MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Yvette M. LaPlante
LaPlante LLP
Evansville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Samuel Dayton
Deputy Attorneys General

Amika Ghosh
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Erik Obryan Washington,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 19, 2022

Court of Appeals Case No. 21A-CR-2673

Appeal from the Vanderburgh Superior Court

The Honorable Kristina H. Weiberg, Magistrate

Trial Court Cause No. 82D03-2108-F5-4382

Brown, Judge.

[1] Erik Obryan Washington appeals his sentence for battery by means of a deadly weapon as a level 5 felony, carrying a handgun without a license as a level 5 felony, criminal recklessness as a level 6 felony, and criminal mischief as a class B misdemeanor. He asserts his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] On August 10, 2021, the Evansville Police Department responded to 911 calls reporting gunfire and that a person had been shot at Lamasco's Bar located on West Franklin Street. Samuel Kinyanjui had a gunshot wound in his abdomen, multiple fired casings were found in the back parking lot, and bullet imprints were found on two parked cars nearby. Witnesses stated that Washington and Kinyanjui were fighting and Washington was observed firing a gun at him.

[3] On August 13, 2021, the State charged Washington with: Count I, battery by means of a deadly weapon as a level 5 felony; Count II, carrying a handgun without a license as a level 5 felony; Count III, criminal recklessness as a level 6 felony; and Count IV, criminal mischief as a class B misdemeanor. On October 6, 2021, the court held a hearing, and Washington pled guilty. When asked by the court if he understood that he would be admitting to the truth of all the facts alleged in the charging information by pleading guilty, Washington answered affirmatively.

[4] On November 3, 2021, the court held a sentencing hearing. Washington stated in part:

> I cooperated throughout the whole incident, and um, I know I was, I feared for my life, but I'm just here to understand and accept the consequences I have to, uh I have to do. And um, I'm terribly sorry, for causing everybody to get up this morning and do their job . . . . I just want to get home, get back to my daughter, and move on from this situation.

Transcript Volume II at 21-22.

[5] The prosecutor indicated that the victim, Kinyanjui, was present. Kinyanjui stated that "for somebody saying they feared for their life, I was already on the ground twice," Washington knocked him down twice, Washington's actions did not represent someone who feared for his life, he de-escalated the situation and went to his vehicle, Washington still shot him, and Washington "emptied the whole clip." *Id.* at 22, 24. He also stated that his head was "completely screwed," he still had a bullet in him, he suffers from PTSD, he still has to go to therapy, and "this is something I'm going to have to deal with for the rest of my life." *Id.*

[6] After some discussion, Washington stated:

> [F]or somebody to . . . say all that, somebody want their sexually explicit women at Lamasco's Bar about (inaudible) girls vagina is very unacceptable. Somebody who goes to the trunk of their car and getting' (sic) their weapon and walking towards my car, is unacceptable. When I told you to stop, and you have the nerve to talk all this bull crap. Talk about my kids, sir, when I told you to get out my face, when I told you to stop touching me, and you didn't do that, you thought it was funny, you didn't do that. I told you to get out of my face. You didn't do that, Samuel. You didn't do that. And I've been shot too. And I've got kids too.

> (Inaudible) walking towards my car. Where I was trying to leave. When they told us to leave, Samuel.

Id. at 26-27. The court took the matter under advisement.

[7] On November 5, 2021, the court continued the hearing. The court found Washington's guilty plea as a mitigating factor. It found the following aggravating factors: Washington's criminal history which "show[ed] a tendency for violence"; the victim tried to de-escalate the situation by walking away; Washington continued to follow the victim, used a gun, and unloaded a clip in the parking lot of a well-known and populated bar; other patrons of the establishment were outside and could have been seen or been hit and hurt by the bullet; and the victim continues to suffer financially, mentally, and physically from the gunshot wound. *Id.* at 31. It determined that the aggravators outweighed the mitigators.

[8] The court sentenced Washington to five years for Count I, battery by means of a deadly weapon as a level 5 felony; five years for Count II, carrying a handgun without a license as a level 5 felony; two years for Count III, criminal recklessness as a level 6 felony; and 180 days for Count IV, criminal mischief as a class B misdemeanor. The court ordered the sentences be served concurrently for an aggregate sentence of five years.

Discussion

[9] The issue is whether Washington's sentence is inappropriate in light of the nature of the offenses and his character. While Washington concedes that the

trial court "laid a concise factual basis," he asserts that he admitted to no more than the elements of the crime. He also argues that his character does not justify an enhanced sentence.

[10] 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).

[11] 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. 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. Ind. Code § 35-50-3-3 provides that a person who commits a class B misdemeanor shall be imprisoned for a fixed term of not more than 180 days.

[12] Our review of the nature of the offenses reveals that Washington attempted to commit battery by means of a deadly weapon, carried a handgun while having previously been convicted of a felony within fifteen years, performed an act that created a substantial risk of bodily injury to the public, and damaged or defaced the property of Goines without her consent.

[13] Our review of the character of the offender reveals that Washington pled guilty without a plea agreement. As an adult, Washington was convicted of disorderly conduct as a class B misdemeanor in 2020; strangulation as a class D felony in 2014; operating a vehicle while intoxicated as a class A misdemeanor in 2012; conversion as a class A misdemeanor in 2011; public intoxication and disorderly conduct as class B misdemeanors in 2009; and battery resulting in bodily injury as a class A misdemeanor in 2007. The presentence investigation report ("PSI") also indicates that Washington was charged in 2011 with Count I, disorderly conduct as a class B misdemeanor, Count II, criminal trespass as a class A misdemeanor, and Count III, public intoxication as a class B misdemeanor. It indicates that the court accepted Washington's guilty plea. It states that he was sentenced for multiple offenses in Tennessee including assault in 2010 and a DUI and assault in 2009. It indicates that he violated the conditions of a protective order by possessing the firearm and ammunition in the instant offense. Washington admitted to violating probation in 2014 and 2016. The PSI states that the "results of the IRAS-CST indicate [Washington] is a Moderate risk to re-offend." Appellant's Appendix Volume II at 39.

[14] After due consideration, we conclude that Washington has not sustained his burden of establishing that his aggregate sentence of five years is inappropriate in light of the nature of the offenses and his character.[1]

[1] While Washington raised the single issue of whether his sentence is inappropriate, he appears to conflate two separate sentencing standards: whether the trial court abused its discretion in identifying mitigating and

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

[16] Affirmed.

Mathias, J., and Molter, J., concur.

---

aggravating factors and whether his sentence is inappropriate pursuant to Ind. Appellate Rule 7. "As our Supreme Court has made clear, inappropriate sentence and abuse of discretion claims are to be analyzed separately." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). Accordingly, "an inappropriate sentence analysis does not involve an argument that the trial court abused its discretion in sentencing the defendant." *Id.* To the extent Washington argues the court abused its discretion by relying upon the victim's injuries or factors not supported by the record or taken from statements in the probable cause affidavit, 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 Washington's abuse of discretion argument, we would not find it persuasive in light of his extensive criminal history which includes convictions for strangulation as a class D felony in 2014, assault in 2010, assault in 2009, and battery resulting in bodily injury as a class A misdemeanor in 2007.