

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.



ATTORNEY FOR APPELLANT

Donald R. Shuler
Barkes, Kolbus, Rife & Shuler, LLP
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria N. Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Edward J. Warren,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 28, 2022

Court of Appeals Case No.
21A-CR-2333

Appeal from the
Elkhart Superior Court

The Honorable
Gretchen S. Lund, Judge

Trial Court Cause No.
20D04-2104-F6-381

Molter, Judge.

- [1] After Edward J. Warren pleaded guilty to battery by bodily waste as a Level 6 felony and resisting law enforcement as a Class A misdemeanor, the trial court

sentenced him to an aggregate sentence of two years executed. Warren requests that we revise his sentence because he contends it is inappropriate in light of the nature of the offense and his character. Because we find that his sentence is not inappropriate, we affirm.

Facts and Procedural History

- [2] On April 1, 2021, officers from the Elkhart Police Department were dispatched to the Daylight Inn on the report of a guest, Warren, who refused to leave the property. The officers arrived at Warren's room, knocked on the door, and announced themselves. Warren opened the curtain and looked out of the window, and the responding officers asked him to open the door. When Warren cracked the door open a few inches and stood partially behind it, the officers could smell alcohol on his breath. They told Warren that hotel management wanted him to leave, and he began talking rapidly and arguing with the police that he had paid for the room and did not have to leave.
- [3] The officers again asked Warren to leave and told him that the management had the right to evict him from the room. Warren then slammed the door and refused to leave. One of the officers pushed the door back open and again advised Warren that he needed to pack his belongings and leave. Warren became irate, started "talking in circles," and yelled that he did not need to go anywhere. Appellant's App. Vol. 2 at 15. He attempted to close the door again as one officer was propping it open with his foot.

- [4] When the officers again pushed the door open, Warren charged at them. They tried to grab his arms and restrain him, but he kept pulling his arms away. During the struggle, Warren fell to the ground and pulled his hands under his torso, so the officers were unable to handcuff him. He continued fighting against the officers and screaming at them. The officers continued their attempt to restrain him and ordered Warren to stop, and they were only able to handcuff him after using a taser.
- [5] After handcuffing him, the officers stood Warren up, and Warren then turned his head and spit in an officer's face. He also began to thrash and use his legs to pull away from the officers' grasp. Warren kicked his legs off the door and pushed himself and the officers to the outside hallway. He then pushed an officer up against the metal railing of the second-floor walkway. Another officer arrived, and they managed to calm Warren down to begin walking to the patrol car. As they walked to the car, however, the officers again had to place Warren on the ground to control his wild movements.
- [6] After placing Warren in the patrol car, the officers went back to the room to speak to his girlfriend. She told them that Warren had been diagnosed with bipolar disorder and schizophrenia and had just been released from the hospital after undergoing a mental-health evaluation the week before. She also said that Warren had been drinking before the officers' arrival and had been acting strange that day.

[7] The State charged Warren with Level 6 felony battery by bodily waste and Class A misdemeanor resisting law enforcement. On August 25, 2021, Warren pleaded guilty to both charges without a plea agreement, and the trial court accepted the guilty plea. At sentencing, the trial court found that Warren had a significant criminal history. His misdemeanor criminal history included theft, aggravated battery, knowingly damaging property, public intoxication, operating while intoxicated, and domestic battery; two convictions for possession of marijuana; five convictions for battery; two convictions for resisting a peace officer; three convictions for driving while suspended; two convictions for operating a vehicle without ever receiving a valid license; and two convictions for disorderly conduct. His felony criminal history included a conviction for failure to return to lawful detention, two convictions for damage to property, and two convictions for operating as a habitual traffic violator. Warren had also violated previous terms of probation and community corrections, had failed to appear at least three separate times, and had been affiliated with a gang.

[8] The trial court also found that other non-incarceration sanctions had been ineffective in keeping Warren from committing offenses in the past and that he had previously failed to take advantage of alternate sanctions. The trial court then sentenced Warren to two years for his conviction for Level 6 felony battery by bodily waste and one year for his conviction for Class A misdemeanor resisting law enforcement and ordered the sentences to be served concurrently in the Elkhart County Jail for an aggregate executed sentence of two years. In

its sentencing order, the trial court noted that if Warren “remains conduct free at the ECJ for a period of 90 straight days, Court will consider modification of placement into ECCC Work Release.” Appellant’s App. Vol. 2 at 74. It further stated that, “[a]s a condition of ECCC Work Release, Def. is to participate in all recommended programming, including addictions assessment/follow-up and mental health assessment/follow-up and anger management assessment/follow-up.” *Id.* Warren now appeals his sentence.

Discussion and Decision

- [9] Warren argues that his sentence is inappropriate under Indiana Appellate Rule 7(B). The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).
- [10] Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Id.* at 160. Thus, we generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).

[11] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 6 felony is a fixed term of imprisonment between six months and two and one-half years, with the advisory sentencing being one year. Ind. Code § 35-50-2-7(b). A person convicted of a Class A misdemeanor may be imprisoned for up to one year. Ind. Code § 35-50-3-2. Here, Warren received a two-year sentence for his Level 6 felony conviction for battery by bodily waste, which is one year over the advisory. His sentence for Class A misdemeanor resisting law enforcement was one year as allowed by Indiana Code section 35-50-3-2. The trial court ordered the two sentences to run concurrently for an aggregate sentence of two years.

[12] Warren argues that the nature of his offense does not support his sentence because there was no personal injury or property damage, and he was suffering from mental illness. His argument overlooks that a lack of injury and damage would be typical of battery by bodily waste, and Warren went much further than just spitting on a police officer. He pinned an officer against a railing and resisted arrest for an extended period of time by kicking and flailing. As for his

mental illness, Warren did not introduce any evidence at sentencing that his illness is what led to his behavior.

[13] Warren also argues that his character makes the sentence inappropriate. He acknowledges his criminal history, but he argues that it outweighed by his decision to plead guilty without the benefit of a plea agreement, which illustrates his acceptance of responsibility. We disagree.

[14] The law is well-established that it is proper to consider a defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, Warren's criminal history is extensive and includes multiple convictions for both misdemeanors and felonies, which significantly outweighs the fact that he pleaded guilty. Precluding any doubt that his character does not warrant a revision of his sentence, this is his eighth battery conviction and third conviction for resisting law enforcement.

[15] Thus, Warren has not demonstrated his sentence is inappropriate by identifying compelling evidence of good character or portraying the nature of his offense in a positive light.

[16] Affirmed.

Riley, J., and Robb, J., concur.