MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Khauyl Asabere Hunter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 25, 2023

Court of Appeals Case No. 22A-CR-2711

Appeal from the Vanderburgh Superior Court

The Honorable Wayne S. Trockman, Judge

Trial Court Cause No. 82D02-2107-F3-4074

Memorandum Decision by Judge Crone
Judges Robb and Kenworthy concur.

Crone, Judge.

Case Summary

[1] Khauyl Asabere Hunter appeals the ten-year sentence, with nine years executed and one suspended to probation, imposed by the trial court following his guilty plea to level 3 felony neglect of a dependent resulting in serious bodily injury. Hunter asserts that the court abused its discretion and that his sentence is inappropriate in light of the nature of the offense and his character. Finding no abuse of discretion and that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] In the fall of 2020, a woman (Mother) informed Hunter that he was the father of her infant daughter (Child). Initially, Hunter avoided Mother because he doubted that Child was his biological child. About five months later, Mother permitted Hunter to bring Child to stay with him in Evansville for approximately one month before returning Child to Mother.

[3] In July 2021, with Mother's permission, Hunter again brought Child to stay with him. This time, Hunter's then-girlfriend, Aisha Kinyanjui, was also residing with Hunter. During the week or so that Child stayed with Hunter, he placed eleven-month-old Child in a bathtub full of water with the shower running. Child suffered third-degree burns that covered fifteen percent of her body, including on her face and buttocks. The burns blistered and were so severe that pigment was removed from her skin. Although he conducted

internet searches regarding burns, Hunter did not seek medical attention for, or ask others for assistance with, Child.

[4] When Hunter returned Child to Mother at an Evansville gas station, Mother saw the burns on Child's face, became angry, and attempted to strike Hunter. Hunter left in a vehicle, and Mother called 911. Child was transported to St. Vincent Hospital's emergency room via ambulance. A St. Vincent physician advised that Child's burns appeared to have been present for several days and that her heavily soiled diaper had not been changed for multiple days. Because St. Vincent's medical staff were not equipped to treat such severe full-thickness burns, Child was transferred to Riley Children's Hospital in Indianapolis. By the time Child received treatment, her wounds were infected. Riley staff advised that some of Child's burns were old and others new, that she had a left arm fracture caused by trauma with force, and that she was severely dehydrated.

[5] Officers arrested Hunter and Kinyanjui. Kinyanjui gave conflicting answers when asked how and when Child was burned. Eventually, she stated that Hunter had threatened to harm Kinyanjui if she revealed the truth. Kinyanjui told law enforcement that Hunter would usually fill the tub with water for Child's bath and turn on the shower, causing water to come down from above Child. She further stated that she noticed redness on Child's face after the bath but that Hunter stated that Child was okay. Kinyanjui observed that Child's face developed blisters, which Hunter popped. She claimed not to know about the burns to Child's buttocks until she was shown photos. Neither Hunter nor

Kinyanjui called 911 or sought medical help for Child but instead applied Vaseline.

[6] In late July 2021, the State charged Hunter with level 3 felony neglect of a dependent resulting in serious bodily injury, alleging that he, "having the care of" dependent Child, "knowingly place[d]" her in a situation that endangered her life or health and that his act resulted in serious bodily injury to Child. Appellant's App. Vol. 2 at 14. The State also charged Hunter with level 6 felony neglect of a dependent, alleging that he, "having the care of" Child, "knowingly deprive[d]" her of necessary support. *Id*.

[7] At an August 2022 hearing, Hunter agreed to plead guilty to the level 3 felony, while the State agreed to dismiss the level 6 felony and make no recommendation regarding sentencing. At an October 2022 sentencing hearing, the court admitted exhibits, heard Hunter's testimony,[1] and listened to arguments before ordering a ten-year sentence, suspending one year to probation, and noting 447 days of jail credit. Within its sentencing order, the court found no mitigating circumstances but found the following four aggravating circumstances: Hunter's criminal history; Child was less than twelve years of age; Hunter was in a position of having care, custody, and

[1] Hunter testified that during the pendency of this case, DNA test results showed that he is not Child's biological father. Tr. Vol. 2 at 30.

control of Child; and Hunter "threatened to harm a witness if the witness told anyone about the offense." Appealed Order at 1. Hunter appeals the sentence.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion by not assigning mitigating weight to Hunter's guilty plea.

[8] Hunter asserts that the trial court abused its discretion when it assigned no mitigating weight to his willingness to agree to an open plea. He argues that the court ignored the fact that his guilty plea "bestow[ed] an enormous benefit on the State" without any corresponding value to him. Appellant's Br. at 12. Contending that the failure to find his guilty plea to be a mitigating circumstance likely had a substantial effect on the court's sentencing, Hunter requests that we revise his sentence.

