

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Edmanuel Morales,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff,*

February 18, 2021

Court of Appeals Case No.  
20A-CR-1774

Appeal from the Lake Superior  
Court

The Honorable Jamise Y. Perkins,  
Judge, *Pro Tempore*

Trial Court Cause No.  
45G02-1807-F3-50

**Robb, Judge.**

## Case Summary and Issue

- [1] Edmanuel Morales pleaded guilty to aggravated battery, a Level 3 felony, and was sentenced to serve nine years in the Indiana Department of Correction (“DOC”) with two years suspended to probation. Morales now appeals and raises the sole issue of whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding his sentence is not inappropriate, we affirm.

## Facts and Procedural History

- [2] Melissa Kuchar is Morales’ ex-girlfriend. On July 6, 2018, Kuchar and her boyfriend, Gilberto Almanza-Rodriguez, were in bed sleeping inside her apartment. Morales entered the apartment, went into the bedroom, and repeatedly punched and struck Almanza-Rodriguez while he was in bed. As a result, Almanza-Rodriguez became unconscious and sustained orbital swelling, lacerations to his lips and tongue, and possible fractures. *See* Appendix of the Appellant, Volume Two at 49.
- [3] On July 7, the State charged Morales with aggravated battery, a Level 3 felony; burglary, a Level 4 felony; robbery and battery resulting in serious bodily injury, both Level 5 felonies; two counts of intimidation, Level 6 felonies; and battery resulting in bodily injury, a Class A misdemeanor. *See id.* at 16-17. The State later amended the information to add one count of attempted murder, a Level 1 felony. *See id.* at 43-44.

[4] On January 30, 2020, Morales pleaded guilty to aggravated battery, a Level 3 felony, pursuant to a plea agreement. In exchange, the State agreed to dismiss the remaining charges. The parties agreed the sentence would be capped at fifteen years. The trial court took the matter under advisement and ordered a pre-sentence investigation report. A hearing was held on August 3 during which the trial court accepted Morales' plea. In sentencing Morales, the trial court identified "the harm, injury, loss, or damage suffered by the victim" as an aggravating factor and Morales' guilty plea and remorse as mitigating factors. Transcript, Volume 2 at 47. The trial court declined to find the undue hardship on Morales' son and mother a mitigating factor, declined to find Morales' criminal history significant, found "the aggravating factors are equally balanced with the mitigating factors[,] " and sentenced him to nine years in the DOC with two years suspended to probation. *Id.* Morales now appeals.<sup>1</sup> Additional facts will be provided as necessary.

## Discussion and Decision

### I. Standard of Review

[5] We may review and revise criminal sentences pursuant to the authority derived from Article 7, [s]ection 6 of the Indiana Constitution. Indiana Appellate Rule 7(B) empowers us to revise a sentence "if, after due consideration of the trial court's decision,

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<sup>1</sup> The trial court's sentencing order incorrectly stated that the victim had died as a result of his injuries. Morales filed a motion to correct error and, following a hearing, the trial court issued an order correcting the information.

the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Because a trial court’s judgment “should receive considerable deference[,]” our principal role is to “leaven the outliers.” *Cardwell v. State*, 895 N.E.2d 1219, 1222-25 (Ind. 2008). “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). The defendant bears the burden to persuade this court that his or her sentence is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record for such a determination, *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*.

*Reis v. State*, 88 N.E.3d 1099, 1101-02 (Ind. Ct. App. 2017).

- [6] Ultimately, “whether we regard a sentence as [in]appropriate 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 factors that come to light in a given case.” *Cardwell*, 895 N.E.2d at 1224. Thus, the question is *not* whether the defendant’s sentence is appropriate or another sentence is *more* appropriate; rather, the test is whether the sentence is inappropriate. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017).

## II. Inappropriate Sentence

- [7] Morales contends his sentence is inappropriate for a “hard-working family man who had a very limited prior criminal history.” Brief of the Appellant at 7. We disagree.

### A. Nature of the Offense

- [8] We begin our analysis of the “nature of the offense” prong with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point the Indiana legislature has selected as an appropriate sentence for the committed crime. *Childress*, 848 N.E.2d at 1081. The sentencing range for a Level 3 felony is a fixed term between three and sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). In this case, Morales received the advisory sentence with two years suspended to probation.
- [9] “Since the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed, the defendant bears a particularly heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence.” *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*. Therefore, this court is unlikely to consider an advisory sentence inappropriate. *Shelby v. State*, 986 N.E.2d 345, 371 (Ind. Ct. App. 2013), *trans. denied*.
- [10] The nature of the offense is found in the details and circumstances of the offenses and the defendant’s participation therein. *Lindhorst v. State*, 90 N.E.3d

695, 703 (Ind. Ct. App. 2017). Here, there is no question that the nature of Morales' offense was serious.

