

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua W. Rowley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 31, 2023

Court of Appeals Case No.
22A-CR-2688

Appeal from the Vigo Superior
Court

The Honorable John T. Roach,
Judge

Trial Court Cause Nos.
84D01-2111-F3-3967
84D01-2205-F5-1698

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

- [1] Joshua W. Rowley appeals his sentence for aggravated battery as a level 3 felony and battery resulting in bodily injury to a public safety official as a level 5 felony and asserts his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On November 21, 2021, Rowley inflicted injury on Paul Aubin that “caused protracted loss or impairment of the function of a bodily member or organ, that being an occipital scalp laceration and/or a trace traumatic subarachnoid hemorrhage and subdural.” Transcript Volume II at 12. On November 24, 2021, the State charged Rowley under cause number 84D01-2111-F3-3967 (“Cause No. 67”) with aggravated battery as a level 3 felony. On June 17, 2022, the State alleged Rowley was an habitual offender.
- [3] On April 19, 2022, Rowley touched “Nathan Kruger, a public safety official, in a rude, insolent, or angry manner by punching him while said officer was engaged in the execution of his official duties, resulting in . . . pain and/or contusion and/or a bloody nose.” *Id.* On May 13, 2022, the State charged Rowley under cause number 84D01-2205-F5-1698 (“Cause No. 98”) with: Count I, battery resulting in bodily injury to a public safety official as a level 5 felony; Count II, battery resulting in bodily injury as a class A misdemeanor; and Count III, criminal mischief as a class B misdemeanor.¹

¹ Count I alleged Rowley “did knowingly or intentionally touch Nathan Kruger, a public safety official, in a rude, insolent, or angry manner by punching him” Appellant’s Appendix Volume II at 98. Count II alleged he “did knowingly or intentionally touch Ronald Decker in a rude, insolent, or angry manner by

[4] In September 2022, Rowley and the State entered into a plea agreement pursuant to which Rowley agreed to plead guilty to aggravated battery as a level 3 felony under Cause No. 67 and Count I, battery resulting in bodily injury to a public safety official as a level 5 felony, under Cause No. 98. The State agreed to dismiss the remaining counts under Cause No. 98 as well as cause number 84D01-2107-F1-2289 (“Cause No. 89”), which included charges of burglary as a level 1 felony, robbery resulting in serious bodily injury as a level 2 felony, aggravated battery as a level 3 felony, and unlawful possession of a firearm by a serious violent felon as a level 4 felony.

[5] On October 14, 2022, the court held a hearing at which Rowley pled guilty pursuant to the plea agreement and the court entered judgments of conviction. Rowley stated:

I know what I did was wrong and I apologize. I wish it would never happened but the damage is done. I’m not, uh, I deserve, I feel like I do deserve to do some time but all I am asking is instead of just releasing me from prison like any other time is let me modify to dual diagnostics where I can get the mental health that Virgil Macke says I’ve got and lay a foundation before I am released to stop this chain of me coming back to prison. I mean, I apologize.

punching and/or kicking him” *Id.* Count III alleged he “did, without the consent of Ronald Decker, recklessly, knowingly or intentionally damage or deface the property of Ronald Decker” *Id.*

Id. at 15. When his attorney asked for a statement regarding his mental health diagnosis, Rowley stated:

Like I have been asking the jail to be put on meds. After I was talking to her on the tablet they finally came with some pills and gave me (inaudible) and the Zoloft. You know, I'm just, I feel like now that I'm in the right state of mind and I feel like I'm going to be alright.

Id. at 15-16.

[6] Robin Michelle Arndell, Rowley's cousin, testified that Rowley came from a "broken home . . . where drugs were used" and he was punched in the face by his father when he was seven years old. *Id.* at 18. She testified she was proud of Rowley for recognizing "the mental underlining [sic] issues and the drug addiction problem that was always there." *Id.* On cross-examination, she acknowledged Rowley had not taken advantage of past opportunities to receive help with his mental health or substance abuse.

[7] The court stated Rowley was "a dangerous man" and "[u]ntil you get a handle on this you are a danger to society." *Id.* at 29. The court noted the multiple failed attempts at interventions including multiple violations of probation. It sentenced Rowley to consecutive sentences of sixteen years for aggravated battery as a level 3 felony under Cause No. 67 and six years for battery resulting in bodily injury to a public safety official as a level 5 felony under Cause No. 98. In its sentencing order, the court stated that it was "designating [him] as a Mental Health placement and also ordering Purposeful Incarceration."

