MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Elizabeth M. Smith
EMS Legal
Mooresville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Jodi Kathryn Stein
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Zachary Hankins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 13, 2023

Court of Appeals Case No. 23A-CR-1315

Appeal from the Morgan Superior Court

The Honorable Sara A. Dungan, Judge

Trial Court Cause No. 55D03-2204-F6-473

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] A jury found Zachary Hankins guilty of five counts of level 6 felony intimidation, and the trial court sentenced him to four years. Hankins challenges the sufficiency of the evidence supporting his convictions, as well as his sentence. We affirm.

Facts and Procedural History

[2] Hankins met Austin Bartee in 2016, and they became "good friends[.]" Tr. Vol. 2 at 171. Around 2019, Bartee started working for Ronald and Stephanie Parks, who owned several businesses at the same location in Monrovia, including Parks Outdoor Maintenance and Spider Graphix. The Parkses' daughter, Ashley Geswein, helped run the maintenance company. Bartee came to consider the Parkses "almost like family." *Id*. at 175.

[3] Bartee became a crew supervisor for Parks Outdoor Maintenance and then began working for Spider Graphix. He helped Hankins get a job with the maintenance company and occasionally filled in as a crew supervisor as needed. Bartee and Hankins worked well together, but "there were several incidents where [Hankins] would leave and quit the job. And then immediately get ahold of [Bartee] and tell [him] what had happened, how he regretted leaving, wanted to know how he could go about things." *Id*. So Bartee "would talk to both [Hankins] and the Parks family" and get Hankins his job back, "sometimes within the same day." *Id*.

[4] On the morning of March 28, 2022, Stephanie Parks and maintenance field operations manager Bill Miller met with Hankins at the Parks Outdoor Maintenance office, and they "asked him to go get some help for himself." *Id.* at 181. During the meeting, Miller described Hankins as "crazy." *Id.* at 204. After the meeting, Hankins left the premises.

[5] Around 6:00 that evening, Bartee was working on a project at Spider Graphix when he saw Hankins's car "pull[] into the parking lot." *Id.* at 180. Bartee had been told about that morning's meeting and that Hankins "hadn't taken that well." *Id.* at 181. Bartee "knew that blood pressure was up for some people" and "wanted to go make sure everything was okay[,]" so he went out to Hankins's car and "asked him what was going on." *Id.* at 181, 182. Hankins "started talking about how they wouldn't let him work but they wouldn't fire him. He was visibly upset." *Id.* at 182. Hankins told Bartee "that when he got there that morning they didn't let him clock in. He left the property and immediately went to someone and bought an illegal gun." *Id.* Hankins told Bartee that he had "wanted to come back and shoot up the office, but he had come and there weren't enough Parks vehicles [owned] by the Parks family[.] So, he left and he said that he had come by three times that day." *Id.* 183. This statement was later verified by surveillance video footage. Hankins "talked about wishing the next time that he came up there that [the police] would be posted up and ready for him. So, that an officer could take him out during that incident." *Id.* at 192.

[6] Hankins also told Bartee that he was "upset that Bill Miller said he was crazy" and that "[h]e was going to show Bill exactly how crazy he was" by either "blow[ing] his head off" or "going to his house and killing his family." *Id*. 185-86. Hankins "talked about leaving Bill behind so he knew that it was his fault. He thought that it would hurt worse [than] blowing his head off." *Id*. at 187. Hankins also told Bartee that "he was going to put a hole in" or "blow heads off" the Parkses and Geswein. *Id*. at 188. Bartee knew that Hankins knew where everyone lived, and Bartee was "panic[ked]" and "felt trapped" because he "couldn't do anything with [Hankins] there." *Id*. at 185. Bartee told Hankins, "I could go to the Parks family, talk to them about formally firing [you], allowing [you] to collect unemployment, if that was the end goal." *Id*. at 188. To give Hankins a "plan" or "activity" to "look forward to[,]" Bartee "offered for him to come out with [Bartee] the following day and go get a beer after work." *Id*. at 189. Hankins told Bartee that he "shouldn't worry about it because he didn't know where he would be." *Id*.

