

STATEMENT OF THE CASE

Samuel Manley appeals his sentence following his convictions for resisting law enforcement, as a Class B felony, and causing death when operating a motor vehicle with a schedule I or II controlled substance in the blood, as a Class C felony, pursuant to an open plea agreement. Manley presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On September 15, 2009, Manley, who did not have a driver's license and was high on marijuana, was driving a vehicle when he failed to stop at a stop sign. After observing that infraction, two Evansville police officers attempted to initiate a traffic stop of Manley's vehicle. Manley did not stop, but increased his vehicle's speed to approximately 100 miles per hour as he drove through the streets of Evansville in an attempt to evade the officers. Manley's vehicle ultimately collided with another vehicle, and the driver of that other vehicle died as a result of injuries he sustained in the collision.

The State charged Manley with resisting law enforcement, as a Class B felony; causing death when operating a motor vehicle with a schedule I or II controlled substance in the blood, as a Class C felony; and reckless homicide, a Class C felony. Manley pleaded guilty to the first two charges, and the State dismissed the third charge in exchange for his plea. The plea agreement left sentencing to the trial court's discretion.

At sentencing, the trial court identified two aggravating circumstances. First, the court found aggravating the nature and circumstances of the crime. In particular, the trial

court noted that Manley: was uncooperative with police after the collision; did not have a driver's license; admitted to driving 100 miles per hour prior to the collision; admitted to being high on marijuana at the time of the collision; lacked remorse at the time of his arrest and only showed remorse for the first time at sentencing; and laughed when police told him that the driver of the second vehicle had died. The trial court also took into consideration the victim impact statements submitted by the deceased victim's relatives. In particular, the trial court observed that the victim leaves two "very young children" to grow up without a father. Appellant's App. at 63. The trial court also found aggravating the fact that Manley was convicted on two counts.

The trial court found the following mitigating circumstances: Manley's lack of criminal history; his "significantly below average intellectual functioning in all areas and [] mild mental handicap;" and his guilty plea. *Id.* at 64. The trial court found that the aggravators outweighed the mitigators and imposed a fifteen-year sentence for the B felony conviction, to run concurrent with an eight-year sentence on the C felony conviction, for an aggregate term of fifteen years. This appeal ensued.

DISCUSSION AND DECISION

Manley contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize [] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate

Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See App. R. 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

The Indiana Supreme Court more recently stated that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to “leaven the outliers.” Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” Id. at 1224.

Manley first contends that his sentence is inappropriate in light of the nature of the offenses. In particular, Manley asserts that he did not intend to hurt anyone, and he stresses that his ability “to appreciate the consequences of his immediate actions” is inferior to that of an individual of average intellectual functioning. Brief of Appellant at 3. But Manley admitted to being high on marijuana and driving a vehicle at 100 miles

per hour at the time of the collision that killed a man. Regardless of Manley's stated lack of intent at the time, the nature of these offenses, which resulted in the death of a father with young children, warrants the imposition of a significant sentence.

A psychologist determined that Manley is mildly mentally handicapped with "significant intellectual limitations." Appellant's App. at 75. A trial court shall consider the following factors that bear on the weight, if any, that should be given to mental illness at sentencing:¹ (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. Weeks v. State, 697 N.E.2d 28, 31 (Ind. 1998) (citing Archer v. State, 689 N.E.2d 678, 685 (Ind. 1997)). While the psychologist's report states that Manley "shows significantly below average intellectual functioning in all areas," it does not specifically address the factors set out in Weeks. Appellant's App. at 74-75 (emphasis added). Manley does not direct us to any evidence showing either an inability to control his behavior or a nexus between his mental impairment and the commission of the crimes, which are, perhaps, the most significant considerations in our review. Manley has not persuaded us that his sentence is inappropriate in light of the nature of the offenses.

Manley next contends that his sentence is inappropriate in light of his character. In particular, he points out that he is only twenty-one years old, has no criminal history, is "significantly below average in intellectual functioning in all areas," and expressed

¹ While Manley's mental impairment is more relevant to our analysis of his character, he raises the issue in his argument with respect to the nature of the offenses.

remorse at sentencing. But, as the State points out, Manley has been smoking marijuana on a daily basis since he was thirteen years old. Thus, while he has not been convicted of a crime before the instant offense, he has been violating the law for several years. Further, Manley laughed when police told him that the victim had died, and he consistently shunned responsibility for the collision until he pleaded guilty. Manley even went so far as to write a letter to a relative of the victim blaming police for his death. We cannot say that the sentence is inappropriate in light of Manley's character.

We affirm.

ROBB, C.J., and CRONE, J., concur.