

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Douglas Jay Barnes,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 14, 2021

Court of Appeals Case No.
21A-CR-834

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-2005-F5-2324

Najam, Judge.

Statement of the Case

- [1] Douglas Jay Barnes appeals his sentence after he pleaded guilty to intimidation, as a Level 5 felony. Barnes raises one issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

Facts and Procedural History

- [3] On March 16, 2020, Barnes, who had been drinking, threw a beer bottle through the window of Joseph Vincent's apartment. Vincent went to the nearby Circle K for assistance. While there, Vincent spoke with two other individuals about Barnes' actions. At some point, Barnes exited his apartment, which was approximately fifty feet from the Circle K's parking lot, and began yelling at the three individuals. Barnes then pulled a six- or seven-inch-long knife from his waistband and "waiv[ed] it around." Tr. at 11. Barnes threatened to kill the men, and he said that he was going to "slit their throats and cut their eyes." *Id.* at 12.
- [4] Office Kyle Weaver with the Columbus Police Department responded to the scene. One of the individuals told Officer Weaver that Barnes' actions caused him to be "fearful for his life." *Id.* Officer Weaver then arrested Barnes. As he escorted Barnes to the police car, Barnes said: "I'll have that gun when I get out" and "I'll see you guys later" loud enough for the three individuals to hear. *Id.*

- [5] The State charged Barnes with two counts of intimidation, as Level 5 felonies, and one count of criminal mischief, as a Class B misdemeanor. Shortly thereafter, Barnes violated a jail rule when he flooded or attempted to flood a cell or cell block. Barnes then agreed to plead guilty to one count of intimidation, as a Level 5 felony, and, in exchange, the State agreed to dismiss the remaining charges. The plea agreement left sentencing open to the discretion of the trial court. The trial court accepted Barnes' guilty plea and entered judgment of conviction accordingly.
- [6] Following a sentencing hearing, the court identified as aggravating factors Barnes' criminal history, his prior unsuccessful "attempts at treatment," his jail rule violation, and the fact that he had a pending charge against him for harassment. Tr. at 34. The court did not identify any mitigating factors. Accordingly, the court sentenced Barnes to four years, with three years executed in the Department of Correction and one year suspended. This appeal ensued.

Discussion and Decision

- [7] Barnes contends that his sentence is inappropriate in light of the nature of the offense and his character. Indiana Appellate Rule 7(B) provides that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." This court has recently held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed."

Sanders v. State, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived “correct” result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemeyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

- [8] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell*, 895 N.E.2d at 1222. 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. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court “prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[9] The sentencing range for a Level 5 felony is one year to six years, with an advisory sentence of three years. *See* Ind. Code § 35-50-2-6(b) (2021). Here, the court identified as aggravating factors Barnes’ criminal history, his unsuccessful attempts at treatment, his jail rule violation, and his pending harassment charge. And the court did not identify any mitigators. Accordingly, the trial court imposed a sentence of four years, with three years executed and one year suspended to probation.

[10] Barnes asserts that his sentence is inappropriate in light of the nature of the offense because the offense was a “‘garden variety’ type” since he “did not rush toward [the victims], get in their faces, or follow through on any threat.” Appellant’s Br. at 11. He also contends that he only made the threat to “keep them from coming into his apartment” and that Vincent had “punched” him in the face three days prior, which “provide[d] additional insight” into his actions. *Id.* at 10. And Barnes maintains that his sentence is inappropriate in light of his character because he “had a very difficult childhood,” recently “lost a daughter to an overdose,” is homeless, and requires “round the clock assistance and care.” *Id.* at 12.

[11] However, Barnes has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offense, Barnes, while intoxicated, threw a beer bottle into Vincent’s apartment window and then proceeded to threaten to kill Vincent and two other individuals with a knife. Indeed, Barnes threatened to “slit their throats and cut their eyes,” which caused at least one of the victims to fear for his life. Tr. at 12. And even after

Officer Weaver had arrived and arrested Barnes, Barnes continued to threaten the three individuals with gun violence following his release from jail. Barnes has not presented compelling evidence portraying the nature of the offense in a positive light. *See Stephenson*, 29 N.E.2d at 122.

[12] As to his character, Barnes has a lengthy criminal history that includes six misdemeanor convictions and two felony convictions. In addition, shortly after his arrest for the instant offense, Barnes committed a jail rule violation by flooding or attempting to flood a cell or cell block. Further, Barnes has been placed on probation six times, but continues to commit crimes. And Barnes has had prior opportunities to obtain mental health treatment, which he “refused.” Appellant’s App. Vol. 2 at 22. We cannot say that Barnes’ sentence is inappropriate in light of his character. We therefore affirm Barnes’ sentence.

[13] Affirmed.

Riley, J., and Brown, J., concur.