

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Geordi J. Gaff,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 15, 2022

Court of Appeals Case No.
22A-CR-827

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2103-F5-92

May, Judge.

[1] Geordi J. Gaff appeals his three-year aggregate sentence for one count of Level 5 felony domestic battery¹ and two counts of Level 6 felony domestic battery.² He argues his sentence is inappropriate based on the nature of the crime and his character. We affirm.

Facts and Procedural History

[2] Shortly after midnight on March 1, 2021, Gaff argued with his mother, Lisa Nelson, about a cell phone. Gaff's sister, Nicole Gaff, told him to leave. Gaff slapped Nicole on the face and left. Gaff's nephew, C.G., who was twelve years old at the time, witnessed the altercation.

[3] Later that day, Gaff broke into the apartment where Lisa, Nicole, and C.G. were staying and started "beating the shit out of everyone." (App. Vol. II at 24.) Specifically, Gaff "jumped on top" of Lisa and "started punching her." (*Id.* at 28.) Nicole tried to get Gaff off of Lisa, so Gaff punched Nicole several times and threw Nicole to the ground. C.G. "woke up because he heard fighting in the living room." (*Id.* at 22.) C.G. helped Nicole pull Gaff off of Lisa. Gaff subsequently punched C.G. "several times in the stomach." (*Id.*) When Gaff heard the police were coming, he left the scene. Officers later located Gaff and took him into custody.

¹ Ind. Code § 35-42-2-1.3(c)(5)(A).

² Ind. Code § 35-42-2-1.3(b).

- [4] The State charged Gaff with one count of Level 5 domestic battery for the alleged crimes against C.G. and two counts of Level 6 domestic battery for the alleged crimes against Lisa and Nicole. On May 10, 2021, Gaff pled guilty as charged and the trial court placed Gaff in a Drug Court Diversion Program (“Drug Court”), which allowed Gaff to participate in substance abuse treatment and other related programs. Upon completion of the program, the trial court would dismiss all counts in the matter.
- [5] Drug Court required Gaff to, among other things, submit to random drug screens and follow all treatment required. On July 30, 2021, August 2, 2021, and December 17, 2021, Gaff missed drug screens. On December 14, 2021, he tested positive for alcohol. On December 15, 2021, Gaff submitted a diluted drug screen. On February 17, 2022, Gaff, while in treatment at Park Center Addiction Residential facility (“Park Center”), “got frustrated . . . so he left without permission[.]” (Tr. Vol. II at 24.) On February 22, 2022, Gaff did not appear at a scheduled Drug Court status hearing, so the trial court issued a warrant for his arrest.
- [6] On February 22, 2022, the State filed a petition to terminate Gaff’s participation in Drug Court based on his discharge from Park Center. On March 14, 2022, the State amended that petition to include Gaff’s failure to appear in court on February 22, 2022, as a reason supporting the revocation of Gaff’s participation in Drug Court. On March 14, 2022, the trial court held a hearing during which Gaff admitted violating the terms and conditions of Drug Court. Based thereon, the trial court revoked his participation in Drug Court and scheduled a

sentencing hearing. At the April 8, 2022, sentencing, the trial court entered convictions on Gaff's three guilty pleas and sentenced him to three years for the Level 5 felony and one year each for the Level 6 felonies. The court ordered the sentences to run concurrent with one another for an aggregate sentence of three years incarcerated, with 164 days jail credit.

Discussion and Decision

[7] Gaff argues his three-year sentence is inappropriate based on the nature of his crime and his character. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find the sentence is inappropriate in light of the nature of the offense and the character of the offender. Gaff "bears the burden of persuading this court that his . . . sentence is inappropriate." *See Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016) (defendant bears the burden of persuading the court his sentence is inappropriate).

[8] When considering the nature of the offense, the "advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Connor*, 58 N.E.3d at 220. The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). The sentencing range for a Level 6 felony is six months to two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Gaff received the advisory sentence for each of his crimes. "A defendant who receives an advisory sentence has a particularly heavy burden to prove it

inappropriate under Appellate Rule 7(B).” *Kincaid v. State*, 171 N.E.3d 1036, 1042 (Ind. Ct. App. 2021), *trans. denied*.

[9] On March 1, 2021, Gaff argued about a cell phone with his mother, Lisa. He left the apartment after he slapped his sister, Nicole. Later that day, Gaff returned to the apartment and attacked Lisa. He held Lisa down and punched her several times. He then attacked Nicole, after Nicole tried to stop Gaff from attacking Lisa. Gaff punched Nicole multiple times. Gaff also punched his twelve-year-old nephew, C.G., multiple times in the stomach. We cannot say Gaff’s three-year sentence is inappropriate based on the nature of his crimes.

[10] When considering the character of the offender, one relevant fact to assess is the defendant’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). The trial court noted when sentencing Gaff that he had no adult criminal history and only one interaction with the juvenile court, which did not result in an adjudication. Despite his lack of criminal history, other aspects of Gaff’s character support his sentence.

[11] Gaff was given an opportunity to earn dismissal of the charges against him by participating in Drug Court. However, less than three months after entering Drug Court rehabilitation programs at Park Center, Gaff’s drug screen came back positive. Less than a year after entering the program, Gaff left Park Center without authorization and did not return. Shortly thereafter, he did not attend a scheduled Drug Court status hearing, which resulted in the trial court issuing a warrant for his arrest. This disregard for the opportunity given to him by

participation in Drug Court reflects poorly on his character. *See Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017) (Sanders’s refusal to complete drug court reflected poorly on his character), *trans. denied*.

[12] Gaff also argues his sentence is inappropriate because he suffers from mental illness and alcohol dependency and because he expressed remorse for his actions. Regarding his alleged mental health issues, Gaff acknowledges he has failed to address these issues “in any meaningful way” and instead chooses to self-medicate with alcohol. (Br. of Appellant at 14.) Regarding his alcohol use, the trial court gave Gaff a means by which to treat his alcohol dependency and he did not take advantage of that opportunity. Gaff’s failure to confront and treat those issues reflects poorly on his character. *See Davis v. State*, 173 N.E.3d 700, 706 (Ind. Ct. App. 2021) (Davis’s failure to seek treatment for mental health issues reflected poorly on his character). Finally, as the trial court did consider Gaff’s remorse as a mitigator when sentencing him, that remorse does not outshine the other negative aspects of his character. Therefore, we conclude Gaff’s three-year sentence is not inappropriate. *See Kunberger v. State*, 46 N.E.3d 966, 974 (Ind. Ct. App. 2015) (Kunberger’s two-and-one-half year sentence for Level 6 felony criminal confinement, Level 6 felony strangulation, and Class A misdemeanor domestic battery was not inappropriate based on the nature of his offenses and his character).

Conclusion

[13] Gaff's three-year sentence for Level 5 felony domestic battery and two counts of Level 6 felony domestic battery is not inappropriate based on the nature of his offenses and his character. Accordingly, we affirm the trial court's decision.

[14] Affirmed.

Crone, J., and Weissmann, J., concur.