[9] Sentencing decisions rest within the sound discretion of the trial court, and if, as here, a sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. *Sloan v. State*, 16 N.E.3d 1018, 1026 (Ind. Ct. App. 2014). When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if "the record does not support the reasons, or the sentencing statement omits reasons that are clearly

supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law." *Anglemyer*, 868 N.E.2d at 490-91.

[10] A defendant who alleges that the trial court failed to identify a mitigating factor has the burden to establish that the proffered factor is both significant and "clearly supported by the record." *Id*. at 493. It is well settled that a guilty plea "is not necessarily a mitigating factor where the defendant receives a substantial benefit from the plea or where evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic." *Amalfitano v. State*, 956 N.E.2d 208, 212 (Ind. Ct. App. 2011), *trans. denied* (2012).

[11] Here, the evidence against Hunter was quite strong. Kinyanjui, Hunter's then-live-in girlfriend, told law enforcement that he put eleven-month-old Child in the bathtub full of water with the shower running, causing the burns. Hunter did not deny that Child was burned in the tub or that Child was under his care. The burns were neither mild nor limited to a small part of Child's body. Rather, Child endured third-degree or full-thickness burns that covered fifteen percent of her body. These deep burns on her face and buttocks blistered and actually removed pigment from her skin. The sight of Child's injuries was so upsetting that Mother reacted by attempting to strike Hunter and then immediately calling 911 as he left in a vehicle. Child's burns were infected, and their severity necessitated that she be transferred to Riley Children's Hospital. Some of the burns were old and some new. In addition, Child arrived at the hospital severely dehydrated, wearing a soiled diaper that had not been changed in

several days, and with an arm fracture caused by trauma with force. Hunter threatened harm to his live-in girlfriend if she told anyone what had occurred.

[12] Hunter decided to plead guilty to one count of neglect causing serious bodily injury and leave sentencing to the judge, while the State agreed to dismiss the second count of neglect for depriving Child of necessary support (in this case, medical care). Given the circumstances, the court easily could have considered Hunter's decision to be pragmatic. Had Hunter opted for a trial, the evidence very well could have proved both that he caused Child's serious bodily injury when he placed her in a scalding bathtub with scalding water flowing from a shower head and that, even days later, he failed to seek medical care for Child. Having viewed the graphic, disturbing photos of Child's injuries, reviewed the probable cause affidavit and supplemental report, and listened to Hunter testify, the court was well within its discretion to determine that Hunter's decision to plead open deserved no mitigating weight. The court's determination was not clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. Hunter's argument to the contrary does not warrant a revision of his sentence.

Section 2 – Hunter has not met his burden to demonstrate that his sentence is inappropriate.

[13] Hunter also 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." Hunter has the burden of showing that his sentence is inappropriate. *Anglemyer*, 868 N.E.2d at 490. 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 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.

[14] 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 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).

[15] Turning first to 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 sentencing range for a level 3 felony is between three and sixteen years, with the advisory sentence being nine years. Ind. Code § 35-50-2-5. Hunter was sentenced to ten years, with nine years to be executed at the Department of Correction and one year suspended to probation. Accordingly, Hunter received a sentence well below the maximum allowable executed sentence of sixteen years for neglect of a dependent resulting in serious bodily injury. While Hunter urges us to reduce his sentence, he does not present us with compelling evidence portraying his offense in a positive light. Nothing about the nature of his offense, as we have already detailed in the previous section, convinces us that his sentence, essentially an advisory sentence plus one year of probation, merits a reduction.

[16] As for Hunter'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 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.*

[17] Although Hunter is still in his twenties, this is not his first offense. In 2014, he entered a guilty plea to a charge of level 5 felony robbery for taking property from another by use of or threatening use of force. The court withheld judgment and placed him on probation. The very next year, a petition to revoke Hunter's probation was filed. By 2020, the court granted the revocation for "failing to comply with probation rules" and entered a judgment for level 5 felony robbery. Appellant's App. Vol. 2 at 47. The court modified his sentence to be served through Vanderburgh County's therapeutic work release. Hunter violated probation two more times. Previously, Hunter entered a guilty plea to knowingly or intentionally operating a vehicle without ever receiving a license. He received a suspended sentence. In addition, he was found delinquent for theft as a juvenile and was released from probation as unsatisfactory. While not an extensive history, Hunter's forays into the judicial system reveal a disregard for the law and a failure to take advantage of opportunities for leniency and rehabilitation. This reflects poorly on his character. Not seeking medical

attention for severe burns that he caused to an infant, who Hunter believed was his own daughter, makes us question his character. Likewise, threatening his girlfriend to discourage her from disclosing the truth of what occurred does not bode well for a positive assessment of his character.

[18] In sum, Hunter has not met his burden to establish that his ten-year sentence, with nine years executed, for this level 3 felony is inappropriate in light of the nature of his offense and his character. Therefore, we affirm.

[19] Affirmed.

Robb, J., and Kenworthy, J., concur.