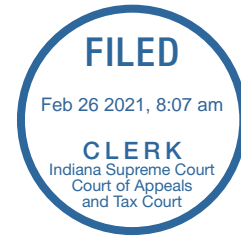


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Mani S. Johnson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 26, 2021

Court of Appeals Case No.
20A-CR-2084

Appeal from the Hamilton
Superior Court

The Honorable William Hughes,
Judge

Trial Court Cause No.
29D03-2001-F6-399

Brown, Judge.

[1] Mani S. Johnson appeals his sentence for invasion of privacy as a level 6 felony. We affirm.

Facts and Procedural History

[2] On March 21, 2018, the Hamilton Superior Court issued a protective order under cause number 29D03-1803-F3-2079 (“Cause No. 2079”) which prohibited Johnson from contacting Raelynn Pettigrew. While serving a sentence under Cause No. 2079, Johnson wrote a letter to Pettigrew. On or about January 2, 2020, Pettigrew received the letter. Johnson had a prior conviction for invasion of privacy as a class A misdemeanor on or about December 11, 2014.

[3] On January 14, 2020, the State charged Johnson with three counts of invasion of privacy as class A misdemeanors and three counts of invasion of privacy as level 6 felonies.¹

[4] On June 11, 2020, Johnson filed a Request to Hold Guilty Plea Hearing. On June 18, 2020, the court held a change of plea hearing.² That same day, the court entered an order finding that Johnson pled guilty to invasion of privacy as a level 6 felony, stating that the court would take the guilty plea under

¹ The counts all reference the same date of January 2, 2020, but allege different bases for the protective orders. Specifically, Counts I and IV refer to an order issued under Ind. Code § 35-33-8-3.2 in Cause No. 2079, Counts II and V refer to an order issued under Ind. Code § 35-38-1-30 in Cause No. 2079, and Counts III and VI refer to a no contact order issued as a condition of probation in Cause No. 2079.

² The record does not contain a transcript of the June 18, 2020 hearing.

advisement, and scheduling a sentencing hearing for July 17, 2020. On July 10, 2020, Johnson filed a Request for Continuance of Sentencing Hearing, and the court granted the request and rescheduled the hearing for July 28, 2020.

[5] On July 10, 2020, a probation officer filed a presentence investigation report. Under the heading Attitudes and Behavioral Orientation, the report asserted that Johnson wrote a statement in which he appeared to blame the courts and the victim for the offense and his previous legal problems and ended his statement by stating that he assured the court “he will endure future incarcerations or the situation will resolve itself through ‘some act of violence’ unless a ‘mutual restraining order’ is issued.” Appellant’s Appendix Volume II at 62. The report stated that Johnson indicated he would refuse a community corrections placement. The probation officer recommended a sentence of 730 days executed at the Department of Correction (“DOC”).

[6] On July 28, 2020, the court entered an order finding that Johnson did not appear for the scheduled hearing, rejecting the plea agreement, granting the State’s request for an arrest warrant, and stating that the cause would be rescheduled for trial.

[7] On September 9, 2020, Johnson filed a plea agreement in which he agreed to plead guilty to Count V, invasion of privacy as a level 6 felony, and the State agreed to dismiss the remaining counts.

[8] On September 10, 2020, the court held a hearing and Johnson pled guilty. On October 8, 2020, the probation officer filed an updated presentence

investigation report which indicated Johnson stated that he planned to make or write a new statement and that the recommendations remained the same as those in the initial report. On October 14, 2020, Johnson filed a statement to be considered at the sentencing hearing in which he apologized for his failure to appear, stated that his father was murdered in January 2020, and requested a sentence of probation without further incarceration.

[9] On October 16, 2020, the court held a sentencing hearing. Johnson's counsel asked the court to provide Johnson with the means to participate in community corrections or to provide him with time-served and place him on probation for a significant period of time. The prosecutor requested a sentence of 730 days in the DOC.

[10] Johnson stated that he had a very rough year, he was worried about the welfare of his child, was upset about his father's death, and had no problems with drug or alcohol abuse. The court stated that it thought they had this conversation before, and Johnson answered affirmatively. Johnson stated in part that the court "maxed [him] out," and the court asked him why he was blaming the courts. Transcript Volume II at 34. Johnson stated that he was not placing any blame on the courts and was aware of his actions, and the court stated that it was the second time he had blamed the courts. After some discussion, Johnson stated: "I blame myself, Your Honor. If I say that I blame the Courts, then I blame the Courts on the civil side for not understanding both ways of it." *Id.* at 35-36.

[11] The court sentenced Johnson to 910 days at the DOC with twenty days executed at the Hamilton County Jail, suspended 890 days, and ordered that he be placed on probation for 730 days. The court ordered that Johnson be evaluated and complete a Domestic Batterers' Intervention program.

Discussion

[12] The issue is whether Johnson's sentence is inappropriate in light of the nature of the offense and his character. Johnson acknowledges that the letter he sent to Pettigrew was a violation of the no contact order but asserts that the contents of the letter were related to their child and what a future relationship could be with that child. He asserts that he was motivated by a concern for his child and the child's living conditions. He also contends that he had been cooperative from charging through the guilty plea.

[13] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[14] Ind. Code § 35-50-2-7 provides that 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.

- [15] Our review of the nature of the offense reveals that Johnson did knowingly or intentionally violate a protective order requiring him to refrain from direct or indirect contact with Pettigrew while having a prior unrelated conviction for invasion of privacy as a class A misdemeanor.
- [16] Our review of the character of the offender reveals that Johnson failed to appear at the July 28, 2020 hearing. After an arrest warrant was served, Johnson pled guilty to invasion of privacy as a level 6 felony and the State dismissed three counts of invasion of privacy as class A misdemeanors and two counts of invasion of privacy as level 6 felonies.
- [17] Johnson has convictions for “neglect of a dependent; child selling” as a class D felony in 2004; driving while suspended as a class A misdemeanor in 2008; three counts of driving while suspended as class A misdemeanors and failure to stop after an accident as a class C misdemeanor in 2010; domestic battery as a class D felony in 2012; intimidation as a class D felony in 2013; invasion of privacy as a class A misdemeanor in 2014; driving while suspended as a class A misdemeanor in 2015; battery as a class B misdemeanor and intimidation as a level 6 felony in 2016; and criminal confinement with bodily injury as a level 5 felony in 2018. Appellant’s Appendix Volume II at 54 (capitalization omitted). The presentence investigation report noted that Johnson was incarcerated at the DOC when he committed the present offense and that Pettigrew was the victim in five other cause numbers in Johnson’s criminal history. Johnson violated probation in 2005 and 2016.

[18] The report reveals that Johnson has one child who lives with Pettigrew, he believed that it had been four to five years since his last visit with his son, and he was behind on child support payments. The report notes that Johnson had not pursued mental health counseling or anger management outside of court ordered services or while incarcerated and that DOC records reflected that he completed the Thinking for a Change program on December 2, 2019. The report also indicates Johnson's overall risk assessment score using the Indiana Risk Assessment System places him in the moderate risk to reoffend category.

[19] After due consideration, we conclude that Johnson has not sustained his burden of establishing that his sentence of 910 days with twenty days executed, 890 days suspended, and probation for 730 days is inappropriate in light of the nature of the offense and his character.

[20] For the foregoing reasons, we affirm Johnson's sentence.

[21] Affirmed.

Vaidik, J., and Pyle, J., concur.