

MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Randy Lamont Sterling,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 13, 2022

Court of Appeals Case No.
22A-CR-450

Appeal from the
Vigo Superior Court

The Honorable
John T. Roach, Judge

Trial Court Case Nos.
84D01-1702-F5-516
84D01-2105-F3-1459

Darden, Senior Judge.

Statement of the Case

- [1] Randy Lamont Sterling appeals the sentence the trial court imposed in two cases after he: (1) admitted to violating the terms and conditions of probation in one case; and (2) pleaded guilty to rape, a Level 3 felony, and to being an habitual offender in another case. We affirm.

Issue

- [2] Sterling raises one issue, which we restate as: whether his fifteen-year sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

- [3] On February 16, 2017, the State filed an information against Sterling in Case Number 84D01-1702-F5-516 (“F5-516”), charging him with robbery, a Level 5 felony, and further alleging that he was an habitual offender. The parties negotiated a plea agreement, pursuant to which Sterling pleaded guilty as charged. The trial court accepted the parties’ agreement and imposed a ten-year sentence, of which five years were to be served on work release in a community corrections program, and the remainder would be served on probation. Sterling had reserved the right to appeal his sentence but apparently chose not to pursue an appeal.
- [4] On October 20, 2017, the State filed a petition to revoke Sterling’s placement in the community corrections program, alleging he had violated the terms and conditions of his placement. Among other violations, the State alleged that

Sterling had cut off his tracking monitor while he was away from the community corrections facility and did not return as required. The parties negotiated another agreement, wherein, Sterling admitted to violating the terms and conditions of his placement in work release. The trial court accepted the agreement and ordered Sterling to serve five years of his sentence in the Indiana Department of Correction (“DOC”).

- [5] In 2020, Sterling was released from the DOC to continue serving his sentence on probation. Among other terms and conditions of his probation, Sterling agreed not to commit any new criminal offenses.
- [6] In late April 2021, Sterling visited his girlfriend, T.F., who lived with her daughter and son-in-law in Terre Haute. Sterling and T.F. attended a family gathering, where he drank heavily. Later that evening, after they had returned home and were in their bedroom, Sterling insisted that they have sex. T.F. told him “no,” that she was not interested in having sex. Tr. Vol. 2, p. 23. At that point, he performed oral sex on her and then penetrated her vagina with his penis. During the incident, T.F. continually told Sterling “no” and repeatedly tried to push him away, but he said, “I’m doing this.” *Id.* She did not cry out because her daughter and other children were sleeping in the next bedroom, and she did not want to alarm or frighten them. After Sterling ended his assault, T.F. left the bedroom to sleep in the front room, but Sterling made her return to the bedroom.

- [7] The next day, T.F. took Sterling to the bus station, where he boarded a bus to Indianapolis using a ticket that T.F. had purchased for him. Later that day, he sent her several messages via a messaging application. Sterling initially apologized, but later, he became threatening when T.F. failed to respond to his messages. In one of his messages, he stated that if she was going to “make him come back to Terre Haute,” then he would “put his hands on her.” Appellant’s App. Vol. 2, p. 100. T.F. had gone to the hospital for a rape examination, and the hospital reported the assault to the police.
- [8] On May 3, 2021, the State filed an information in Case Number 84D01-2105-F3-1459 (“F3-1459”), charging Sterling with two counts of rape, both Level 3 felonies, and one count of intimidation, a Class A misdemeanor. The State further alleged that Sterling was an Habitual Offender. On May 10, 2021, the State filed a notice of violation of probation in F5-516, alleging he had violated the terms and conditions of probation by committing the new criminal offenses described in F3-1459.
- [9] On December 6, 2021, the parties executed a plea agreement addressing both F3-1459 and F5-516. In F3-1459, Sterling agreed to plead guilty to one count of rape as a Level 3 felony and to being an Habitual Offender. In exchange, the State agreed to dismiss the other two counts, and further agreed that any executed portion of his sentence for rape and for being an Habitual Offender in F3-1459 would not exceed fifteen years. As for F5-516, the parties agreed that Sterling would be returned to probation. The trial court accepted the parties’ terms and conditions of the agreement, and entered judgment of conviction for

one count of rape and the habitual offender count, for sentence enhancement purposes.

- [10] On January 31, 2022, the trial court sentenced Sterling to an aggregate sentence of fifteen years in F3-1459. On that same date, in F5-516, the trial court accepted Sterling’s admission that he had violated the terms and conditions of his probation and ordered him returned to probation after serving his executed sentence. This appeal followed.

Discussion and Decision

- [11] Sterling argues that the trial court should have ordered him to serve his sentence in a community corrections program rather than in the DOC. Even when a trial court imposes a sentence within its discretion, the Indiana Constitution authorizes independent appellate review and revision of sentencing decisions. *Hoak v. State*, 113 N.E.3d 1209, 1209 (Ind. 2019) (citing Indiana Constitution article 7, sections 4 and 6). This sentencing review authority is implemented through Indiana Appellate Rule 7(B), which provides that we “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.”
- [12] The principal role of sentencing review under Rule 7(B) is to attempt to leaven the outliers. *Shepherd v. State*, 157 N.E.3d 1209, 1224 (Ind. Ct. App. 2020), *trans. denied*. When a defendant requests review of a sentence under Appellate Rule 7(B), “the question is not whether another sentence is more appropriate;

rather, the question is whether the sentence imposed is inappropriate.”

