fortunate that her children were able to live with their grandparents. As aggravating factors, the court found that there were multiple victims, both Mike and Mildred, and that one of the victims had a disability. The court found that the aggravators outweighed the mitigators, and for that reason, the court would impose consecutive sentences.

[28] Griffith asserts that the trial court abused its discretion during sentencing by ignoring significant mitigating circumstances. "Generally speaking, sentencing decisions are left to the sound discretion of the trial court, and we review the trial court's decision only for an abuse of this discretion." *Singh v. State*, 40

N.E.3d 981, 987 (Ind. Ct. App. 2015), *trans. denied* (2016). “An abuse of discretion occurs 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.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (quotation marks omitted), *clarified on reh’g* 875 N.E.2d 218. One way a trial court may abuse its discretion is by failing to consider or identify mitigating factors that are significant and clearly supported by the record and advanced for consideration during sentencing. *Id.* at 490-91, 493. “A trial court is not obligated to find a circumstance to be mitigating merely because the defendant advances it.” *Benefield v. State*, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009), *trans. denied*. Furthermore, a trial court is not required to consider alleged mitigating circumstances that are “highly disputable in nature, weight, or significance.” *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied* (2004). A trial court does not have to explain why it has found a factor does not exist. *Anglemyer*, 868 N.E.2d at 493. In order to be persuasive, a claim that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence was both significant and clearly supported by the record. *Id.*

[29] Griffith claims that the trial court abused its discretion by not finding the five following significant mitigating factors: (1) her remorse; (2) she did not contemplate that her crimes would cause or threaten serious harm to persons; (3) she had led a law-abiding life for a substantial period before the commission of the crimes; (4) the crimes were the result of circumstances unlikely to recur;

and (5) her character and attitudes indicate that she is unlikely to commit another crime. *See* Ind. Code § 35-38-1-7.1(b) (enumerating mitigating factors). As for her remorse, Griffith did not advance this mitigating factor for consideration in the trial court. Therefore, she has waived this claim for appeal. *Simms v. State*, 791 N.E.2d 225, 233 (Ind. Ct. App. 2003) (“If the defendant fails to advance a mitigating circumstance at sentencing, this court will presume that the circumstance is not significant and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal.”).

[30] Waiver notwithstanding, Griffith’s argument that her remorse is a significant mitigating factor clearly supported by the record fails. She directs us to her testimony at the sentencing hearing expressing how sorry she was, and she argues that her actions in admitting guilt and cooperating with the State, without any guaranteed benefit, demonstrate that her words of remorse are sincere. “Remorse, or lack thereof, by a defendant is something better [gauged] by a trial judge who views and hears a defendant’s apology and demeanor first hand and determines the defendant’s credibility.” *Sharkey v. State*, 967 N.E.2d 1074, 1079 (Ind. Ct. App. 2012) (quoting *Phelps v. State*, 914 N.E.2d 283, 293 (Ind. Ct. App. 2009)). Like other credibility determinations, absent some evidence of impermissible consideration by the trial court, we do not reweigh a trial court’s assessment of a defendant’s expressions of remorse. *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002).

[31] Here, the trial court heard Griffith’s expression of remorse and was not convinced. Although the trial court did not specifically address why it did not

find Griffith's remorse to be a significant mitigating factor, it was not required to. *Anglemyer*, 868 N.E.2d at 493. The trial court either determined that Griffith's remorse was insincere or that it was not significant enough to merit consideration. We decline to second-guess the trial court, especially where the record reveals that Griffith long denied any part in her crimes, told the officer preparing her presentence report that she did not commit the crimes and was simply doing the right thing by calling the police, implicated an innocent person in the crimes, and decided to cooperate with the police only after she was found guilty. Appellant's App. Vol. 3 at 72.

[32] Next, we address Griffith's assertion that she never contemplated that her crimes would cause or threaten serious harm, she notes that she testified that she did not intend that anyone would get hurt, let alone killed, and that was not what was planned. We observe that Griffith participated in an armed street confrontation and burglary, both of which clearly threaten serious harm. As with remorse, the trial court was in the best position to judge Griffith's credibility on this question and determined that it was either insincere or not significant enough to merit consideration. We find no abuse of discretion here.