Appellant's Appendix Volume II at 85. It also stated: "Defendant shall have the ability to petition the court to modify the last seven (7) years of his executed sentence to be served as a direct commitment to Community Corrections so long as defendant is found eligible and remains compliant, if appropriate, with the conditions of same." *Id.*

Discussion

- [8] Rowley argues the maximum executed sentence was inappropriate in light of the nature of the offenses and his character. He does not dispute that the offenses were violent in nature but asserts there was nothing egregious that made them unusual for aggravated battery or for striking a jail officer. He asserts he has experienced a lifelong struggle with mental illness, endured a difficult childhood, and expressed sincere remorse for his actions.
- [9] Ind. 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." 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). "[W]hether we regard a sentence as appropriate 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 factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "[A]ppellate review 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.*

[10] Ind. Code § 35-50-2-5 provides that a person who commits a level 3 felony shall be imprisoned for a fixed term of between three and sixteen years, with the advisory sentence being nine years. Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years, with the advisory sentence being three years. The Indiana Supreme Court has observed the maximum possible sentences are generally most appropriate for the worst offenders. *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (citation omitted). The Court further stated “[t]his is not, however, a guideline to determine whether a worse offender could be imagined,” “[d]espite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario,” and “[a]lthough maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.” *Id.*

[11] Our review of the nature of the offenses reveals that, on November 21, 2021, Rowley inflicted injury on Aubin that “caused protracted loss or impairment of the function of a bodily member or organ, that being an occipital scalp laceration and/or a trace traumatic subarachnoid hemorrhage and subdural.” Transcript Volume II at 12. The presentence investigation report (“PSI”) indicates that the camera footage of the offense in Cause No. 67 showed

Rowley punch inmate Aubin on the left side of his face causing him to fall backwards and hit his head on the concrete floor. On April 19, 2022, Rowley touched “Kruger, a public safety official, in a rude, insolent, or angry manner by punching him while said officer was engaged in the execution of his official duties, resulting in . . . pain and/or contusion and/or a bloody nose.” *Id.*

- [12] Our review of the character of the offender reveals that Rowley pled guilty and the court dismissed the habitual offender allegation under Cause No. 67, the remaining charges under Cause No. 98, and Cause No. 89, which included charges of burglary as a level 1 felony, robbery resulting in serious bodily injury as a level 2 felony, aggravated battery as a level 3 felony, and unlawful possession of a firearm by a serious violent felon as a level 4 felony. The PSI reveals that Rowley reported he was diagnosed with schizophrenia and bipolar disorder in 2010, and he denied receiving mental health treatment as an adult but recalled going to Hamilton Center and Bloomington Meadows Hospital as a child. Rowley reported that he “was recently diagnosed with Schizoaffective disorder, ADHD and Substance Use Disorders by Virgil Macke” and that Macke recommended the medication Zyprexa. Appellant’s Appendix Volume II at 56. It indicates that Rowley has abused marijuana, methamphetamine, Xanax, K2, and heroin. Rowley reported successfully completing the CLIFF program in 2010. According to the PSI, Rowley stated he did not have a good childhood, his mother physically abused him, his parents were on drugs, and he intends to live with his father when he is released from custody. It reveals that Rowley has a fifteen-year-old daughter and that an order of protection was

granted in 2021 stating he was not to have any contact with his ex-wife or daughter.

[13] As a juvenile, Rowley, who was born in 1987, admitted to allegations of disorderly conduct in 2001, criminal recklessness in 2002, and criminal mischief and intimidation in 2003. As an adult, Rowley has convictions for “Operator Never Received a License” as a class C misdemeanor in 2005; auto theft and resisting law enforcement as class D felonies in 2006; auto theft as a class D felony in 2006; intimidation as a class D felony and criminal mischief as a class A misdemeanor in 2010; invasion of privacy as a class A misdemeanor in 2010; battery committed by means of a deadly weapon or resulting in serious bodily injury as a class C felony, domestic battery as a class A misdemeanor, criminal mischief as a class A misdemeanor, and criminal mischief as a class B misdemeanor in 2010; two counts of resisting law enforcement as class D felonies and reckless driving as a class B misdemeanor in 2012; escape as a class C felony and being an habitual offender in 2014; and auto theft as a level 6 felony in 2017. *Id.* at 59. The PSI indicates that “[p]revious sentences have included community service, restitution, compliance with mental health treatment, probation and prison” and Rowley has “had multiple probation violations filed in the past.” *Id.* at 63. Rowley was on parole at the time of the offenses. The PSI states that Rowley’s overall risk assessment score using the Indiana Risk Assessment System places him in the very high risk to reoffend category.

[14] After due consideration and in light of Rowley's criminal history and the trial court's willingness to review the last seven years of his sentence, we conclude that Rowley has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[15] For the foregoing reasons, we affirm Rowley's sentence.

[16] Affirmed.

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