MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Billy Albright,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 23, 2022

Court of Appeals Case No. 22A-CR-811

Appeal from the Hendricks Superior Court

The Honorable Stephenie LeMay-Luken, Judge

Trial Court Cause No. 32D05-2008-F6-626

Crone, Judge.

Case Summary

[1] Billy Albright appeals the sentence imposed by the trial court following his guilty plea to level 6 felony domestic battery and level 6 felony pointing a firearm. He contends that his four-year sentence, with two years served in community corrections and two years suspended to probation, is inappropriate in light of the nature of the offenses and his character. Concluding that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] Albright and C.H. began a six-year romantic relationship in 2014. When the relationship began, C.H. already had two children, L.H. and I.H. Albright and C.H. subsequently had two sons together, B.A. and M.A. Throughout their relationship, Albright was verbally and physically abusive to C.H. and to the children. Eventually, in February 2020, C.H. took all of the children and moved out of Albright's house. Albright agreed to go to counseling, and, over the next few months, he attended three or four sessions with C.H. and participated in visits with his sons. However, his anger and erratic behavior toward C.H. continued to escalate, and by July 2020, Albright stopped attending counseling sessions. At some point in late July, Albright went to C.H.'s residence and asked her to move back in with him, but C.H. refused. Albright was extremely angry about not visiting with his sons, and he told C.H. that she had to "f**king agree to some kind of thing" or else "[t]his is going to end very badly" and that she would "regret it" if she continued "f**king with [him]." Tr. Vol. 2 at 34.

[3] On August 1, 2020, Albright went to C.H.'s residence and began banging on the door. C.H. was so scared of Albright that she screamed for L.H. to call 911. She grabbed B.A. and I.H. and went into the garage and got I.H. into the car. As C.H. was standing on the garage ramp that led back inside the residence, she heard footsteps and saw that Albright had gained unauthorized access into the home and was walking through the kitchen toward her. C.H., who was holding B.A. in her arms, told Albright that he needed to leave. He responded by pulling up his shirt and revealing a holstered gun at his side. He then told her, "You're going to give me my kids." *Id*. at 38. C.H. tried to back away from Albright and stated, "You need to leave now." *Id*. Albright pulled his gun from the holster and pointed it at C.H. Albright then charged at C.H., knocking her and B.A. to the ground and causing B.A. to strike his head on the car. Albright dropped to his knees, shoved B.A.'s hands away with his elbow, and placed the gun against the side of C.H.'s head.

[4] I.H. screamed from the car for Albright to get off her mother. Albright stood up and struck the car window with the gun before pointing it at I.H. He said, "Oh yeah, [I.H.], you little bitch, you want some too?" *Id*. at 40. C.H., who had now been freed, kicked on the garage door, hoping to alert anyone outside that she needed help. Albright walked over to C.H., who was holding B.A., and picked her up by her throat. He clenched both hands around her neck, causing her to be unable to breathe. C.H. let go of B.A., who slid to the ground down her body. Albright unclenched his hands from C.H.'s throat and tried to grab for B.A., but C.H. used her body to block him from reaching the little boy. C.H.

was able to get B.A. inside the car with I.H., and she crawled over the hood of the car so she could reach the garage door opener. When the garage door did not open, C.H. looked and saw that Albright was holding the button on the wall to prevent the door from opening. C.H. pulled the emergency lever on the garage door, pulled the door open, and ran outside screaming for help. Albright followed C.H. outside taunting her, "You better move bitch. I'll be back. I'll kill you. Get me thrown in jail. I'll kill you." *Id*. at 42. Albright got in his truck and threatened C.H. that she "better move" before driving away. *Id*. After police arrived on the scene, C.H. was transported to the hospital for injuries to her neck, arm, legs, and chest. B.A. sustained a bruise to his head due to falling on the car.

