MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Clayton P. Frazier,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 9, 2023

Court of Appeals Case No. 22A-CR-2117

Appeal from the Madison Circuit Court

The Honorable Mark Dudley, Judge

Trial Court Cause No. 48C06-1909-F5-2227

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Clayton P. Frazier appeals his conviction and sentence for invasion of privacy as a level 6 felony. We affirm.

Facts and Procedural History

[2] Frazier and J.B. were previously in a relationship. J.B. has a child, O., who was born in October 2016. On March 24, 2017, the trial court issued a no contact order under cause number 48C06-1703-F5-779 ("Cause No. 779") ordering that Frazier have no contact with J.B. in person, by telephone or letter, through an intermediary, or in any other way, directly or indirectly. Frazier was charged with stalking J.B. and invasion of privacy[1] and pled guilty to invasion of privacy as a level 6 felony. The court accepted the plea agreement and, in its sentencing order on May 23, 2018, ordered that Frazier have no contact with the victim.

[3] Afterwards, Frazier sent a number of letters to J.B. The State charged Frazier as amended with invasion of privacy as a level 6 felony under cause number 48C06-1909-F5-2227, the cause from which this appeal arises, and alleged he was previously convicted of invasion of privacy under Cause No. 779. On August 8, 2022, the court held a hearing and indicated there was a plea agreement. After Frazier was questioned, the court rejected his attempt to plead guilty. On August 9, 2022, the court held a jury trial at which it admitted

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[1] The information in Cause No. 779 alleged Frazier violated a protective order under cause number 48C03-1609-PO-819 ("Cause No. 819") and that he had been "previously convicted of invasion of privacy under cause number 48H02-1610-CM-3083 or under 48H02-1609-CM-2769." J.B. was the protected person in the order issued under Cause No. 819.

letters which Frazier sent to J.B. It also admitted, as State's Exhibit 9, a letter by Frazier which was addressed to O. and sent in an envelope which contained O.'s name and J.B.'s mailing address. The jury found Frazier guilty of invasion of privacy, and Frazier admitted to having a prior conviction which elevated the offense to a level 6 felony. The court moved to sentencing and verbally stated "I'm not giving it a lot of weight, but a little mitigation is you take some responsibility by agreeing" to the enhancement of the offense to a felony. Transcript Volume II at 87. It also stated "I give you some credit . . . that there has been a period of almost three (3) years of no contact." *Id*. The court's written sentencing order stated it did not find any mitigators. It found Frazier's criminal history to be an aggravator. The court sentenced Frazier to two years and ordered that the sentence "run consecutively to 48C06-1710-F5-2565, 48C06-1703-F5-779, and 48C06-1805-F4-1441." Appellant's Appendix Volume II at 96.

Discussion

I.

[4] Frazier asserts the trial court abused its discretion in rejecting his plea agreement. He argues that, "[w]hile [he] did at times hem and haw, as well as hedge a bit, he ultimately admitted to everything the State alleged he did." Appellant's Brief at 17.

[5] We review a trial court's decision to reject a guilty plea for an abuse of discretion. *Jennings v. State*, 723 N.E.2d 970, 972 (Ind. Ct. App. 2000). "Trial

courts enjoy considerable discretion in deciding whether to accept or reject a proposed plea agreement." *Rodriguez v. State*, 129 N.E.3d 789, 794 (Ind. 2019). Ind. Code § 35-35-1-3(b) provides: "The court shall not enter judgment upon a plea of guilty . . . unless it is satisfied from its examination of the defendant or the evidence presented that there is a factual basis for the plea." "A defendant has no right to have a guilty plea accepted." *Jennings*, 723 N.E.2d at 972.

[6] The record reveals that, at the August 8, 2022 hearing, the court stated it had a plea agreement in front of it. The court asked Frazier "[d]o you swear or affirm under the penalties of perjury that the testimony you're about to give be the truth and nothing but the truth," Frazier replied "[n]o," defense counsel stated "[y]ou got to swear or affirm," and Frazier stated "I affirm." Transcript Volume I at 96. The court asked "[y]ou affirm that . . . what you're about to say will be the truth," and Frazier stated "[y]eah." *Id*. After discussing the allegations and possible penalties, the court stated "Mr. Frazier, I'm gonna quiz you for a moment. Did you . . . waive your right to appeal . . . as a part of your plea agreement?" *Id*. at 99. Frazier answered: "Nah, I didn't . . . . If I did I didn't understand." *Id*. The court stated "[t]here is a written document in front of you, which I'm gonna go through, and I wanted to quiz to see how much you were aware of what you were doing there," and Frazier stated "[t]hat's nothing – I didn't read none of it. I just seen . . . the bold print as usual, (INDISCERNIBLE)." *Id*. at 99-100. The court said "I was just trying to see how much of it you looked at," and Frazier said "I know who is [sic] though to be truthful" and "I'm satisfied, but I just want to get it done truth be told. . . . I

don't even care about none of the plea, nothing, anything else. I just want to get it done." *Id*. at 100-101.