[33] Regarding Griffith's argument that she led a law-abiding life for a substantial period before the commission of the crimes, she notes that her criminal history consists solely of a 2013 conviction for possession of a narcotic drug and that she successfully completed probation and had the charge reduced to a misdemeanor. However, she admitted that she regularly used marijuana and cocaine throughout her adult life and had used both drugs on the day she was

arrested for the current offenses. Tr. Vol. 4 at 82; Appellant's App. Vol. 3 at 75. We cannot say that the trial court abused its discretion by declining this claimed mitigator. See *Conley v. State*, 972 N.E.2d 864, 874 (Ind. 2012) (concluding that defendant's "lack of criminal history was offset by his actual criminal behavior of smoking marijuana and drinking alcohol.").

[34] As for Griffith's claim that her crimes were the result of circumstances unlikely to recur, she failed to advance this as a mitigator in the trial court, and thus it is waived. *Simms*, 791 N.E.2d at 233. In any event, her argument is without merit. She asserts that at the same time that she was in a desperate need of money because she had to find a place for her children to live, she learned that Mike had a large sum of money in his possession. We are unconvinced that this situation is unlikely to recur. As the State puts it, "A combination of financial need and persons to rob is not unique or infrequent[.]" Appellee's Br. at 31.

[35] Last, Griffith asserts that her character and attitudes indicate that she is unlikely to commit another crime. This claim rests to a large extent on her arguments regarding her remorse and minimal criminal history, but we have already concluded that the trial court's rejection of those proffered mitigators was not an abuse of discretion. As such, we cannot say that this claimed mitigator is significant and clearly supported by the record. We conclude that the trial court did not abuse its discretion during sentencing.

Section 3 – Griffith has failed to carry her burden to show that her sentence is inappropriate based on the nature of the offenses and her character.

[36] Griffith asks us to revise her 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.” Griffith has the burden to show that her sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490. 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. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017); *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.

[37] 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). “We do not look to

determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell*, 895 N.E.2d 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). As we assess the nature of the offenses and the character of the offender, “we may look to any factors appearing in the record.” *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013).

[38] Turning first to the nature of the offenses, 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). The advisory sentence for murder is fifty-five years, with a sentencing range of forty-five to sixty-five years. Ind. Code § 35-50-2-3. The advisory sentence for a level 2 felony is seventeen and a half years, with a sentencing range of ten to thirty years. Ind. Code § 35-50-2-4.5. Griffith received a fifty-year sentence for murder and a fifteen-year sentence for level 2 felony burglary. The sentence for each of her offenses is already below the advisory for each felony level. She asks us to reduce her sentence to forty-five years for murder and order a concurrent burglary sentence. Thus, she seeks the minimum possible sentence.

[39] Turning now to the specific facts and circumstances of Griffith's offenses, we note that they had two victims, Mike and Mildred. Mike was brutally shot after Griffith lured him out of his house on the pretense that she needed his help, taking advantage of his generous nature. Mike left Mildred alone in the middle of the night to help Griffith. Mildred was terrorized by a masked gunman and forced to listen to people ransack her home as she lay helpless in bed. Mildred lost the person who loved and cared for her and had to sell the home that was built especially for her.

[40] As for Griffith's character, she refers us to her traumatic childhood and the difficulties of a single mother raising four children and maintains that despite these circumstances, she has worked hard to provide for her children and has led a law-abiding life for a significant period of time. She claims that her good character is shown by her willingness to cooperate with the State to prosecute the shooter and that she has taken responsibility for her crimes. But Griffith lied to police repeatedly, misled the police regarding Adams's involvement with the crime, resulting in the incarceration of an innocent person, and chose to reveal the truth only after she was found guilty. We conclude that Griffith has failed to carry her burden to show that her sixty-five-year aggregate sentence for felony murder and level 2 felony burglary while armed with a deadly weapon is inappropriate. Therefore, we affirm her sentence.

[41] Affirmed.

Vaidik, J., and Altice, J., concur.