



## **Case Summary**

Charles Orr appeals his sentence for burglary as a Class B felony. We affirm.

### **Issue**

Orr raises one issue, which we restate as whether his sixteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

### **Facts**

On October 22, 2008, Orr and an accomplice burglarized two churches in Greene County. They took several items, including a handgun and cameras. The State charged Orr with two counts of burglary as Class B felonies and two counts of theft as Class D felonies.

On March 22, 2009, Orr became violent while in the jail visitation area. He was evaluated at the Hamilton Center, and in-patient mental health services were recommended. Orr was transferred to the Department of Correction, which had the facilities to care for Orr. Orr was evaluated by two doctors, who found that he was competent to stand trial. Dr. Matt Oliver diagnosed Orr with polysubstance dependence, major depressive disorder, and adult anti-social behavior. Dr. Jerry Neff diagnosed Orr with major depressive disorder, impulse control disorder NOS, and polysubstance dependence.

Orr pled guilty to one count of burglary as a Class B felony, and the State dismissed the remaining charges. At the sentencing hearing, the trial court found the following aggravating factors: (1) Orr's extensive criminal history; (2) numerous probation violations; (3) the fact that he "is in need of correctional and rehabilitative

treatment that can best be provided by commitment” to a penal facility; and (4) the fact that Orr had been “provided rehabilitative services numerous times while on probation but continues to commit additional criminal offenses.” App. pp. 63-64. The trial court found Orr’s guilty plea, ongoing mental health issues, and his agreement to name his accomplice as mitigating factors. The trial court found that the aggravating factors outweighed the mitigating factors and sentenced Orr to sixteen years in the Department of Correction.

### **Analysis**

Orr argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. 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. When considering whether a sentence is inappropriate, we need not be “extremely” deferential to a trial court’s sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.”

Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest – the aggregate sentence – rather than the trees – consecutive or concurrent, number of counts, or length of the sentence on any individual count.” Id.

Orr argues that the sentence is inappropriate due to his mental illness. The trial court properly considered this issue as a mitigating factor. To the extent Orr is arguing that his mental illness was entitled to more weight, that argument is not subject to review. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007) (holding that the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion). To the extent Orr argues the sentence is inappropriate due to his mental illness, we will address his argument.

An analysis of the nature of the offense reveals that Orr and an accomplice burglarized two churches and took items, including a handgun, from the churches. A look into the character of the offender reveals that thirty-two-year-old Orr has an extensive criminal history and a long history of mental and substance abuse issues. As a juvenile, Orr was adjudicated delinquent for acts that would be intimidation on a police officer as a Class D felony. Later that same year, he was waived to adult court and charged with criminal recklessness with a deadly weapon as a Class D felony. He pled guilty to criminal recklessness as a Class A misdemeanor. As an adult, he was convicted of illegal consumption of an alcoholic beverage as a Class C misdemeanor on three occasions, glue sniffing as a Class B misdemeanor, resisting law enforcement as a Class A misdemeanor, attempted burglary in Kansas, attempted burglary, felony theft,

misdemeanor theft, and misdemeanor criminal damage to property in Kansas, public intoxication as a Class B misdemeanor, disorderly conduct as a Class B misdemeanor, battery as a Class A misdemeanor, and vehicle theft, flight escape, and larceny in Colorado. Additionally, Orr violated his probation several times and was on probation at the time of this offense.

Despite his extensive criminal history, Orr argues that his mental illness makes the sixteen-year sentence inappropriate. Our supreme court has noted four factors to consider when weighing the mitigating force of a defendant's mental illness. Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998). Those factors include the extent of inability to control behavior, the overall limitation on function, the duration of the illness, and the nexus between the illness and the crime. Id. Two doctors examined Orr prior to his guilty plea. Dr. Oliver diagnosed Orr with polysubstance dependence, major depressive disorder, and adult anti-social behavior. Dr. Neff diagnosed Orr with major depressive disorder, impulse control disorder NOS, and polysubstance dependence. Although it is clear from the record that Orr has had long-term mental illness issues and there is some indication of an inability to control his behavior on occasion, there is no indication in the record of a nexus between the burglaries and his mental illness or that he has an overall limitation on function. Under these circumstances and given Orr's extensive criminal history, we cannot say that his sixteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

## **Conclusion**

Orr's sixteen-year sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

BAILEY, J., and MAY, J., concur.