

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Derek Briggs,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 16, 2023  
Court of Appeals Case No.  
22A-CR-2517

Appeal from the  
Ripley Superior Court

The Honorable  
Jeffrey Sharp, Judge.

Trial Court Cause No.  
69D01-1506-F6-84

**Memorandum Decision by Judge Foley**  
Judges Vaidik and Tavitas concur.

**Foley, Judge.**

[1] Derek Briggs (“Briggs”) appeals his aggregate four-year sentence imposed for sexual battery<sup>1</sup> and strangulation.<sup>2</sup> Briggs contends that the sentence is inappropriate in light of the nature of his offenses and his character. We disagree. Thus, we affirm.

## **Facts and Procedural History**

[2] At some point between the March 27, 2015, and April 6, 2015, Briggs met up with V.S., a fourteen-year-old. He “touched” V.S. and she “was compelled to submit by the touching by force and grabbing the back of [V.S.’s] neck . . . .” Tr. Vol. II p. 12. Briggs “forcibly kiss[ed] and touch[ed] [V.S.’s] breasts . . . .” *Id.* Briggs also “appl[ied] pressure to the throat or neck of [V.S.] in a manner that impeded the normal breathing or circulation of [V.S.]” *Id.* On June 29, 2015, the State charged Briggs with Count I, sexual battery, a Level 6 felony; Count II, strangulation, a Level 6 felony; and Count III, battery, a Class B misdemeanor.<sup>3</sup> Shortly thereafter, Briggs was incarcerated for unrelated sexual misconduct with a minor convictions and was not released until August 28, 2022.

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<sup>1</sup> Ind. Code § 35-42-4-8(a)(2).

<sup>2</sup> I.C. § 35-42-2-9(b).

<sup>3</sup> The State dropped Count III at Briggs’s initial hearing.

[3] Briggs admitted the allegations of the instant case at an initial hearing on August 29, 2022, without the benefit of counsel<sup>4</sup>. Briggs then entered an open guilty plea. The trial court ordered a pre-sentence investigation. The sentencing hearing took place on September 21, 2022. Briggs remained unrepresented by counsel. The pre-sentence investigation report was admitted into evidence, as was the probable cause affidavit underlying the charges. The trial court concluded that the circumstances of the crime—namely the age of the victim and her apparent mental and emotional vulnerability at the time, as well as the fact that the sexual battery escalated into a strangulation when the victim resisted—were aggravating factors. The trial court considered Briggs’s extensive prior criminal history to be another aggravating factor. As mitigating factors, the trial court recognized that Briggs pleaded guilty at the earliest possible opportunity and that he has taken full responsibility for his actions. The trial court also weighed all of the rehabilitative decisions made by Briggs during his previous incarceration, among them: drug rehabilitation programing, the sexually maladaptive behavior program (which would continue upon release), and the Psalms Bible study program.

[4] Ultimately, however, the trial court appears to have placed significant weight on the fact that this was Briggs’s fourth minor victim, an aggravating factor that the trial court found to be “very significant.” Tr. Vol. II p. 25. The trial court

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<sup>4</sup> Briggs was appropriately advised of his right to counsel by the trial court and does not challenge his waiver of counsel or his guilty plea.

concluded that the aggravators “clearly outweigh[ed]” the mitigators, *id.*, and sentenced Briggs to seven hundred and thirty days on each count, with all of that time to be served in the Department of Correction, and the two sentences to be served consecutively for an aggregate sentence of four years. Briggs now appeals.

## Discussion and Decision

[5] Briggs raises a lone issue: whether his sentence is inappropriate in light of the nature of the offenses and his character. The Indiana Constitution authorizes independent appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is “inappropriate in light of the nature of the offense and the character of the offender.” Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court’s sentence; rather, “[o]ur posture on appeal is [ ] deferential” to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in “exceptional cases, and its exercise ‘boils down to our collective sense of what is appropriate.’” *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

- [6] “‘The principal role of appellate review is to attempt to leaven the outliers.’” *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is “not to achieve a perceived correct sentence.” *Id.* “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.’” *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court’s sentence “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).
- [7] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Briggs was convicted of two Level 6 felonies. Indiana Code Section 35-50-2-7(b) provides that: “A person who commits a Level 6 felony (for a crime committed after June 30, 2014) 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.” Thus, Briggs faced a sentencing range of between six months and five years, with the advisory sentence being either one or two years, depending on whether the sentences were ordered to be served consecutively or

concurrently. The trial court sentenced Briggs to an aggravated sentence of four years.

