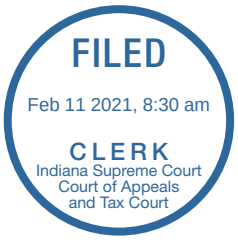
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Christopher L. Moore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 11, 2021

Court of Appeals Case No.
20A-CR-1716

Appeal from the
Montgomery Superior Court

The Honorable
Heather L. Barajas, Judge

Trial Court Cause No.
54D01-1911-F6-3267

Kirsch, Judge.

[1] Christopher L. Moore ("Moore") pleaded guilty to resisting law enforcement[1] as a Class A misdemeanor, domestic battery[2] as a Class A misdemeanor, and intimidation[3] as a Level 6 felony. He was sentenced to 230 days for his resisting law enforcement conviction, 230 days for his domestic battery conviction, and 910 days for his intimidation conviction with the sentences ordered to be served consecutively for an aggregate sentence of 1,370 days executed. Moore appeals his sentence and raises the following issues for our review:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On October 23, 2019 at approximately 3:20 a.m., Lindzy Keeling ("Keeling"), who is the mother of one of Moore's children, was driving Moore home when Moore became agitated and threw Keeling's phone out the window of her van. *Tr. Vol. II* at 13; *Appellant's App. Vol. 2* at 14. After Moore recovered the phone and returned to the van, he repeatedly threatened to "beat [Keeling's] face in"

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[1] *See* Ind. Code § 35-44.1-3-1(a)(3).

[2] *See* Ind. Code § 35-42-2-1.3(a)(1).

[3] *See* Ind. Code § 35-45-2-1(a)(2), (b)(1)(A).

for making him go retrieve her phone while poking Keeling in the face. *Tr. Vol. II* at 13; *Appellant's App. Vol. 2* at 14. Moore then ignited a cigarette lighter and burnt Keeling's hair. *Tr. Vol. II* at 13; *Appellant's App. Vol. 2* at 14. Keeling, who was afraid for her life, began speeding in an attempt to get pulled over by law enforcement so she could get help. *Appellant's App. Vol. 2* at 14. When Keeling noticed Montgomery County Sheriff's Department Officer Matthew Riddell ("Officer Riddell") driving in the opposite direction on the road, she began honking the horn to get Officer Riddell's attention. *Id*. at 12, 14. After making a U-turn, Keeling began to pull up next to Officer Riddell. *Id*. at 12. Moore realized that Keeling was trying to get Officer Riddell's attention, so he grabbed the steering wheel and pulled it, causing the van to hit the edge of the road and then come to a stop in the grass of a nearby business. *Id*. at 12, 15.

[4] Officer Riddell exited his police vehicle, and as he began to approach the van, he could hear Keeling and Moore yelling. *Id*. at 12-13. Moore exited the passenger's side front seat and began to approach Officer Riddell, stating to the officer to "get her" and "she's crazy." *Id*. at 13. Officer Riddell ordered Moore to stop and show the officer his identification. *Id*. Moore then began to flee from Officer Riddell on foot. *Id.*; *Tr. Vol. II* at 13. While in pursuit of Moore, Officer Riddell repeatedly ordered Moore to stop and get on the ground. *Appellant's App. Vol. 2* at 13. However, Moore did not comply and continued to run from Officer Riddell. *Id*. Eventually, Officer Riddell lost sight of Moore, ended the pursuit, and returned to the van to speak with Keeling. *Id*. at 13-14.

[5] On November 4, 2019, the State charged Moore with Class A misdemeanor resisting law enforcement, Class A misdemeanor domestic battery, Level 6 felony intimidation, and Class B misdemeanor criminal recklessness. *Id*. at 10-11. A warrant was issued for Moore's arrest, and he was eventually arrested. *Id*. at 3. On August 21, 2020, Moore pleaded guilty to Class A misdemeanor resisting law enforcement, Class A misdemeanor domestic battery, and Level 6 felony intimidation. *Tr. Vol. II* at 4-5, 11-14; *Appellant's App. Vol. 2* at 16-18. In exchange, the State dismissed the Class B misdemeanor criminal recklessness charge and Moore's pending charges in two separate cause numbers, 54D01-1807-F6-2215 and 54D01-1811-F6-3369. *Tr. Vol. II* at 5, 11-14; *Appellant's App. Vol. 2* at 16-18. As part of the plea agreement, sentencing was left to the sole discretion of the trial court with the State to make no recommendation as to sentencing. *Tr. Vol. II* at 5; *Appellant's App. Vol. 2* at 16.