[11] Morales admits that his actions resulted in serious injuries to Almanza-Rodriguez; however, he contends that the seriousness of his offense was an element of the crime because the severity of Almanza-Rodriguez's injuries elevated his crime to a Level 3 felony. Indiana Code section 35-42-2-1.5 provides, "A person who knowingly or intentionally inflicts injury on a person that creates a substantial risk of death . . . commits aggravated battery, a Level 3 felony." However, the trial court found "the nature and circumstances of the crime to be a significant aggravating factor because the victim was ambushed while he was sleeping. He had no prior connection or relationship to [Morales]. The attack was unprovoked and he was beaten until he became unconscious and urinated on himself." Appealed Order at 1. Morales beat Almanza-Rodriguez repeatedly leaving Almanza-Rodriguez unconscious covered in blood. Blood had been spattered all over the wall, floor, and bedroom furniture. And as a result of the unprovoked attack, Almanza-Rodriguez sustained orbital swelling, lacerations to his lips and tongue, and possible fractures.

[12] At the sentencing hearing, Almanza-Rodriguez testified that, when he was in the hospital, his "parents didn't know if I was going to die or survive or what was going to happen." Tr., Vol. 2 at 31. He also stated a previous injury became worse because of the new injuries. In addition to physical injuries, Almanza-Rodriguez has suffered financially. He used his savings to cover

medical expenses, was unable to work for two months after the attack, and is in \$200,000 of debt for his medical bills. He has had numerous procedures and doctor's visits. Although Morales claims his offense was a crime of passion,<sup>2</sup> we are unpersuaded that the nature of this brutal and unprovoked offense warrants revision of his advisory sentence.

## **B. Character of the Offender**

[13] We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Moyer v. State*, 83 N.E.3d 136, 143 (Ind. Ct. App. 2017), *trans. denied*. And a defendant's life and conduct are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. A defendant's criminal history is one relevant factor in analyzing his or her character, the significance of which varies based on the "gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).

[14] Morales claims his sentence is inappropriate in light of his character as "demonstrated by his limited prior criminal history." Br. of the Appellant at 9. He contends the instant offense "is the first time that [he] has been in serious trouble with the criminal justice system [and n]one of his prior offenses relate to

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<sup>2</sup> Morales claims "[t]his was a crime of passion that occurred when [he] came into the apartment that he had been sharing with his long-time girlfriend. He found a man in his bed and became angry. This does not justify the beating but begins to explain his frame of mind at the moment." Br. of the Appellant at 12 (record citations omitted).

the current charge of aggravated battery and therefore should be given little consideration” in assessing his character. *Id.* at 10.

- [15] The record reveals that Morales’ adult criminal history is comprised of two misdemeanor convictions – disorderly conduct in 2013 and driving while suspended in 2019. Although Morales’ criminal history is not lengthy, this court has held that “[e]ven a minor criminal record reflects poorly on a defendant’s character[.]” *Reis*, 88 N.E.3d at 1105.
- [16] Morales also argues his sentence is inappropriate because he expressed remorse, pleaded guilty, and his incarceration will be an undue hardship on his family. However, the trial court identified Morales’ remorse and guilty plea as mitigating factors and considered them in sentencing him. Although Morales was his mother’s primary care giver prior to his incarceration and he has a thirteen-year-old son, the trial court declined to find the hardship a mitigating factor.
- [17] Ultimately, the trial court balanced the aggravating and mitigating factors equally and sentenced Morales to the advisory sentence – the starting point our legislature has prescribed for the crime committed – with two years suspended. We cannot conclude Morales’ character is so stellar as to render his sentence inappropriate.
- [18] In sum, based on the nature of the offense and Morales’ character, his advisory sentence is not inappropriate. We decline to revise his sentence.



## Conclusion

[19] Based on the foregoing, we conclude Morales' sentence is not inappropriate in light of the offense and his character. Accordingly, his sentence is affirmed.

[20] Affirmed.

Bailey, J., and Tavitas, J., concur.