MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Terence Little, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 3, 2021

Court of Appeals Case No. 21A-CR-6

Appeal from the Lake Superior Court

The Honorable Diane Ross Boswell, Judge

Trial Court Cause Nos. 45G03-1907-F5-330 45G03-1908-F6-1760

Najam, Judge.

Statement of the Case

[1] Terence Little, III appeals his sentence after he pleaded guilty to domestic battery, as a Level 6 felony, and escape, as a Level 6 felony. Little raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] On July 16, 2019, Little was on home detention for pending criminal charges. On that date, he "punched and kicked" K.M., who is the mother of two of his four children. Appellant's App. Vol. 2 at 36. Little also pointed a gun at K.M. and threatened to kill her. K.M. was ultimately able to leave, and she sought medical treatment for her injuries. The State charged Little with two counts of domestic battery, as Level 5 felonies; domestic battery, as a Level 6 felony; pointing a firearm at another person, as a Level 6 felony; and domestic battery, as a Class A misdemeanor, under Cause Number 45G03-1907-F5-330 ("F5-330").

[4] On August 14, 2019, after he learned of his impending arrest in F5-330, he "cut his GPS tracking device off [of] his ankle and it was later recovered in a wooded area." *Id.* at 36. Accordingly, the State charged him with escape, as a Level 6 felony, and criminal mischief, as a Class B misdemeanor, under Cause Number 45G03-1908-F6-1760 ("F6-1760").

[5] On November 2, 2020, Little entered into a plea agreement whereby he pleaded guilty to one count of domestic battery, as a Level 6 felony, and escape, as a Level 6 felony. In exchange for his plea, the State dismissed the remaining charges in F5-330 and F6-1760. The plea agreement provided that Little's sentences would be served consecutively, but it otherwise left sentencing open to the trial court's discretion. The trial court accepted Little's guilty plea and entered a judgment of conviction accordingly.

[6] At a sentencing hearing, K.M. testified that she needed Little's help in raising their children. And Little's mother testified regarding Little's medical condition, which requires him to use a colostomy bag. The trial court did not identify any aggravators or mitigators, but the court made several remarks at the conclusion of the hearing, including that Little appeared "absolutely nonchalant about what's going to happen to his life" during the proceeding; he had "been involved with [K.M.] in these kind[s] of domestic disputes over and over again"; and the court expressed "concern about [K.M.'s] safety." Tr. at 50-51. The court then sentenced Little to consecutive two and one-half year sentences, for an aggregate term of five years, with four years executed and one year suspended to probation. This appeal ensued.

Discussion and Decision

[7] Little contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he 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." This court has recently held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[8] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate 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 facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] 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).

[9] Little contends that his sentence is inappropriate in light of the nature of the offenses because the "maximum sentence should be reserved for the worst of the worst" and "[t]his case does not fit that description." Appellant's Br. at 12. Little maintains that the State had requested one and one-half years to be served on probation, and K.M. had requested that the remainder of his sentence be served on probation. In addition, Little asserts that, after he removed the GPS tracking device, he was taken into custody, and he has since paid restitution for the destroyed device. Little contends that his sentence is inappropriate in light of his character because he is a good father to four children and because of his medical condition, which requires more surgery and a "lengthy hospitalization." *Id.* at 10.

[10] However, Little has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the battery offense, Little pointed a gun at K.M. and threatened to kill her, and he punched and kicked her. During the battery, K.M. lost consciousness "multiple times," and she sustained injuries including lacerations, a black eye, and several bruises. Tr. at 47. With regard to his escape conviction, Little not only removed the GPS tracking device, but he also destroyed it and tossed it into the woods. Little has not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.2d at 122.

[11] As to his character, Little's criminal history includes two felony convictions in Illinois for "selling controlled substances" and "possession of firearm," and one misdemeanor conviction. Appellant's App. Vol. 2 at 47. Further, Little has been given opportunities to avoid incarceration in the past through alternative sentences, but he continues to commit crimes. Indeed, Little committed the instant offenses while on home detention for unrelated pending charges. And the trial court noted that Little had committed battery against K.M. "over and over again" during the course of their relationship. Tr. at 51. We cannot say that Little's sentence is inappropriate in light of his character.

[12] Again, Little has the burden on appeal to present "compelling evidence portraying in a positive light the nature of the offense" and his character. *Stephenson*, 29 N.E.3d at 122. Little has not met that burden. Accordingly, we conclude that Little has not shown that his sentence is inappropriate in light of the nature of the offenses and his character, and we affirm his sentence.

[13] Affirmed.

Pyle, J., and Tavitas, J., concur.