[6] During sentencing, the trial court found Moore's criminal history and his failure to seek help with his substance abuse and anger issues to be aggravating factors. *Tr. Vol. II* at 24-26. The trial court found Moore's guilty plea to be the only mitigating factor. *Id*. at 27. The trial court found the aggravating factors outweighed the mitigating factor and sentenced Moore to 230 days for his resisting law enforcement conviction, 230 days for his domestic battery conviction, and 910 days for his intimidation conviction, all to be served consecutively for an aggregate sentence of 1,370 days executed. *Id*. at 27; *Appellant's App. Vol. 2* at 26, 28-29. Moore now appeals.

Discussion and Decision

I. Abuse of Discretion

[7] Sentencing determinations are within the trial court's discretion and will be reversed only for an abuse of discretion. *Harris v. State*, 964 N.E.2d 920, 926 (Ind. Ct. App. 2012), *trans. denied*. An abuse of discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014), *trans. denied*. A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all"; (2) enters "a sentencing statement that explains reasons for imposing a sentence -- including a finding of aggravating and mitigating factors if any -- but the record does not support the reasons"; (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration"; or (4) considers reasons that "are improper as a matter of law." *Anglemyer v. State,* 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh'g,* 875 N.E.2d 218 (Ind. 2007). The relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. *Id.* at 491. The decision to impose consecutive sentences lies within the discretion of the trial court. *Gross*, 22 N.E.3d at 869 (citing *Gilliam v. State,* 901 N.E.2d 72, 74 (Ind. Ct. App. 2009)). A trial court is required to state its reasons for imposing consecutive sentences or enhanced terms. *Id.* A single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Id.*

[8] Moore appears to argue that the trial court abused its discretion in sentencing him because his sentence was excessive.[4] The trial court did not abuse its discretion when it sentenced Moore. The trial court provided an adequate sentencing statement and set out the aggravating and mitigating factors that were supported by the record. *Tr. Vol. II* at 24-27. The trial court identified two aggravating circumstances: Moore's criminal history and his failure to seek help with his substance abuse and anger issues. *Id*. Only one aggravating factor is needed to enhance a defendant's sentence. *Gross*, 22 N.E.3d at 869. A trial court may rely on the same reasons to impose a maximum sentence and also impose consecutive sentences. *Gilliam*, 901 N.E.2d at 74. Because the trial court here found multiple valid aggravating factors to support enhancing Moore's sentence, the trial court did not abuse its discretion when it imposed enhanced, consecutive sentences.

[9] In asserting that his sentence was excessive, Moore also alludes to the fact that his consecutive sentences should not exceed four years due to the fact that they arose out of a single episode of criminal conduct. The imposition of consecutive or concurrent terms is governed by Indiana Code section 35-50-1-2, which provides that, except for crimes of violence,

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[4] Moore clearly conflates the abuse-of-discretion standard with the inappropriateness standard as he sets out both standards of review and argues that "[t]he trial court abused its discretion when sentencing [him] to three consecutive sentences . . . as said sentence was inappropriate in light of the nature of the offense and character of [Moore.]" *Appellant's Br*. at 8. This conflation of arguments is improper as it is well settled that the two types of claims are distinct and are to be analyzed separately. *King v. State*, 894 N.E.2d 265, 266 (Ind. Ct. App. 2008). We, therefore, address each claim individually.

> Except as provided in subsection (c), the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions rising out of an episode of criminal conduct may not exceed the following:
>
> (1) If the most serious crime for which the defendant is sentenced is a Level 6 felony, the total of the consecutive terms of imprisonment may not exceed four (4) years.

Ind. Code § 35-50-1-2(d)(1). "An 'episode of criminal conduct' means offenses or a connected series of offenses that are closely related in time, place, and circumstance." Ind. Code §35-50-1-2(b).

[10] Although Moore is correct that, under Indiana Code section 35-50-1-2(d), his sentence cannot exceed four years since it arose out an episode of criminal conduct, the sentence imposed by the trial court did not exceed four years. The trial court imposed consecutive sentences that resulted in an aggregate sentence of 1,370 days or approximately three years and nine months. Therefore, Moore's sentence did not run afoul of Indiana Code section 35-50-1-2(d), and the trial court did not abuse its discretion in sentencing him.

II. Inappropriate Sentence

[11] Pursuant to Indiana Appellate Rule 7(B), this court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Our Supreme Court has explained that the principal role of appellate review should be to attempt to leaven the

outliers, "not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We independently examine the nature of Moore's offense and his character under Appellate Rule 7(B) with substantial deference to the trial court's sentence. *Satterfield v. State*, 33 N.E.3d 344, 355 (Ind. 2015). "In conducting our review, we do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is 'inappropriate.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Whether a sentence is inappropriate ultimately depends upon "the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224. The defendant bears the burden of persuading us that his sentence is inappropriate. *Id*.