[7] The court asked Frazier if he understood that, by pleading guilty, he was admitting the charge filed against him was true, Frazier stated "I mean absolutely. See I've been doing this for a long time, so yes sir," the court stated "I'm gonna have them lay a factual basis and I'm gonna look at you and say did this in fact happen" and asked "[a]re you gonna be prepared to say yup that's what happened," and Frazier replied "I mean I – Yes. I'm gonna have to because I got to do that in order to accept the plea." *Id*. at 102.

[8] The court stated "[m]ake sure you hear what I said. I'm gonna say did this in fact happen," Frazier asked "[s]o if I say no then you're not gonna accept my plea . . . [a]nd I have to go to trial," the court replied affirmatively, and Frazier stated:

> So that's what I said. That's how in the beginning you said this and when you asked me to do can I . . . swear or affirm. I couldn't swear because I gonna be lying since I had to affirm because in order for me to accept this plea or to even get you to accept my plea I have to tell the truth. I have to tell a lie even if it's not, you see what I'm saying, the truth.

Id. at 102-103. He stated: "I don't have to fight it in a trial and fight it on appeal . . . . I just want to get it done." *Id*. at 103.

[9] The court explained "[y]ou can make the State prove its case beyond a reasonable doubt, or you can . . . say yup, this really did happen. I'm gonna

strike a deal with the State" and "[t]here is no third option where this didn't happen but I'm gonna accept a plea of guilty on something that didn't happen. That's not an option." *Id*. at 103-104. Frazier stated:

> Yes, yes sir, but all due respect to your courtroom sir, (INDISCERNIBLE) say. If it didn't happen, see what I'm saying, then in order for me to accept this plea I have to say that it happened on record, see what I'm saying. So therefore it's in a bind regardless, see what I'm saying. But like I said, it's whatever. I want to, I just want to get it done so of course I'm gonna have to say yes it did happen even if it didn't happen. See what I'm saying, because I want to get it done so I can go. See what I'm saying? Basically I, I been . . . sitting for four (4) years and I want to, I want to take it to trial, I want it to go to trial.

Id. at 104. He later stated:

> I'd rather take the . . . less of offense, some, something less, see what I'm saying, then having to . . . been found guilty and hit with habitual. Y'all gonna force me to go down state and win it on appeal, see what I'm saying. I already know what you gonna do sir, all due respect . . . . I'm gonna lose . . . .

Id. at 105.

[10] The prosecutor stated that, if the case were to proceed to trial, the State would put forth evidence to show that, on or between May 21, 2019, and June 24, 2019, Frazier did knowingly or intentionally violate a no contact order, he had previously been convicted of invasion of privacy under Cause No. 779, and the violation occurred by writing letters which were received by J.B., who was a protected person. Frazier stated "she never received those letters" and

"[s]omebody else read 'em and probably told her she probably shouldn't read 'em." *Id*. at 108. The court said "[t]hat's for a Jury." *Id*. Frazier stated "I'm just ready to do this so I can go back to the penitentiary (INDISCERNIBLE). . . . I'm guilty." *Id*. The court asked "[w]hy are you guilty," and Frazier replied "[b]ecause I want to get this plea so we can get it over with . . . ." *Id*. The court stated "I just need a clear answer from you," and Frazier stated "I just said we was gonna get it done sir that's why." *Id*. at 109. The court asked "[w]hat did you do," Frazier said "[w]hat I'm being accused of," the court asked "[w]ell what's that," and Frazier replied "[w]hatever they said they, they said I done." *Id*. The court stated "[y]ou're not doing a very good job of convincing me." *Id*.

[11] Frazier stated he wrote a letter. Defense counsel asked Frazier "[d]id you put it in an envelope and mail it," Frazier said "Uh-huh (ACKNOWLEDGES YES)," defense counsel said "[y]es or no," Frazier replied "[y]eah that's what they said (INDISCERNIBLE)." *Id*. at 110. Defense counsel said "[i]t's got to be yes for Judge . . . did you send the letter to [J.B.]?" *Id*. Frazier answered: "Nah, I didn't." *Id*. Defense counsel asked "[d]id you send it to your son at [J.B.'s] house?" *Id*. Frazier stated "[y]eah I did" and "[h]e's not on the protective order so I can do that all day long. I'm not supposed to be in contact with that person that's on the No Contact Order, is that true or false?" *Id*. The trial court stated "[i]t sounds like we're gonna have a trial tomorrow morning" and "we'll start your Jury trial tomorrow morning and we'll have this concluded." *Id*. at 111. Frazier asked "[w]e're gonna have it concluded tomorrow," and the court answered "[y]es sir." *Id*. On this record, we cannot

say the trial court abused its discretion in refusing the guilty plea. *See Jennings*, 723 N.E.2d at 972 (finding the trial court did not abuse its discretion in refusing the guilty plea where the defendant stated "whatever [the victim] said happened did happen" and "whatever the report said happened did happen" and he initially denied having intercourse with the victim and said he "suppose[d]" he had intercourse with her).

