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IN THE
COURT OF APPEALS OF INDIANA

Reese Levi Keith,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No.
22A-CR-930

Appeal from the Johnson Superior
Court

The Honorable Peter Nugent,
Judge

Trial Court Cause No.
41D02-1705-F2-5

Pyle, Judge.

Statement of the Case

[1] In 2018, following a bench trial, the trial court convicted Reese Levi Keith (“Keith”) of multiple offenses, including Level 1 felony burglary, and

adjudicated him to be an habitual offender. The trial court then sentenced Keith to an aggregate sentence of sixty-two (62) years. Keith appealed his convictions and sentence, and this Court remanded the case to the trial court with instructions to vacate the Level 1 felony burglary conviction and enter judgment for a Level 3 felony burglary conviction. We further instructed the trial court to resentence Keith and to attach the habitual offender enhancement to one of Keith's felony convictions upon resentencing. On remand, the trial court sentenced Keith to a forty-two (42) year aggregate sentence. Keith now argues that this sentence is inappropriate. Concluding that Keith's sentence is not inappropriate, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether Keith's sentence is inappropriate.

Facts

[3] We set forth the facts as follows in Keith's prior appeal:

On May 14, 2017, following an automobile accident that occurred when he was intoxicated on methamphetamine, [then-twenty-seven-year-old] Keith was arrested and admitted for treatment at Johnson Memorial Hospital, in Franklin, Indiana, before being escorted to jail. Keith was discharged from the hospital into police custody but was readmitted to Johnson Memorial shortly thereafter due to reported seizure activity. Keith was not in police custody when he was readmitted for treatment.

Sometime after 3:20 a.m. on May 15, 2017, Keith disconnected himself from his heart monitor and IV and left the hospital without being formally discharged by his physician. Keith entered the garage of the nearby home of ninety-year-old Clayton Dixon and eighty-eight-year-old Ella Dixon (the Dixons). Keith initially slept in the Dixons' garage but later broke into the Dixons' home through a basement window so that he could steal clothing in order to change out of the hospital gown he was still wearing.

Shortly after Keith broke into their basement, the Dixons left home to do errands. While they were away, Keith changed into Clayton's clothing and ate the Dixons' food. Keith also ransacked the home and discovered the Dixons' firearm cabinet. The Dixons surprised Keith by returning from their errands quickly. Ella entered the back door of the home into the kitchen and was met by Keith, who was wearing a ski mask and pointing one of the rifles he had found in the home at her. Ella attempted to call 9-1-1 on her cell phone, but Keith grabbed the cell phone from her. Clayton then entered through the back door and attempted to subdue Keith, only ceasing his efforts upon Ella's pleas to Clayton to cooperate to avoid injury.

Keith used duct tape to bind Ella's and Clayton's hands. He then ordered them into their hallway because he feared they could be seen through the home's large picture window. Keith used more duct tape to bind Clayton by his arms and legs to a chair. Keith took Clayton's wallet from him and removed the cash it contained. Keith also duct taped Ella's arms and legs to her walker. He rummaged her purse and removed cash and the keys to the Dixons' automobile. After holding the Dixons in their home for approximately forty minutes, Keith drove away in their automobile, taking three guns and cash with him. Clayton accessed his pocketknife and used it to cut himself and Ella free. Ella alerted the authorities, who discovered Keith's hospital identification bracelet and hospital gown in the garage where he had discarded them. Subsequent investigation revealed the

presence of Keith's DNA on the hospital gown and on shards of glass collected from the Dixons' broken basement window. Clayton and Ella sustained substantial bruising as a result of being bound. After the offenses, Clayton complained to Ella that his bruises "were sore." (Transcript Vol. II, p. 73).

On May 16, 2017, the State filed an Information, charging Keith with multiple offenses. After a series of amendments to the Information, the final charges against Keith were for burglary to a dwelling resulting in serious bodily injury, a Level 1 felony; two Counts of robbery while armed with a deadly weapon, a Level 3 felony; two Counts of criminal confinement while armed with a deadly weapon, Level 3 felonies; and auto theft, a Level 6 felony. The State also sought to have Keith adjudicated as an habitual offender.

A warrant for Keith's arrest was served on him in Richmond, Indiana, on May 20, 2017. On May 21, 2017, Detective Scott Carter (Detective Carter) of the Franklin Police Department interviewed Keith[.] During the interview, which lasted approximately one hour, Keith made incriminating statements, including admissions that he had broken into the Dixons' home and taken their car, money, and guns and that he "made them think there were bullets in the gun." (Exh. 37, p. 52)[.]