[5] The State subsequently charged Albright with level 6 felony domestic battery, level 6 felony strangulation, level 6 felony intimidation, and level 6 felony pointing a firearm. The trial court also issued a no-contact order barring Albright from having contact with C.H., L.H., I.H., B.A., and M.A. Despite the order, Albright continued to communicate with C.H. by relaying messages through one of his cousins with whom C.H. remained in contact. The messages threatened C.H. that Albright was going to make her life "hell" if she did not write to the trial court to drop the charges against him. *Id.* at 47. He said he planned to "make sure" she "lost everything," including her job and her children. *Id.* Albright continued to threaten and behave belligerently toward C.H. during subsequently implemented supervised and unsupervised visitation with B.A. and M.A. On one occasion, Albright became confrontational with

police officers who were present during visitation exchanges. C.H. was terrified that Albright would eventually take B.A. and M.A. and disappear.

[6] In February 2022, Albright pled guilty pursuant to a plea agreement to level 6 felony domestic battery and level 6 felony pointing a firearm in exchange for dismissal of the other charges. Sentencing was left open to the court. Following a sentencing hearing, the trial court sentenced Albright to consecutive two-year terms, with two years to be executed in community corrections (355[1] days on work release and 365 days on home detention) and two years suspended to probation. This appeal ensued.

Discussion and Decision

[7] Albright asks us to revise 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." Albright has the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110

[1] This number accounts for ten days of credit for time already served.

N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[8] 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). "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). As we assess the nature of the offenses 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).

[9] Turning first to the nature of the offenses, 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 sentencing range for a level 6 felony is between six months and two and a half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7. Albright was sentenced to consecutive two-year terms for his crimes, with two years to be executed in community corrections and two years suspended to probation. Accordingly, Albright received an executed sentence well below the maximum allowable executed sentence of four years for these crimes.[2]

[10] While Albright urges us to reduce his sentence to concurrent sentences of six months of probation on each count, he does not present us with compelling evidence portraying his offenses in a positive light (such as accompanied by restraint, regard, and lack of brutality). He brutally attacked, strangled, and

[2] The deputy prosecutor conceded during sentencing that the maximum allowable executed sentence was four years because the crimes charged are not defined as crimes of violence. *See* Ind. Code § 35-50-1-2(d)(1) ("If the most serious crime for which the defendant is sentenced is a Level 6 felony, the total of the consecutive terms of imprisonment may not exceed four (4) years.").

battered C.H in front of her children after gaining unauthorized access to her home. He also pointed a firearm at both C.H. and her young daughter. All the while he verbally threatened to do even more. Nothing about the nature of these offenses convinces us that a sentence reduction is warranted.

[11] As for Albright's character, we observe that 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 conduct our review of 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). We acknowledge that Albright does not have an extensive criminal history, consisting of only two misdemeanor convictions. However, he has numerous prior arrests, some of them being quite recent, and he also blatantly disregarded the trial court's no-contact order. This disregard for the rule of law reflects negatively on his character. As was the trial court, we are incredibly thankful for Albright's military service to our country and are sympathetic to his post-traumatic stress disorder diagnosis. Nevertheless, it must be emphasized that his pattern of abusing and repeatedly terrorizing his former partner and her children (including two of his own children) may not simply be ignored. We cannot say that a sentence of combined community corrections and probation is inappropriate under the circumstances presented.

[12] In sum, Albright has not met his burden to establish that his sentence is inappropriate in light of the nature of his offenses and his character.[3] Therefore, we affirm.

[13] Affirmed.

May, J., and Weissmann, J., concur.

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[3] We note that while Albright frames the issue as whether his sentence is inappropriate, he conflates two separate sentencing standards: whether the trial court abused its discretion in considering aggravating and mitigating circumstances and whether his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). "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). 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 Albright argues that the trial court abused its discretion, 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 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, even assuming the trial court errs in sentencing a defendant, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Indiana Appellate Rule 7(B))), *trans. denied*.