MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Robert Brumback,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 25, 2022

Court of Appeals Case No. 21A-CR-2631

Appeal from the Henry Circuit Court

The Honorable Bob A. Witham, Judge

Trial Court Cause No. 33C01-2011-F5-91

Crone, Judge.

Case Summary

[1] Robert Brumback appeals the six-year executed sentence imposed by the trial court following his guilty plea to level 5 felony stalking. He argues that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that Brumback has not met his burden of demonstrating that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] Brumback was married to K.B., but they divorced. In September 2020, K.B. obtained a protective order against Brumback after the trial court found by a preponderance of the evidence that Brumback committed a sex offense against her. The trial court determined that Brumback represented a "credible threat to the safety" of K.B. or a member of her household. Appellant's App. Vol. 2 at 62. The protective order prohibited Brumback from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating" with K.B. *Id.* The trial court further ordered Brumback to "stay away from the residence, school, and place of employment" of K.B. *Id*.

[3] In early October 2020, K.B. contacted the police to report that Brumback was in her neighborhood. Police located Brumback and served him with the protective order. Later that evening, K.B. called the police to report that Brumback was back in her neighborhood and behind her home. She received text messages from Brumback stating that "he could see inside of her apartment[,]" and he "even mentioned the camera that [she] had mounted in

her back door." *Id.* at 17. While an officer was searching the area for Brumback, K.B. received another text from him indicating that he knew the officer's exact location and also knew that a backup officer had arrived. The officers learned that Brumback was using a police scanner because he was able to relay "radio conversations" to K.B. via text. *Id.* Brumback told K.B. that "police may find his vehicle but that he was laying down away from the vehicle watching [police] and K.B." *Id*. Brumback continued to threaten and harass K.B. throughout the night. At one point, Brumback threatened K.B. that if he found her car, he did not care who was in it, he would "start blasting that car." *Id*. at 18. Officers escorted K.B. out of New Castle so that she could stay with friends. Brumback later warned K.B. to make sure to have someone watching her apartment "because you never know what will happen while you are gone." *Id*.

[4] On October 7, police were again dispatched to K.B.'s residence after she received a text message from Brumback stating, "I will get you and no one is going to stop me." *Id*. at 22. K.B. informed officers that she was in extreme fear because Brumback had previously sent her a text message with a picture of a firearm. Later that evening, police returned to K.B.'s residence after Brumback sent her additional text messages, including a message stating, "the cops will have to shoot me or I will take my own life before I go back behind bars." *Id*. at 25. Over the next few weeks, Brumback repeatedly called K.B., left her voicemails, and sent her numerous threatening text messages.

[5] On October 29, 2020, New Castle Police Department Officer Brandy Pierce interviewed K.B.'s daughter, K.S. K.S. reported that she had received several Facebook messages from Brumback. One message included K.B.'s license plate number. K.S. reported feeling fearful that Brumback would show up at the apartment and attempt to harm her, her siblings, or her mother. She felt that Brumback was messaging her to avoid violating the protective order.

[6] The State subsequently charged Brumback with level 5 felony stalking. In October 2021, Brumback pled guilty to that offense pursuant to a plea agreement. Pursuant to the agreement, in exchange for the guilty plea, the State agreed to forgo seeking a habitual offender enhancement against Brumback and also to dismiss a level 6 felony sexual battery charge filed against him in another cause. The agreement left sentencing to the trial court's discretion. Following a sentencing hearing, the trial court sentenced Brumback to six years executed in the Indiana Department of Correction. This appeal ensued.

Discussion and Decision

[7] Brumback 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." 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). A defendant 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.

[8] Brumback contends that the six-year sentence imposed by the trial court here is inappropriate in light of the nature of his offense and his character. We begin by observing that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6(b). As stated above, the plea agreement left sentencing to the trial court's discretion, and the trial court imposed the maximum sentence of six years.

[9] When reviewing the nature of the offense, this Court considers the "details and circumstances surrounding the offense and the defendant's participation therein." *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied* (2019). Brumback argues that the "factual basis" set forth for his guilty plea was "unremarkable" and "would not support a maximum sentence[.]" Appellant's

Br. at 8. However, the record is clear that, after he sexually assaulted K.B., Brumback repeatedly and continuously watched, texted, phoned, and harassed her. He repeatedly threatened to harm K.B. and caused her to fear for her life and the lives of her children. The involvement of police to help protect K.B. did not deter Brumback, as he assured K.B. that police "would have to shoot and kill [him]" in order to stop him. Appellant's App. Vol. 2 at 17. At the time of sentencing, K.B.'s children were still having nightmares, and K.B. was suffering from panic attacks. There is nothing regarding the nature of Brumback's stalking offense that convinces us that a sentence reduction is warranted.

[10] Turning to an assessment of Brumback's character, "[t]he character of the offender is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). This assessment includes consideration of the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Brumback has a lengthy criminal history including both juvenile adjudications and adult convictions. As an adult, Brumback has amassed eight felony convictions (two for stalking) and twelve misdemeanor convictions. Prior attempts at leniency have failed, as Brumback has had his probation revoked on multiple occasions. Brumback's criminal history and failure to take advantage of prior less-restrictive attempts for rehabilitation demonstrate his clear disregard for the rule of law, which reflects negatively on his character.

[11] Brumback acknowledges that "while he [does] have a substantial criminal history," he "accepted responsibility" for his current offense and saved the State

"time and resources" by pleading guilty. Appellant's Br. at 8. In addition, he asserts that his employment history and his stated desire to take care of his ill father are examples of his good character that support sentence revision.

[12] Regarding his guilty plea, we note that Brumback received a substantial benefit from his plea agreement. Indeed, the State dismissed his level 6 felony sexual battery charge and further agreed to forgo seeking a habitual offender enhancement. Without the benefit of the plea agreement, if convicted, Brumback could have been sentenced to an additional six years for the habitual offender enhancement and would have faced the possibility of receiving an additional conviction and sentence of two and a half years for the level 6 felony. *See* Ind. Code §§ 35-50-2-8(i)(2) and 35-50-2-7(b). Brumback's pragmatic decision to plead guilty does not persuade us to reduce his sentence.

[13] As for Brumback's employment history and desire to care for his ill father, while we do not disregard these as positive attributes, they do not overshadow the numerous examples of his poor character evident in the record. In sum, Brumback has not met his burden to demonstrate that the six-year sentence imposed by the trial court is inappropriate in light of the nature of the offense or his character. Therefore, we affirm.

[14] Affirmed.

Vaidik, J., and Altice, J., concur.