MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Quinten D. Joseph,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 17, 2023

Court of Appeals Case No. 22A-CR-1691

Appeal from the Vigo Superior Court

The Honorable Sarah K. Mullican, Judge

Trial Court Cause No. 84D03-2104-F3-1130

Tavitas, Judge.

Case Summary

[1] Quentin Joseph appeals his sentence of sixteen years in the Department of Correction ("DOC"). Joseph argues that his sentence is inappropriate in light of the nature of the offense and his character. Finding that his sentence is not inappropriate, we affirm.

Issue

[2] Joseph raises one issue on appeal, which we restate as whether his sentence was inappropriate in light of the nature of the offense and his character.

Facts

[3] On or around September 13, 2020, Joseph was home alone with his twelve-pound one-month old son, D.J. While D.J. was asleep in Joseph's arms, Joseph, inexplicably, videotaped himself brutally beating D.J. Joseph violently shook and strangled D.J while stating, "I f***ing love choking you, b***h. Choke. Choke to f***ing death." State's Ex. 1, Ex. Vol. I. D.J. was screaming, choking, whimpering, and in visible pain. Over the course of the one-minute and eleven-second video, Joseph continued to shake and strangle D.J, held D.J. upside down by the legs, slammed D.J.'s face into the couch, and threw D.J. into the backrest of the couch.

[4] D.J.'s mother, S.S., returned home and took D.J. to the hospital when she discovered that D.J. was unable to move his right arm. D.J. was diagnosed with bruising around his head and neck and fractures in both elbows, both shoulders, his right collar bone, his right femur, and his left knee.

[5] At some point, Joseph deleted the video of the battery from his phone. Joseph initially lied about the cause and "pointed the finger to anyone but himself." Tr. Vol. II p. 46. When police recovered the video, Joseph "arrogantly said, they can't prove that was me." *Id.* DCS took custody of D.J. and placed him in foster care.

[6] On April 6, 2021, the State charged Joseph with three counts: Count I, domestic battery resulting in serious bodily injury to a family or household member who is less than fourteen years old, a Level 3 felony; Count II, neglect of a dependent resulting in serious bodily injury, a Level 3 felony; and Count III, strangulation, a Level 6 felony. On November 17, 2021, Joseph pleaded guilty to Count I. The trial court accepted the plea agreement in a hearing on May 11, 2022.

[7] The trial court held a sentencing hearing on June 17, 2022, and entered a judgment of conviction on Count I.[1] During the hearing, Dr. Courtney Demetrius, a physician who works with victims of child abuse at the Peyton Manning Children's Hospital and Riley Children's Hospital, testified regarding D.J.'s injuries. A.H., D.J.'s foster parent, testified regarding the consequences of Joseph's battery on D.J.'s development. She testified that, for approximately five months after D.J. was placed with her, he cried six to twelve hours per day due to "trauma" from the abuse. *Id.* at 44. She further testified that D.J.

[1] The trial court subsequently dismissed Counts II and III per the terms of the plea agreement.

requires extensive therapy, "had to wear a cranial helmet to help correct the shape of his skull" for twenty-three hours per day for four months, is delayed in his motor skills, is "delayed in his speech and only says about five (5) words," must wear braces on both ankles to allow him to walk, self-harms, and suffers from seizures. *Id*. Also during the sentencing hearing, Joseph apologized for the battery and testified that he was not taking his medication at the time of the offense.

[8] The trial court found three aggravating factors: 1) the harm and injury suffered by D.J. "was significant and greater than the elements necessary to prove the crime"; 2) Joseph's criminal history included a juvenile conviction for intimidation and an adult charge for battery of a minor, a Class B misdemeanor, the latter of which was dismissed based on Joseph's completion of a diversionary program in mental health court; and 3) the Class B misdemeanor battery of a minor offense "occurred while [Joseph] was babysitting the minor child and therefore [Joseph] was in a position of care, custody, and control of the victim." Appellant's App. Vol. III p. 150-51. The trial court observed that the video depicting Joseph's battery of D.J. "is one of the most disturbing videos [the trial court] has had occasion to observe" and "demonstrates [Joseph's] shocking disregard for the life, health and welfare of his child." *Id*. at 151. The trial court found as the sole mitigator that Joseph "has a long history of mental health treatment" and "has suffered previous trauma and post-traumatic stress and experienced a very troubled childhood." *Id*.

[9] The trial court concluded that the aggravating circumstances outweighed the mitigating circumstances and sentenced Joseph to the maximum of sixteen years in the DOC. Joseph now appeals.

Discussion and Decision

[10] Joseph argues that his sixteen-year sentence in the DOC is inappropriate in light of the nature of the offense and Joseph's character. We disagree.

[11] The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[2] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what

[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[12] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "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.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[13] 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. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Joseph was convicted of domestic battery resulting in serious bodily injury to a family or household member who is less than fourteen years of age, a Level 3 felony. Ind. Code § 35-42-2-1.3(e). A Level 3 felony carries a sentencing range of three and sixteen years, with the advisory sentence set as nine years. Ind. Code § 35-50-2-5(b).

[14] Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). We may also consider whether the offender "was in a position of trust" with the victim. *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). Here, Joseph was in a position of trust with his infant son, and Joseph's battery of his son was appalling, depraved, and horrific. That battery resulted in serious injuries, which still significantly impact D.J. Joseph points to nothing that portrays his offense in a positive light.

[15] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Pierce*, 949 N.E.2d at 352-53; *see also Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[16] Here, Joseph's video-recorded battery of his infant son evidences an appalling disregard for human life. In addition, Joseph's criminal history includes: 1) a juvenile intimidation conviction for threatening to shoot his classmate bullies;

and 2) an adult conviction for battery of a minor that was dismissed based on Joseph's completion of a diversionary program. Joseph's criminal history evidences violent character, and his previous battery conviction bears a strong similarity to the present offense. Furthermore, Joseph points to no positive character traits that suggest his sentence is inappropriate.

[17] Joseph argues that his sentence is inappropriate in light of his traumatic childhood and his remorse. Joseph indeed suffered abuse and neglect as a child, and he deserved better. But so did D.J. Our Supreme Court, moreover, "has 'consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.'" *Patterson v. State*, 090 N.E.2d 1058, 1062 (Ind. Ct. App. 2009) (quoting *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007)). Here, the trial court considered Joseph's traumatic childhood as a mitigating factor but found that the aggravating circumstances outweighed any mitigating effect. As for Joseph's remorse, the trial court expressed doubts about Joseph's "sincerity," and we will not reweigh that assessment. Tr. Vol. II p. 93; *see Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004) ("The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether the remorse is genuine."). Accordingly, we decline to revise Joseph's sentence in light of the nature of the offense and his character.

Conclusion

[18] Joseph's sentence was not inappropriate in light of the nature of the offense and his character. Accordingly, we affirm.

[19] Affirmed.

Altice, C.J., and Brown, J., concur.