[12] Moore argues that his sentence is inappropriate in light of the nature of his offenses and his character. Although Moore does not set out a fully developed argument regarding how the nature of his offenses make his sentence inappropriate, he does assert that there was no evidence of injury to Keeling as a result of his offenses. As to his character, Moore contends that, although he does have a criminal history, the passage of time since his previous convictions in 2008 and his "lack of current criminal history" should be considered to find that his sentence is inappropriate.

[13] Here, Moore pleaded guilty to Class A misdemeanor resisting law enforcement, Class A misdemeanor domestic battery, and level 6 felony intimidation. A

person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind Code § 35-50-3-2. A person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). The trial court sentenced Moore to 230 days for each Class A misdemeanor conviction and 910 days for his Level 6 felony conviction, with all of the sentences to be served consecutively for an aggregate sentence of 1,370 days executed. *Tr. Vol. II* at 27; *Appellant's App. Vol. 2* at 26, 28-29.

[14] As this court has recognized, the nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). "When determining the appropriateness of a sentence that deviates from an advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that 'makes it different from the typical offense accounted for by the legislature when it set the advisory sentence.'" *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*. Here, the evidence showed that while Keeling was driving Moore home, he became agitated and threw her phone out of the window of the moving van. After retrieving the phone, Moore began threatening Keeling for making him retrieve the phone and repeatedly made threats to "beat [Keeling's] face in" while poking her in the face. Moore then ignited a cigarette lighter and burnt Keeling's hair. Although there was no evidence that Keeling suffered any

injury requiring medical attention, she did inform Officer Riddell that she feared for her life. When Moore realized that Keeling was trying to get Officer Riddell's attention, he grabbed the steering wheel and pulled it, which caused the van to hit the edge of the road and come to rest in the grass of a nearby business. Such actions could have caused a more serious vehicle accident, and Moore's action in holding a cigarette lighter to Keeling's hair could have resulted in serious injury to Keeling. Additionally, at the time of the present offenses, Moore had pending charges for domestic battery and similar offenses against other women in two other causes but continued to engage in violent and threatening behavior toward Keeling. Further, when Officer Riddell approached Moore and asked for identification, instead of complying, Moore fled on foot and led Officer Riddell on an extended foot pursuit.

[15] The character of the offender is found in what we learn of the offender's life and conduct. *Perry*, 78 N.E.3d at 13. When considering the character of the offender, one relevant fact is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). The evidence showed that Moore has an extensive criminal history that spanned twenty-two years, consisting of four prior felony conviction and two prior misdemeanor convictions. *Appellant's App. Vol. 2* at 21-24. Moore's convictions include convictions for stalking, burglary, robbery, and multiple convictions for battery. *Id*. Moore has violated probation at least four times, resulting in two revocations of his probation. *Id*. At the time Moore committed the current offenses, he had pending charges in two other cases, one for domestic battery in the presence of

a child, strangulation, and intimidation, and the other for battery resulting in bodily injury, intimidation, and counterfeiting. *Id*. at 23; *Tr. Vol. II* at 24. Both of those cases were resolved as a result of the plea agreement in the present case. *Appellant's App. Vol. 2* at 16. Additionally, at the time of sentencing, Moore also had pending charges in another county for intimidation, false informing, and three counts of domestic battery. *Appellant's App. Vol. 2* at 24; *Tr. Vol. II* at 24.

[16] We do not find Moore's attempt to minimize his criminal history to be persuasive. Moore asserts he has a "lack of current criminal history" and "the passage of time from his convictions in 2008" should "not be used to elevate the sentence to a maximum sentence." *Appellant's Br*. at 9. However, his argument ignores that he was incarcerated for his 2008 convictions and was not released from incarceration until May 7, 2018. *Appellant's App. Vol. 2* at 23; *Tr. Vol. II* at 24. He was then arrested on Jul 25, 2018 for one of the pending cases dismissed pursuant to the plea agreement, within only three months of being released. *Tr. Vol. II* at 24. Moore had extensive contacts with the criminal justice system, including charges and convictions for battery, domestic battery, and intimidation, crimes similar to the present offenses, both before and after his 2008 conviction. Thus, receiving lesser sentences for similar offenses had not caused Moore to change his behavior. Moore's prior convictions and repeated disregard of the law, particularly those for battery and domestic violence-related crimes, and the other charges pending at the time of his plea agreement reflect particularly poorly on his character. Moore also admitted to regularly using

illegal drugs and failing to seek help for any substance abuse or anger-related issues. *Id*. at 19-20, 26-27; *Appellant's App. Vol. II* at 25.

[17] Moore's arguments do not portray the nature of his crimes and his character in "a positive light," which is his burden under Appellate Rule 7(B). *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Moore has not shown that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We, therefore, affirm the sentence imposed by the trial court.

[18] Affirmed.

Bradford, C.J., and May, J., concur.