On October 6, 2017, and May 24, 2018, the trial court convened Keith's bench trial. Ella and the Dixons' two sons testified regarding the changes in Clayton's behavior after the offenses. Clayton had been diagnosed with Alzheimer's dementia in August 2016. His symptoms of memory loss and cognitive disfunction had been stabilized with medication, and the Dixons had enjoyed an active life together. Immediately after the offenses, Clayton became more sedentary and withdrawn. Clayton's mood then turned sullen and aggressive toward Ella. Clayton spoke to Ella using foul language and told his wife of almost seventy years that he wanted a divorce, behavior that he had never before exhibited. Clayton eventually became so confused that he telephoned the police and

inaccurately reported that his son Greg had tried to rob them. The family became concerned when Clayton began cleaning his guns and keeping a firearm close at hand in the house. Clayton was taken to a psychiatric hospital where he was treated for a month, and he was subsequently transferred to an assisted living facility because he had lost the ability to care for himself physically. Clayton was not expected to ever return home or to live independently again[.]

Dr. [Dawn] Zapinski[, who had treated Clayton before and after the offenses,] saw Clayton on April 27, 2017, and had noted that his condition continued to be stabilized by his medication. Dr. Zapinski next saw Clayton in September of 2017, after the offenses. She noted that Clayton’s condition had significantly worsened in that he was more confused and had lost memory since his last examination[.]

Dr. Zapinski noted that although decline was inevitable with Alzheimer’s dementia, that decline was normally more gradual when a patient was on a medication regimen. She believed that it was the offenses that caused Clayton’s decline because he had experienced a rapid, acute decline immediately after those events.

On May 31, 2018, the trial court found Keith guilty as charged. After the State presented evidence that Clayton had five prior unrelated felony convictions, the trial court adjudicated Keith to be an habitual offender. On July 11, 2018, the trial court conducted Keith’s sentencing hearing.

Keith v. State, 127 N.E.3d 1221, 1225-27 (Ind. Ct. App. 2019).

[4] At the sentencing hearing, Keith’s pre-sentence investigation report contained Ella’s victim impact statement. In this statement, Ella explained that Keith’s violent criminal actions had “destroyed [the Dixons’] golden years together.” (App. Vol. 2 at 161). Ella specifically explained that at eighty-eight and ninety

years old, she and Clayton had had active lives, including church activities and a social life with family and friends. However, shortly after Keith had broken into their home, Clayton had experienced “a breakdown resulting in a rapid decline in his mental health.” (App. Vol. 2 at 161). According to Ella, Clayton had to spend his remaining years in an assisted living facility that cost approximately \$7,000 per month and was exhausting the Dixons’ savings. In addition, Ella had to live alone in the same house where the crimes had occurred. Ella further explained that not having her “husband of 71 years living with [her] . . . [was] a very lonely life for [her].” (App. Vol. 2 at 161). Ella asked the trial court to sentence Keith “to the full extent of the law.” (App. Vol. 2 at 161).

The trial court found Keith’s criminal history consisting of six felonies, five misdemeanors, and seven probation violations as a significant aggravating circumstance. The trial court found as additional aggravators that the Dixons were both significantly older than sixty-five, Keith was on probation when the offenses were committed, and that Keith prevented Ella from calling 9-1-1. The trial court found as a mitigating circumstance that Keith spoke to law enforcement and admitted his involvement in the offenses. The trial court found that the aggravating circumstances outweighed the mitigating circumstance and sentenced Keith as follows:

Count [1]	Burglary	Level 1	35 years
Count [2]	Robbery	Level 3	12 years
Count [3]	Confinement	Level 3	12 years
Count [4]	Robbery	Level 3	12 years

Count [5]	Confinement	Level 3	12 years
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Count [6]	Auto Theft	Level [6]	2 years
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The trial court ordered Keith to serve his sentences for the burglary and the Count [2] robbery consecutively. The trial court ordered Keith to serve all of his other sentences concurrently, for a base sentence of forty-seven years. The trial court enhanced Keith’s sentence by fifteen years for being an habitual offender, which it ordered was “consecutive” to the burglary and robbery sentences, for an aggregate sentence of sixty-two years. (Tr. Vol. II, p. 233).

Keith, 127 N.E.3d at 1227-28.

[5] On appeal, this Court remanded the case to the trial court with instructions to vacate the Level 1 felony burglary conviction and to enter judgment for a Level 3 felony burglary conviction. *Id.* at 1230. We further instructed the trial court to resentence Keith and, upon resentencing, to attach the habitual offender enhancement to one of Keith’s felony convictions. *Id.* at 1234.

