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

Kendell W. Martin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 5, 2022

Court of Appeals Case No. 22A-CR-1487

Appeal from the Gibson Circuit Court

The Honorable Jeffrey F. Meade, Judge

Trial Court Cause No. 26C01-2205-CM-397

Crone, Judge.

Case Summary

[1] Kendell W. Martin appeals the aggregate three-year sentence imposed by the trial court following his guilty plea to three counts of class A misdemeanor criminal mischief. He asserts that the trial court abused its discretion during sentencing and that his sentence is inappropriate in light of the nature of the offenses and his character. Finding no abuse of discretion and that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] In the early morning hours of May 21, 2022, Martin threw rocks at the windows of a Menards store, a McDonald's restaurant, and the Gibson County Visitor and Tourism Bureau, causing approximately $4,530 worth of damage to those establishments. The State charged him with three counts of class A misdemeanor criminal mischief. Martin appeared for his initial hearing, waived his right to an attorney, and pled guilty to all three charges without a plea agreement. The trial court sentenced him to three consecutive one-year terms for his crimes. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion during sentencing.

[3] Martin challenges the sentence imposed by the trial court. Martin first argues that the trial court abused its discretion in imposing a one-year sentence for each of his offenses. He asserts that the trial court erred by considering his

criminal history as an aggravating circumstance and by failing to treat his guilty plea as a mitigating circumstance. Appellant's Br. at 10.

[4] But a trial court need not articulate and balance aggravating and mitigating circumstances before imposing sentence on misdemeanor convictions. *Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016). That is because the misdemeanor sentencing statutes provide only for a maximum allowable sentence, unlike the felony sentencing statutes which specify an advisory sentence that may be increased or decreased depending on the particular circumstances. *Compare* Ind. Code § 35-50-3-3 ("A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than one hundred eighty (180) days . . . .") with Ind. Code § 35-50-2-7(b) ("A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½ years), with the advisory sentence being one (1) year."). Without an advisory sentence from which to start, "trial courts have nothing to enhance or reduce" when sentencing for misdemeanor offenses, rendering articulation of aggravating and mitigating circumstances unnecessary. *Cuyler v. State*, 798 N.E.2d 243, 246 (Ind. Ct. App. 2003), *trans. denied* (2004.

[5] The same rule does not apply to the trial court's consideration of consecutive sentences. Courts that impose consecutive sentences when not statutorily required must engage in the articulation and balancing of aggravating and mitigating circumstances. *Id.* And as the State concedes, the trial court must

find at least one aggravating circumstance before imposing consecutive sentences. *Henderson v. State*, 44 N.E.3d 811, 814 (Ind. Ct. App. 2015).

[6] The decision to impose consecutive or concurrent sentences lies within the trial court's sound discretion, and, on appeal, we review the trial court's decision only for an abuse of that discretion. *Id.* Consecutive sentences may be appropriate when, as here, the defendant's offenses cause separate harm to multiple victims. *See*, *e.g.*, *Boss v. State*, 964 N.E.2d 931, 939-40 (Ind. Ct. App. 2012); *Vance v. State*, 860 N.E.2d 617, 620 (Ind. Ct. App. 2007).

[7] Here, the State argued, and the trial court made clear, that Martin's criminal history was aggravating. Specifically, the State provided a detailed recitation of Martin's criminal history, which comprised twelve offenses committed by Martin in the community over the last five years, including convictions for theft, criminal mischief, and trespass. Indeed, the State argued that Martin was "an absolute menace to this town [who] does nothing but destroy." Tr. Vol. 2 at 8. Although the trial court did not expressly state that Martin's guilty plea was a mitigating circumstance or that the aggravators outweighed the mitigators, "the record indicates that the court engaged in an evaluative process . . . and deemed" consecutive, maximum sentences appropriate. *Plummer v. State*, 851 N.E.2d 387, 392 (Ind. Ct. App. 2006).

[8] Martin complains, without citation to relevant authority, that the State's mere recitation of his criminal history without "evidence" was insufficient to support the trial court's finding that his criminal history was an aggravating factor.