[7] Eventually, Hankins left the parking lot, saying that "he might as well go make a house call[,]" *id*. at 202, and drove off in the general direction of Geswein's home. Bartee called Geswein's husband to warn him about Hankins's threats and told him to contact Miller's family. Bartee then called Stephanie Parks and 911. The Geswein, Miller, and Parks families took various protective and evasive measures, both temporary and permanent, in response to Bartee's warnings. Bartee himself did not go to work the next day because he took Hankins's threats "very seriously" and felt "unsafe[.]" *Id*. at 193.

[8] The State subsequently charged Hankins with level 6 felony intimidation against ten victims. After a trial in April 2023, the jury found Hankins guilty of five counts relating to Stephanie Parks, Geswein, Miller, and Miller's two sons, and it acquitted him of the other five counts. At sentencing, the trial court determined that Hankins's convictions arose out of an episode of criminal conduct pursuant to Indiana Code Section 35-50-1-2, and because his convictions were not for crimes of violence as defined by that statute, the total of the consecutive terms of imprisonment could not exceed four years. Ind. Code § 35-50-1-2(c), -(d)(1). The trial court found Hankins's criminal and juvenile history and "the nature and seriousness of the offense" as aggravating circumstances and gave "very low weight" to his likeliness to respond affirmatively to probation and his mental health issues as mitigating circumstances. Tr. Vol. 3 at 98, 99. Accordingly, the court imposed consecutive two-year sentences on counts 1 and 3, with three years executed and one year suspended to probation, and concurrent one-and-a-half-year executed sentences on the remaining counts. Hankins now appeals his convictions and sentence.

Discussion and Decision

Section 1 – Hankins's convictions are supported by sufficient evidence.

[9] Hankins first contends that his convictions are not supported by sufficient evidence. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. We respect the jury's

exclusive province to weigh conflicting evidence, and we consider only the evidence most favorable to its verdict. *Id*. On appeal, it is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.

[10] The State alleged that Hankins committed level 6 felony intimidation against his victims by communicating a threat to commit a forcible felony to them, with the intent that they be placed in fear that the threat would be carried out. Appellant's App. Vol. 2 at 26, 96; Ind. Code § 35-45-2-1(a)(4), -(b)(1)(A). "It is well-established that a defendant need not speak directly with a victim to communicate a threat for purposes of" the intimidation statute. *E.B. v. State*, 89 N.E.3d 1087, 1091 (Ind. Ct. App. 2017). But "the statement must be transmitted in such a way that the defendant knows or has good reason to know the statement will reach the victim." *Id*. at 1092.

[11] Hankins claims that he did not know or have good reason to know that his violent threats would reach his victims. At trial, when Bartee was asked whether he believed that Hankins "thought that [Bartee] was going to tell" the Parks family about Hankins's threats to shoot them, Bartee testified, "[H]e is very aware of how close I am with the Parks family. So, I would think that he had to have had an inkling." Tr. Vol. 2 at 199. And given that Bill Miller was a senior Parks family employee, a reasonable inference could be drawn that Hankins also had an inkling that Bartee would get word to the Miller family

about Hankins's threats to shoot them as well. Hankins's argument to the contrary is simply a request to reweigh evidence and reassess witness credibility, which we may not do.[1] Consequently, we affirm Hankins's convictions.

Section 2 – The trial court did not abuse its discretion in sentencing Hankins.

[12] Next, Hankins claims that the trial court improperly used an element of his offenses as an aggravating circumstance, apparently alluding to the threats that he conveyed to Bartee.[2] Sentencing decisions rest within the trial court's sound discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) *clarified on reh'g* 875 N.E.2d 218. So long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id.* A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing sentence that are improper as a matter of law. *Id.* at 490-91.

[13] A material element of an offense "may not be used as an aggravating factor to support an enhanced sentence." *McElroy v. State*, 865 N.E.2d 584, 589 (Ind.

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[1] The same may be said for Hankins's suggestion that his threats of violence were merely "frustrated ramblings[.]" Appellant's Br. at 8.

