

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.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
Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Paul A. Mast,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 28, 2023

Court of Appeals Case No.
23A-CR-1061

Appeal from the Elkhart Superior
Court

The Honorable Gretchen S. Lund,
Judge

Trial Court Cause No.
20D04-2211-F6-1379

Memorandum Decision by Judge Brown

Judges Vaidik and Bradford concur.

Brown, Judge.

[1] Paul A. Mast appeals his sentence for public indecency as a level 6 felony and claims his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On October 30, 2022, Mast knowingly, in a public place, appeared in a state of nudity with the intent to arouse the sexual desires of himself or another person.¹ In particular, Mast drove to an area near a thrift store in Elkhart, Indiana, exited the vehicle, unzipped his pants, displayed his penis to a woman, entered his vehicle, and drove away. Mast then stopped his vehicle near a woman in a wheelchair, opened the driver’s door of his vehicle, held his erect penis, and said “Hey, baby! I’ve got something for you.” Appellant’s Appendix Volume II at 14. The woman told him she was not interested and was going to call 911, and Mast drove away. The locations of these incidents were within a block of each other.

[3] On November 2, 2022, the State charged Mast with public indecency as a level 6 felony. The information alleged that he had a previous conviction for public indecency.² On March 22, 2023, Mast pled guilty to public indecency as a level 6 felony without the benefit of a plea agreement. On May 3, 2023, the court held a sentencing hearing. The court found the aggravating factors included

¹ Although the guilty plea transcript reveals little about the nature of the offenses, Mast cites portions of the Affidavit in Support of Warrantless Arrest on appeal.

² Ind. Code § 35-45-4-1(a) provides a person “who knowingly or intentionally, in a public place: . . . (3) appears in a state of nudity with the intent to arouse the sexual desires of the person or another person . . . commits public indecency, a Class A misdemeanor.” Ind. Code § 35-45-4-1(c) provides the offense is a level 6 felony “if the person who commits the offense has a prior unrelated conviction under subsection (a) or (b).”

Mast's criminal history, his violations of conditions of community supervision, and that he had not taken advantage of programming or alternate sentencing. It found a mitigating factor was that he had taken responsibility for his actions. The court sentenced Mast to 910 days executed.

Discussion

- [4] Mast asserts that his sentence is inappropriate. He argues “[t]he circumstances of this offense are minimal – the basic elements of what is necessary to establish the offense itself” and there was no evidence that any individual was in danger, hurt, or injured or that any property was damaged as a result of his actions. Appellant’s Brief at 8. He argues his open plea shows his acceptance of responsibility, his offense is related to a mental illness for which he receives medication, and he was the victim of sexual abuse by a neighbor when he was a child. He argues “[h]is offense was elevated to a felony solely because of his criminal history, which was then used by the trial court to further enhance his sentence.” *Id.* at 11. He asserts “it is appropriate for this Court, pursuant to Ind. Appellate Rule 7(B), to either revise [his] sentence to the advisory or order the remaining portion of his sentence be served on home detention.” *Id.*
- [5] Ind. Appellate Rule 7(B) provides 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). 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.

[6] Our review of the nature of the offense reveals that Mast exposed his penis to two women in public places on October 30, 2022. Our review of the character of the offender reveals that Mast pled guilty to public indecency as a level 6 felony without the benefit of a plea agreement. The presentence investigation report (“PSI”) indicates that Mast was born in January 1977 and that his juvenile history includes an adjudication for public indecency in 1993. The PSI indicates that his adult criminal history includes convictions for two counts of public indecency as class A misdemeanors in 2000; two counts of public indecency as class A misdemeanors in 2001; vicarious sexual gratification as a class D felony in 2004; public indecency as a class D felony in 2005; vicarious sexual gratification as a class D felony and public indecency as a class A misdemeanor in 2010; unauthorized use of railroad right of way as a class B misdemeanor in 2012; public indecency as a class D felony in 2013; larceny as a misdemeanor in Michigan in 2014; public indecency as a level 6 felony in 2015; and public indecency as a level 6 felony in 2020. Mast has previously violated the terms of his probation.

[7] The PSI further states Mast is a lifetime registrant on the Indiana sex offender registry and on lifetime parole supervision. Mast reported that, while growing up, he was sexually abused by a neighbor. He reported that he was placed in special education classes and he was awarded disability benefits after he

completed the eleventh grade. With respect to the instant offense, Mast stated: “I realize I don’t mean to do it. I have a mental health problem. I need help to keep from doing this stuff. I need to get put on medicine.” Appellant’s Appendix Volume II at 38. With respect to his mental health, the PSI states: “Mr. Mast reported he was diagnosed with an intellectual disability at Oaklawn in 1997. He reported he has idealized suicide a couple of times in the past. He reported he takes prescription medication.” *Id.* He also reported participation in sex offender specific treatment at Holy Cross Counseling in 2011 and at Lincoln Therapeutic Partnership in 2013. The PSI further indicates that Mast’s overall risk assessment score using the Indiana risk assessment tool places him in the high risk to reoffend category. Mast received a total score on the Static-99R which places him above average risk for being charged or convicted of another sex offense. After due consideration, we conclude that Mast has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[8] For the foregoing reasons, we affirm Mast’s sentence.

[9] Affirmed.

Vaidik, J., and Bradford, J., concur.