Appellant's Br. at 6. However, as noted by the State, the trial court made clear that it was very familiar with Martin's previous convictions in that court[1] and, contrary to Martin's assertions, the trial court was permitted to rely on its knowledge of its own docket in imposing consecutive sentences. *See Nasser v. State*, 727 N.E.2d 1105, 1111 (Ind. Ct. App. 2000) (trial court permitted to rely on its familiarity with defendant's prior convictions before its own court, as well as recent conviction in another court, to support finding of criminal history as aggravating factor), *trans. denied*.

[9] Moreover, even assuming that the trial court's finding regarding Martin's criminal history was unsupported by the record, our review reveals that the trial court also implicitly considered the nature and circumstances of Martin's crimes as an aggravating factor. A trial court may find the nature and particularized circumstances surrounding the offense to be an aggravating factor. *Caraway v. State*, 959 N.E.2d 847, 850 (Ind. Ct. App. 2011), *trans. denied*. The State argued that the nature and circumstances of Martin's crimes were aggravating because of the substantial financial damage incurred by the three local businesses that would negatively affect the community as a whole by

[1] Speaking directly to Martin, the court stated, "You keep coming back here over and over again and I'm done. You have worn out whatever mercy that I'm willing to give[.]" Tr. Vol. 2 at 11. Court records bolster those comments, as the records reflect the same judge had sentenced Martin in eight other prosecutions during the past six years. We take judicial notice under Indiana Evidence Rule 201(a)(2)(C) of the chronological case summaries in those other cases: 26C01-2109-CM-907, 26C01-2109-CM-940, 26C01-2005-CM-451, 26C01-1806-CM-621, 26C01-1806-CM-622, 26C01-1805-F6-586, 26C01-1708-CM-733, and 26C01-1701-CM-59.

resulting in higher prices for customers.[2] The trial court apparently agreed with the State that the particularized circumstances surrounding these offenses were an aggravating factor and, in addition to ordering consecutive sentences, the trial court ordered Martin to pay restitution.[3] It is well settled that the impact on others may qualify as an aggravator where the defendant's actions "had an impact on other persons of a destructive nature that is not normally associated with the commission of the offense in question and this impact must be foreseeable to the defendant." *Comer v. State*, 839 N.E.2d 721, 727 (Ind. Ct. App. 2005), *trans. denied*. There is ample support for a finding that Martin's actions had an impact on others that is not normally associated with the commission of criminal mischief and that impact was foreseeable to Martin. The trial court did not abuse its discretion in ordering consecutive sentences. *See Henderson*, 44 N.E.3d at 814 (affirming consecutive misdemeanor sentences that were based on the defendant's criminal history).

Section 2 – Martin has not met his burden to demonstrate that his sentence is inappropriate.

[10] Martin asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence

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[2] After going through the estimates to repair each of the windows damaged, the State argued, "[s]o these are not offenses that are limited to affecting just those businesses. They affect everybody in our town." Tr. Vol. 2 at 9.

[3] He does not challenge that order on appeal.

is inappropriate in light of the nature of the offense and the character of the offender." Martin bears the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218. When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "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). As we assess the nature of the offenses and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, 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." *Cardwell*, 895 N.E.2d at 1224.

[11] Regarding the nature of the offenses, the record indicates that Martin inexplicably, and without provocation, decided to throw rocks at the windows

of three different buildings, causing thousands of dollars' worth of damage. Martin has failed to present any evidence portraying these offenses in a positive light. We are not persuaded that the nature of these offenses warrants a sentence reduction.

[12] In addition, we are not persuaded that Martin's character warrants a sentence revision. An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). We do not know much about Martin, other than that he has engaged in a troubling pattern of criminal behavior in Gibson County that includes several prior criminal mischief convictions, including one for throwing rocks through the stained-glass windows of a local church. And although he insists that his decision to plead guilty to the current offenses is an example of his good character entitling him to a lesser sentence, it was the trial court's prerogative to disagree. *See Blixt v. State,* 872 N.E.2d 149, 153 (Ind. Ct. App. 2007) (while a guilty plea demonstrates a defendant's acceptance of responsibility for the crime and at least partially confirms mitigating evidence regarding his character, it is not automatically a significant mitigating factor). We observe from our review of the record that Martin was rude and wholly unremorseful during the sentencing hearing. Under the circumstances, we cannot say that sentence reduction is warranted based on his character. Martin has failed to meet his burden to

demonstrate that the sentence imposed by the trial court is inappropriate, and therefore we affirm it.

[13] Affirmed.

May, J., and Weissmann, J., concur.