II.

[12] Frazier next argues the trial court abused its discretion in admitting State's Exhibit 9. He argues that the exhibit contains a letter addressed to O. and that O. was not a protected person under the no contact order. We generally review the trial court's ruling on the admission of evidence for an abuse of discretion. *Brittain v. State*, 68 N.E.3d 611, 616-617 (Ind. Ct. App. 2017), *trans. denied*. However, where the trial court has erred in the admission of evidence, we will not reverse the conviction if that error was harmless. *Turner v. State*, 953 N.E.2d 1039, 1058 (Ind. 2011). Generally, errors in the admission of evidence are to be disregarded unless they affect the substantial rights of a party. *Id.* at 1059. The improper admission is harmless error if the conviction is supported by substantial independent evidence of guilt satisfying the reviewing court there is no substantial likelihood the challenged evidence contributed to the conviction. *Id.*

[13] Even if the trial court abused its discretion in admitting State's Exhibit 9, reversal is not warranted. The State presented a number of other exhibits

containing letters which Frazier does not challenge on appeal and which were addressed and written to J.B. J.B. testified that she received the letters from Frazier after the court issued the no contact order in March 2017. She testified that she received the letters in the mailbox at her house and the envelopes had Frazier's name on them as the sender. She indicated that she was able to recognize Frazier's handwriting and, based on the handwriting and the information in the letters, she believed Frazier sent the letters to her. The State presented substantial evidence of Frazier's guilt. We find no reversible error.

III.

[14] Frazier argues his sentence is inappropriate. He argues he "sent non-threatening, non-intimidating letters to [J.B.], apologizing and talking about his child." Appellant's Brief at 22. Ind. Appellate Rule 7(B) provides 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." 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). Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year.

[15] The record reveals that Frazier sent numerous letters to J.B. at her home address in violation of the trial court's no contact order. In the letters, Frazier

asked J.B. to send him pictures, apologized for his "wrong doings," State's Exhibit 5, wrote "[a]ll I really do is think about you and where and how I went wrong with you" and "[l]etting you go has always been my weakness," State's Exhibit 12, and stated "I give up and I surrender, you win and I loss [sic]" and "the whole f------ world gets to see him all the f------ time." State's Exhibit 13. J.B. testified it was stressful to receive the letters because Frazier could be very threatening and intimidating. The trial court noted "[y]ou're serving 2565 and 1441 . . . at the DOC."[2] Transcript Volume II at 90. Frazier was convicted of invasion of privacy as a level 6 felony under Cause No. 779. After due consideration, we conclude that Frazier has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.[3]

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[2] In cause number 48C06-1710-F5-2565, Frazier pled guilty to unlawful possession of a firearm by a serious violent felon as a level 4 felony, burglary as a level 5 felony, and theft of a firearm as a level 6 felony. In cause number 48C06-1805-F4-1441, Frazier pled guilty to battery resulting in serious bodily injury as a level 5 felony.

[3] To the extent Frazier argues the trial court abused its discretion in verbally stating that his admission to the enhancement to a felony and the time between the last letter and sentencing were mitigators but stating in its written order that it did not find any mitigators, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant's guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate"), *trans. denied*), *trans. denied*. Even if we were to address his abuse of discretion argument, we would not find it persuasive in light of the record. Further, to the extent Frazier asserts his sentence is disproportionate under Article 1, Section 16 of the Indiana Constitution, the Indiana Supreme Court has stated "[o]ur standard for an as-applied proportionality challenge depends on the type of penalty at issue," "[f]or habitual-offender enhancements, we assess the 'nature and gravity' of the present felony, and then the 'nature' of the prior felonies on which the enhancement is based," and "[f]or penalties not based on prior

[16] For the foregoing reasons, we affirm Frazier's conviction and sentence.

[17] Affirmed.

Bailey, J., and Weissmann, J., concur.

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offenses, we have undertaken a simpler inquiry into whether the penalty is 'graduated and proportioned to the nature of [the] offense.'" *Shoun v. State*, 67 N.E.3d 635, 641 (Ind. 2017) (citations omitted). Frazier sent numerous letters to J.B. in violation of the court's no contact order and was previously convicted for the same conduct. Frazier has not demonstrated that his sentence is disproportionate.