Woodcock v. State, 163 N.E.3d 863, 877 (Ind. Ct. App. 2021), *trans. denied*.

Further, we exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires us to give due consideration to that decision, and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Gleason v. State*, 965 N.E.2d 702, 712 (Ind. Ct. App. 2012).

[13] The defendant bears the burden of persuading the reviewing court that the sentence imposed is inappropriate. *Shepherd*, 157 N.E.3d at 1224. We may consider any factors in the record in making this determination. *Woodcock*, 163 N.E.3d at 877.

[14] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). At the time Sterling committed the offense of rape, the advisory term for a Level 3 felony was nine years, with a minimum of three years and a maximum of sixteen years. Ind. Code § 35-50-2-5 (2014). In addition, a person who is convicted of a Level 1, 2, 3, or 4 felony and is found to be an habitual offender may be sentenced to an additional fixed, nonsuspendible term of between six and twenty years. Ind. Code § 35-50-2-8(i) (2017).

[15] The trial court sentenced Sterling to nine years, the advisory sentence for a Level 3 felony, plus six years (the minimum allowed by statute) for the habitual

offender sentencing enhancement, for a total of fifteen years. The sentence imposed was the maximum possible executed sentence allowed under the parties' plea agreement, for which Sterling had bargained, but was well short of the maximum possible sentence of thirty-six years if there had been no agreement.

[16] When examining the nature of the offense, we consider the details and circumstances of the offenses, along with the defendant's participation therein. *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021). Sterling argues the circumstances of the offense, although admittedly "disturbing," are "not particularly egregious when compared with other rapes." Appellant's Br. p. 7. We disagree. Sterling raped T.F. within hearing range of her daughter and several children. Further, the next day he threatened T.F. after she did not return his messages.

[17] Sterling points out that T.F. testified at sentencing that she wanted to continue their relationship and did not want him to be charged with rape. She further told the trial court that she wanted him to be sentenced to community corrections. However, the facts and circumstances of this incident speak volumes of what occurred, which was a grave violation of Indiana law. A victim's recommendations on sentencing are not mitigating or aggravating factors, but they may assist the trial court in determining what sentence to impose for a crime. *Hill v. State*, 751 N.E.2d 273, 279 (Ind. Ct. App. 2001). The trial court was not obligated to accept T.F.'s sentencing recommendation,

and we cannot conclude that her recommendation outweighs the disturbing circumstance of Sterling's offense.

[18] In evaluating a defendant's character, we engage in a broad consideration of his or her qualities. *Smoots*, 172 N.E.3d at 1290. The significance of a criminal history in assessing a defendant's character and an appropriate sentence 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).

[19] Sterling, who was forty-four years of age at sentencing, has a lengthy criminal record. As a juvenile, he was adjudicated a delinquent for acts that, if committed by an adult, would have amounted to Class D felony theft, Class D felony criminal recklessness, Class A misdemeanor battery, and Class A misdemeanor carrying a handgun without a license. As an adult, he has been convicted of twelve felonies in prior cases, including two counts of battery, three counts of resisting law enforcement, and three counts of robbery. Sterling has also accrued ten misdemeanor convictions, including battery, false informing, five counts of resisting law enforcement, driving while suspended, possession of marijuana, driving while never having received a valid license, carrying a handgun without a license, and criminal conversion. He has committed criminal offenses on a regular basis, staying out of trouble for the most part only when incarcerated.

[20] Sterling has been placed on probation seven times, and in four of those cases he later violated the terms and conditions of probation. As noted, he was on

probation when he committed the offenses outlined in F5-516, and in that case he was removed from a community corrections program and sent to the DOC, after he admitted to violating the terms and conditions of his placement there. Further, he was still on probation in F5-516 after being released from the DOC when he committed the instant offense in F3-1459. Sterling is indisputably a poor candidate for alternatives to incarceration.

[21] Sterling has an extensive history of mental illness, including substance addictions, bipolar disorder, schizophrenia, and antisocial personality disorder. He argues that he needs treatment outside of the DOC for his conditions, but he provides no evidence that he will be unable to obtain adequate treatment while incarcerated. Furthermore, the record also reflects that he has failed to address his mental health and substance abuse issues in the past, and he failed/refused to take his medications prior to committing the offenses in F3-1459.

[22] Finally, Sterling points to his statement of remorse at sentencing as proof that incarceration is inappropriate. We cannot conclude that Sterling's expression of remorse outweighs his past failures at attempts to rehabilitate himself, along with his lengthy criminal history. He has failed to demonstrate that his placement in the DOC, rather than in community corrections, is an outlier in need of correction.

Conclusion

[23] For the reasons stated above, we affirm the judgment of the trial court.

[24] **Affirmed.**

Riley, J., and Brown, J., concur.