

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Alejandro Espinosa,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 7, 2024

Court of Appeals Case No.
23A-CR-2338

Appeal from the Tippecanoe Superior Court
The Honorable Steven P. Meyer, Judge

Trial Court Cause No.
79D02-2303-F5-53

Memorandum Decision by Judge Crone
Judges Bailey and Pyle concur.

Crone, Judge.

Case Summary

- [1] Alejandro Espinosa appeals the three-year executed sentence imposed by the trial court following his guilty plea to level 5 felony domestic battery. He contends that the trial court abused its discretion during sentencing and that his sentence is inappropriate in light of the nature of the offense and his character. Finding that he has not met his burden to establish that his sentence is inappropriate and that any sentencing error would be harmless, we affirm.

Facts and Procedural History

- [2] Espinosa and F.A. share two young children. In November 2020, Espinosa was charged with domestic battery following a dispute with F.A. Two months later, the Indiana Department of Child Services removed the children from the couple's custody after another domestic dispute. The children were adjudicated children in need of services (CHINS) and were removed from the couple's care for nine months before being returned. In October 2021, Espinosa pled guilty to class A misdemeanor domestic battery and was sentenced to 189 days of probation.
- [3] On July 8, 2022, F.A. spent the night at Espinosa's apartment. In the morning, Espinosa refused to let F.A. leave. He shoved her several times and confined her on his bed by holding his hands around her neck. He also repeatedly struck her in the head and face. When F.A. screamed for help, Espinosa held a pillow over her face. A neighbor eventually knocked on the door, and F.A. was able to

escape when Espinosa opened the door for the neighbor. F.A. called the police and reported the incident. F.A. suffered injuries to her face, neck, hips, arms, legs, and ears as a result of the attack.

- [4] Espinosa was subsequently charged with level 5 felony domestic battery, level 6 felony strangulation, level 6 felony criminal confinement, and class A misdemeanor domestic battery. He pled guilty to the level 5 felony in exchange for the dismissal of the remaining charges as well as the dismissal of an unrelated charge of class C misdemeanor public intoxication. Sentencing was left to the trial court's discretion. Following a hearing, the trial court sentenced Espinosa to an executed three-year term. This appeal ensued.

Discussion and Decision

- [5] Espinosa 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 is inappropriate in light of the nature of the offense and the character of the offender.” 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). Espinosa 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.
- [6] “[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 offense 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.

[7] Regarding the nature of the offense, we observe that “the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed.” *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a level 5 felony is one to six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6(b). Espinosa received the advisory sentence for his crime. “Since the advisory sentence is the starting point our General Assembly has selected as an appropriate sentence for the crime committed, the defendant bears a particularly heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence.” *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[8] Espinosa’s only assertion is that the nature of his offense was “no more than that necessary to establish the statutory elements of the offense of [domestic]

battery as a Level 5 felony.” Appellant’s Br. at 13. We disagree, as the record reveals that Espinosa confined, strangled, and violently and repeatedly struck the mother of his two young children, causing her numerous serious injuries. More significantly, he presents us with absolutely no evidence portraying his brutal offense in a positive light. In short, Espinosa has done nothing to persuade us that a sentence revision is warranted based upon the nature of the offense.

[9] We reach a similar conclusion regarding his character. We assess 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). An offender’s character is shown by his “life and conduct.” *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). While we acknowledge that Espinosa has both positive and negative character traits, we need look no further than the fact that he battered F.A. less than six months after completing probation (which included completion of an abuse awareness program) for the same offense, which he committed against the same victim. Espinosa urges that a partially suspended three-year sentence would be more appropriate under the circumstances. However, we are unpersuaded because, as observed by the trial court, the prior and very recent attempt at leniency and rehabilitation proved to be wholly unsuccessful. Moreover, we remind Espinosa that the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Espinosa has not met his burden to demonstrate that

his executed three-year advisory sentence is inappropriate in light of the nature of the offense or his character.

[10] We briefly note that Espinosa also claims that three of the four aggravating factors found by the trial court during sentencing were either improper or unsupported by the record.¹ But even if the trial court did err in this regard, any error in sentencing is harmless if the sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that even if trial court abuses its discretion during sentencing, any error is harmless if sentence imposed is not inappropriate), *trans. denied*. As we have determined that Espinosa’s sentence is not inappropriate, any sentencing error is harmless, and we need not discuss it further.

[11] Affirmed.

Bailey, J., and Pyle, J., concur.

¹ The trial court found as aggravating Espinosa’s criminal history, lack of remorse, and prior failed attempts at rehabilitation, as well as the repetitive nature of the offense against the same victim. Espinosa does not challenge the trial court’s finding that his prior failed attempts at rehabilitation was a proper aggravating factor. It is well established that a single aggravating circumstance may be sufficient to enhance a sentence, and even when a trial court improperly relies on an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied* (2017). Here, the trial court did not enhance Espinosa’s sentence and merely imposed the advisory sentence for his crime so, even assuming error, the propriety of Espinosa’s sentence is not seriously in question.

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