[6] The trial court held a resentencing hearing in August 2019 and incorporated the evidence from Keith’s trial and previous sentencing hearing. Following the hearing, the trial court resentedenced Keith as follows:

Count 1	Burglary	Level 3	15 years
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Count 2	Robbery	Level 3	12 years
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Count 3	Confinement	Level 3	12 years
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Count 4	Robbery	Level 3	12 years
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Count 5	Confinement	Level 3	12 years
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Count 6 Auto Theft Level 6 2 years

In addition, the trial court attached a fifteen (15) year habitual offender sentencing enhancement to Count 1, the Level 3 felony burglary conviction. The trial court also ordered the sentences for Counts 1 and 2 to run consecutively to each other and the sentences for Counts 3 through 6 to run concurrently with each other. Lastly, the trial court ordered the sentences for Counts 1 and 2 and the sentences for Counts 3 through 6 to run concurrently with each other, for an aggregate sentence of forty-two (42) years.

[7] Keith now appeals.¹

Decision

[8] Keith argues that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on the “culpability of the defendant, the severity of the crime, the damage done to others, and myriad

¹ In April 2022, the trial court granted Keith permission to file a belated notice of appeal.

other factors that come to light in a given case.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[9] The Indiana Supreme Court has further explained that “[s]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Id.* 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).

[10] 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. *Childress*, 848 N.E.2d at 1081. Here, the trial court convicted Keith of five Level 3 felonies and one Level 6 felony. The trial court also adjudicated Keith to be an habitual offender. The sentencing range for a Level 3 felony is between three (3) and sixteen (16) years with an advisory sentence of nine (9) years. *See* I.C. § 35-50-2-5(b). The sentencing range for a Level 6 felony is between six (6) months and two and one-half (2½) years, and the advisory sentence is one (1) year. I.C. § 35-50-2-7(b). Further, the habitual offender sentencing enhancement for a person convicted of a Level 3 felony is between six (6) and twenty (20) years. I.C. § 35-50-2-8(i).

[11] Here, the trial court sentenced Keith to fifteen years for one of the Level 3 felony convictions (Count 1) and twelve years for the other four Level 3 felony convictions (Counts 2 through 5). In addition, the trial court sentenced Keith to two years for the Level 6 felony conviction (Count 6). The trial court also enhanced the fifteen-year sentence for Count 1 by fifteen years for the habitual offender adjudication. The trial court further ordered the sentences for Counts 1 and 2 to run consecutively to each other, and the sentences for Counts 3 through 6 to run concurrently with each other. Lastly, the trial court ordered the sentences for Counts 1 and 2 and the sentences for Counts 3 through 6 to run concurrently with each other, for an aggregate sentence of forty-two years. This forty-two-year sentence is considerably less than the potential maximum sentence of 102½ years.

[12] Regarding the nature of the offenses, in May 2017, Keith broke into the Dixons' home. When eighty-eight-year-old Ella and ninety-year-old Clayton returned home from running errands, Ella discovered Keith in the kitchen. Keith was wearing a mask and pointing a rifle at Ella. She attempted to call 911, but Keith grabbed her cell phone. Keith bound Clayton's and Ella's hands with duct tape and then used additional duct tape to bind Clayton's arms and legs to a chair. Keith also duct-taped Ella's arms and legs to her walker. After holding the Dixons in their home for approximately forty minutes, Keith drove away in their car, taking three guns and cash. Following this incident, Clayton's Alzheimer's dementia, which had been stabilized with medication, significantly worsened. Clayton's physician attributed this decline to the home invasion.

Clayton was subsequently placed in an assisted living facility, which drained the Dixons' savings and left Ella alone in the same house where the crimes had occurred. Clayton was not expected to ever return home.

[13] Regarding Keith's character, we note that Keith, who was twenty-seven years old when he committed the offenses in this case, has an extensive criminal history that includes six felonies, five misdemeanors, and seven probation violations. In addition, Keith was on probation when he committed the offenses in this case. Keith's extensive criminal history reflects poorly on his character for the purposes of sentencing. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). We further note that Keith's former contacts with the law have not caused him to reform himself. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*.

[14] This senseless attack on an elderly couple is particularly disturbing. When these facts are placed in context with Keith's criminal history, we find it necessary to remind appellants that our "appellate review and revise authority derived from Article 4 of the Indiana Constitution likewise includes the power to either reduce or *increase* a criminal sentence on appeal." *McCullough v. State*, 900 N.E.2d 745, 750 (Ind. 2009) (emphasis added). However, given our previous instructions on remand, we chose not to exercise the authority to increase Keith's sentence. The trial court considered all of the evidence and imposed a sentence well within the statutory range.

[15] Based on the record before us, Keith has failed to meet his burden to persuade this Court that his sentence is inappropriate.

[16] Affirmed.

Bradford, C.J., and Altice, J., concur.