MEMORANDUM DECISION

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Court of Appeals
and Tax Court

IN THE
Court of Appeals of Indiana

Eliel Avelar,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 28, 2024

Court of Appeals Case No.
23A-CR-2783

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No.
03D01-2008-MR-4053

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitas concur.

Weissmann, Judge.

[1] Eliel Avelar was paid to kill Leobardo Flores and did just that. Pursuant to a plea agreement with the State, Avelar pleaded guilty to murder in exchange for dismissal of ten other charges and a sentencing cap of 55 years. The trial court sentenced Avelar to 55 years in prison, which is the statutory advisory sentence for murder. Avelar now appeals this sentence as inappropriate in light of the nature of his offense and his character. We affirm.

Facts

[2] In 2020, Avelar was a 31-year-old Mexican citizen and undocumented immigrant living in Chicago, Illinois. One day, Avelar learned that a man in Columbus, Indiana—Abraham Cesareo—was offering to pay someone to harm his ex-girlfriend's new boyfriend, Flores. Avelar made contact with Cesareo through a mutual friend, Eladia Ortiz, and the three soon met at a Columbus gas station, where Cesareo paid Avelar $2,000. In exchange, Avelar agreed to return to Columbus and kill Flores.

[3] Two weeks later, after borrowing a .45 caliber handgun from someone, Avelar paid his friend Esam Abujouedeh $800 to drive Avelar from Chicago to Columbus. After picking up Cesareo, the three drove to Flores's place of work and waited for Flores to arrive. Thirty minutes later, when Flores pulled into the parking lot and exited his car, Avelar approached Flores on foot and shot him once in the head, killing him.

[4] After the shooting, Avelar drove Flores's car to a nearby grocery store and abandoned it in the parking lot with the engine running. This was done to make Flores's death look like a robbery. Abujouedeh and Cesareo then picked up Avelar, and the three drove to Cesareo's house. Once there, Avelar pointed his gun at Cesareo and demanded more money. Avelar also demanded more money from Ortiz over the phone. Cesareo's brother eventually gave Avelar an additional $1,200, after which Avelar and Abujouedeh returned to Chicago. Avelar then had someone set fire to Abujouedeh's car and told Abujouedeh to report the car as stolen, which he did.

[5] Cesareo, Ortiz, and Abujouedeh ultimately confessed to their roles in Flores's killing, and all three identified Avelar as the shooter. The State charged Avelar with murder as well as ten other crimes: one Level 3 felony (armed robbery); six Level 6 felonies (auto theft, intimidation, unlawful possession of a firearm, and three counts of obstruction of justice); and three Class B misdemeanors (all criminal mischief). Pursuant to a plea agreement, Avelar agreed to plead guilty to murder in exchange for the State's dismissal of the other charges and a sentencing cap of 55 years. The trial court approved the agreement, accepted Avelar's guilty plea, and sentenced him to 55 years in prison.

Discussion and Decision

[6] Avelar appeals his sentence under Indiana Appellate Rule 7(B), which permits an appellate court to revise a sentence if, "after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). In

reviewing the appropriateness of a sentence, our principal role is to attempt to leaven the outliers, not to achieve a perceived "correct" sentence. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Accordingly, we give "substantial deference" to the trial court's sentencing decision. *Id.* The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015).

[7] In assessing the appropriateness of a sentence, we first look to the statutory range established for that class of offense. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Murder has a sentencing range of 45 to 65 years and an advisory sentence of 55 years. Ind. Code § 35-50-2-3(a). Though Avelar received the maximum sentence allowed by his plea agreement, it equated to the 55-year advisory sentence provided by statute.

[8] As to the nature of the offense, Avelar argues that this conduct did not substantially exceed the elements of murder. We disagree. *See generally* Ind. Code § 35-42-1-1(1) ("A person who . . . knowingly or intentionally kills another human being . . . commits murder."). Avelar agreed to kill Flores—someone he had never even met—for $2,000. Despite having two weeks to back out of the deal, Avelar ultimately borrowed a handgun, travelled from Chicago to Columbus, laid in wait at Flores's place of employment, and then murdered Flores when he arrived for work. After the murder, Avelar attempted to cover up the crime by driving Flores's car to another location and abandoning it. Avelar also had his getaway car burned and told his friend to report it stolen.

[9] On the issue of character, Avelar asserts that he has a history of depression, anxiety, suicidal ideation, and self-harm. But he does not explain how these mental health issues render his sentence inappropriate. Avelar also notes his significant history of substance abuse, claiming—without explanation—that "this crime would not have occurred had he been sober and clear headed." Appellant's Br. p. 11. Additionally, Avelar emphasizes that he expressed remorse for murdering Flores. However, in making those expressions, Avelar simultaneously blamed drugs and alcohol for the crime, and the trial court "[did] not buy that whatsoever." Tr. Vol. II, p. 89.

[10] Finally, Avelar highlights that his criminal history consists of only two misdemeanor convictions. But "[e]ven a minor criminal history" reflects poorly on a defendant. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014). Moreover, Avelar ignores that he was in the United States illegally when he committed the instant offense. *See Guzman v. State*, 985 N.E.2d 1125, 1132 (Ind. Ct. App. 2013) (recognizing defendant's unlawful immigration status is a valid aggravating factor because it demonstrates a disregard for the law).

[11] Ultimately, Avelar has not persuaded us that his advisory sentence of 55 years is inappropriate in light of the nature of his offense and his character. We therefore affirm.

Mathias, J., and Tavitas, J., concur.

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