[8] Our analysis of the “nature of the offense” requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, Briggs met up with an apparently suicidal fourteen-year-old girl and proceeded to sexually batter her by forcing her to kiss him and by forcibly touching her breasts. She resisted, and, when she did, the altercation escalated to the point where Briggs strangled her. The only argument Briggs appears to make is that “his conduct did not so substantially exceed the conduct proscribed by the legislature as to warrant a sentence of four [ ] years.” Appellants Br. p. 9. Briggs offers no explanation for this assertion. He offers no argument or cogent reasoning to support it. Neither does he cite any authorities which might justify it. His argument with respect to the nature of offense is, therefore, waived pursuant to Indiana Appellate Rule 46(A)(8)(a). *See also Clark Cnty. Drainage Bd. v. Isgrigg*, 963 N.E.2d 9, 18 (Ind. Ct. App. 2012) (quoting *Watson v. Auto Advisors, Inc.*, 822 N.E.2d 1017, 1027–28 (Ind. Ct. App. 2005), *trans. denied*) (““When parties fail to provide argument and citations, we find their arguments are waived for appellate review.””). Notwithstanding waiver, Briggs’s conduct exhibited no elements of restraint, regard, or lack of brutality. We cannot conclude that the nature of the offenses renders Briggs’s sentence inappropriate.

[9] Our analysis of the character of the offender involves a “broad consideration of a defendant’s qualities,” *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App.

2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548–59 (Ind. Ct. App. 2007). We emphasize that “[t]he significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense.” *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. “Even a minor criminal history is a poor reflection of a defendant’s character.” *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[10] Briggs was arrested on multiple occasions as a juvenile for child molestation, adjudicated as a delinquent, and placed at a treatment facility. As an adult he was convicted of illegal possession of alcohol on multiple occasions, and multiple felony thefts.<sup>5</sup> For one of those felony theft convictions, (accompanied by charges for receiving stolen property and unlawful possession of a legend drug) Briggs was sentenced to probation, which was subsequently revoked after he committed a new offense. In 2014, he was convicted of contributing to the delinquency of a minor. The following year he was convicted of invasion of privacy. Later that year, Briggs was convicted of two counts of felony sexual misconduct with a minor, for which he was sentenced to two concurrent ten-

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<sup>5</sup> Briggs indicated to the pre-sentence investigators that one of these theft convictions was later reduced to a misdemeanor.

year sentences. In short, Briggs's criminal history is not short. We are troubled, as was the trial court, that many of Briggs's victims appear to have been minors, and that many of the acts resulting in those victimizations were sexual in nature.

[11] Briggs emphasizes the rehabilitation efforts he has made while incarcerated. And he is to be commended for those efforts. He also points out that he pleaded guilty at the first possible opportunity. Our review of the record confirms this fact: he was cooperative, respectful, and openly remorseful throughout the proceedings, and is to be commended for that as well. Those behaviors do seem to support his assertions that he has worked hard while incarcerated to change and better himself. And it is certainly unfortunate that the crimes for which he is convicted here occurred *before* he was incarcerated and made all of those rehabilitative efforts.

[12] Nevertheless, the vehicle through which Briggs challenges his sentence is Appellate Rule 7(B), which constrains us to look for *outliers* among sentences. The trial court's determination receives our deference. And the trial court considered the mitigating factors which Briggs raises in this court. The trial court concluded that Briggs's criminal history, the nature of the offenses, and the number of minor victims associated with Briggs already in his relatively young life weighed too heavily against those mitigating factors. We cannot conclude that Briggs's character gives us cause to disagree with that conclusion.



[13] We, therefore, conclude that Briggs has not shown that his sentence is inappropriate in light of the nature of his offenses and his character.

[14] Affirmed.

Vaidik, J. and Tavitas, J. concur.