[2] Hankins also contends that the trial court erred in not imposing an advisory sentence on count 3, citing Indiana Code Section 35-50-2-1.3(c). This contention is meritless for the reasons given in *Miller v. State*, 138 N.E.3d 314, 316-17 (Ind. Ct. App. 2019), *trans. denied* (2020).

2007). But, "when evaluating the nature of the offense, 'the trial court may properly consider the particularized circumstances of the factual elements as aggravating factors.'" *Id*. at 589-90 (quoting *McCarthy v. State*, 749 N.E.2d 528, 539 (Ind. 2001)). "The trial court must then 'detail why the defendant deserves an enhanced sentence under the particular circumstances.'" *Id*. at 590 (quoting *Vasquez v. State*, 762 N.E.2d 92, 98 (Ind. 2001)). That is precisely what the trial court did here. *See* Tr. Vol. 3 at 98-99 ("If you look at the statements that were made, the evidence that was presented at trial, very scary stuff. And I, hearing the victim impact statements today, they changed their lives, and obviously they took these very seriously, and so am I, based on the evidence that was presented at trial."). Consequently, we find no abuse of discretion.

Section 3 – Hankins has failed to establish that his sentence is inappropriate in light of the offenses and his character.

[14] Finally, Hankins asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states, "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." Hankins has the burden of establishing that his sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490.

[15] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each 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*. "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "Such deference should prevail 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).

[16] As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, whether a sentence should be deemed inappropriate "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*, 895 N.E.2d at 1224. Moreover, when conducting an appropriateness review, the appellate court may consider all penal consequences of the sentence imposed, including the manner in which the sentence is ordered served. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[17] Regarding the nature of the offense, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The advisory

sentence for a level 6 felony is one year, with a minimum of six months and a maximum of two and a half years. Ind. Code § 35-50-2-7(b). Hankins asserts that "[t]he nature of the offense is ultimately a gripe session with his close friend and confidant in which Hankins made some off the cuff remarks threatening other individuals which Hankins had no way to foresee would reach the named individuals. Hankins did not directly communicate threats to the victims." Appellant's Br. at 10. As indicated above, Hankins drove to his place of employment three times with the intention to "shoot up the office," but he left each time because "there weren't enough Parks vehicles [owned] by the Parks family" on the premises. Tr. Vol. 2 at 183. The jury found that Hankins communicated threats to shoot his employer and his supervisor and their families with the intent that they be placed in fear that those threats would be carried out, and the extremely violent nature of those threats does not support a reduction of his sentence.

[18] An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). We assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A typical factor we consider when examining a defendant's character is criminal history, with its significance varying based on the gravity, nature, and number of prior offenses. *See McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied* (2021). Hankins fails to mention his criminal history, which includes a prior intimidation conviction in Indiana and a "DUI" conviction in Kansas, both in 2016, Tr. Vol. 3 at 78, a

conviction for alcohol consumption by a minor, and juvenile adjudications for criminal mischief and resisting law enforcement.[3] Hankins's prior run-ins with the criminal justice system do not reflect favorably on his character.

[19] Hankins claims that he was "a solid worker[,]" Appellant's Br. at 10, but he repeatedly quit his job and threatened to shoot his employer and supervisor after they told him to seek assistance for his mental health issues. Hankins also claims that the threats "were made at a time when [he] was suffering from an untreated mental health diagnosis due to inability to afford his medication." *Id.* at 10-11. The State points out that the trial court "found this factor mitigating and specifically used it to not impose a fully executed sentence[,]" Appellee's Br. at 26-27 (citing Tr. Vol. 3 at 99-100), and Hankins has failed to establish that it warrants further mitigating treatment.[4] Therefore, we affirm Hankins's sentence.

[20] Affirmed.

Riley, J., and Mathias, J., concur.

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[3] No presentence investigation report was prepared in this case, so details about the offenses are scant.

[4] Moreover, the record shows that a few days after he committed the offenses, Hankins admitted to Bartee that his doctor had "combined 2 cheap prescriptions to match what [he] was last on for way less money. *Feel dumb for not going sooner* […]." Ex. Vol. at 4 (emphasis added).