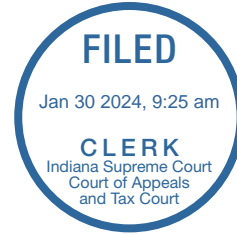


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Kayla E. Hart,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 30, 2024

Court of Appeals Case No.
23A-CR-2031

Appeal from the Jay Superior
Court

The Honorable Gail M. Dues,
Judge

Trial Court Cause No.
38D01-2205-F6-61

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] Following a bench trial, Kayla Hart was convicted of Level 6 felony battery on a person less than fourteen years of age, Class A misdemeanor criminal trespass, and Class B misdemeanor battery. The trial court imposed an aggregate two-year, executed sentence. On appeal, Hart contends that her sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On April 18, 2022, Tina Schofner was at her apartment in Portland with her daughter Teresa Collins, Collins's six- or seven-year-old daughter K.C.,¹ and David Fox when Hart came over to the apartment. When Hart's cellular telephone battery began to run low, she "jerked" a telephone charger cord ("the charger") "out of [K.C.'s] hand." Tr. Vol. II p. 9. K.C., who had been using the charger, took it back and refused to let Hart use it. Hart responded by grabbing K.C.'s "arm really hard." Tr. Vol. II p. 14. K.C. felt pain as a result of Hart grabbing her arm. When Collins saw Hart grab K.C.'s arm, she attempted to pull Hart away from K.C. Hart responded by biting Collins on the arm. Collins felt pain as a result of the bite.

¹ K.C. was eight years old when she testified at Hart's trial. It is unclear from the record whether she was six or seven years old on the date of the incident involving Hart.

[3] Hart became angry and began yelling, at which time Schofner told her to leave. Hart did not comply with Schofner's command and remained at the apartment for approximately twenty more minutes. During those twenty minutes, Collins reiterated Schofner's command that Hart leave three times. At some point, Collins attempted to push Hart out of the apartment, but Hart grabbed her, causing both to fall to the ground. Collins eventually called law enforcement. Portland Police Officer Brandon McDavid arrived after Hart had already left and photographed the "marks that [had been] left on" K.C.'s and Collins's arms as a result of the altercation. Tr. Vol. II p. 18.

[4] On May 23, 2022, the State charged Hart with Level 6 felony battery on a person less than fourteen years of age, Class A misdemeanor criminal trespass, and Class B misdemeanor battery. Hart waived her right to a jury trial and the case proceeded to a bench trial. After trial, the trial court found Hart guilty as charged and sentenced her to an aggregate two-year, executed sentence.

Discussion and Decision

[5] Indiana Appellate Rule 7(B) provides that "The 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." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about

the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of persuading us that her sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

- [6] The most serious offense for which Hart was convicted was Level 6 felony battery, for which the trial court imposed a two-year sentence. Indiana Code section 35-50-2-7 provides that "[a] person who commits a Level 6 felony ... shall be imprisoned for a fixed term between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Hart argues that the nature of her offenses and her character "both support the advisory sentence of one (1) year executed." Appellant's Br. p. 8. We disagree.
- [7] In arguing that her sentence is inappropriate, Hart classifies the injury suffered by K.C. as "very mild" and asserts that K.C. suffered "no ongoing injury." Appellant's Br. p. 9. Hart suggests that the "incident seems similar to one [K.C.] might experience with another child at a playground." Appellant's Br. p. 10. While K.C. may not have experienced a long-lasting injury, the record indicates that Hart had grabbed K.C.'s arm with enough force to cause K.C. to experience pain and to leave a mark. Hart committed the battery after she had become angry that K.C. had refused to give her the charger that K.C. had been using. Hart responded to this refusal with violence. Further, when Collins attempted to pull Hart away from K.C., Hart bit her, again with enough force to cause pain and to leave a mark. Hart also ignored numerous commands that she leave. We agree with the State that Hart's battery "offenses were more

serious than the most basic conceivable battery charges since she caused some injury to her two victim's arms." Appellee's Br. p. 10.

[8] As for her character, Hart points to her "significant mental[-]health history" and her claimed lack of a criminal history, which, at the time she committed the instant offenses, included only one conviction for Class B misdemeanor possession of marijuana. Appellant's Br. p. 10. Hart claims that while her mental-health issues "do not excuse her crimes, they do tend to explain them" as "[a] person with these conditions would struggle to remain compliant with the law and would be inclined to engage in antisocial behavior." Appellant's Br. p. 10. While her step-father testified that medication "can control her psychiatric problems," Hart has not been consistent in taking medication and has admitted to illegal drug use. Tr. Vol. II p. 35.

[9] While Hart had only a minor criminal history prior to the incident in this case, she has since been charged with and convicted of numerous offenses. In July of 2023, Hart was convicted of Level 5 felony battery with bodily injury to a public safety officer, Class A misdemeanor resisting law enforcement, and Class B misdemeanor public intoxication. She has also been convicted of an additional charge of Class A misdemeanor resisting law enforcement. It reflects poorly on Hart's character that she has demonstrated what appears to be an increasing propensity to engage in violent behavior. Based on the record before us, we conclude that Hart has failed to prove that her aggregate, two-year sentence is inappropriate in light of the nature of her offenses and her character. *See*

Sanchez, 891 N.E.2d at 176 (providing that the appellant bears the burden of proving that their sentence is inappropriate).

[10] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.