

## 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

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Corey Adam Ray,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 10, 2022

Court of Appeals Case No.  
21A-CR-885

Appeal from the  
Tippecanoe Superior Court

The Honorable  
Kristen E. McVey, Judge

Trial Court Cause No.  
79D05-2001-F6-31

**Molter, Judge.**

[1] After he beat and strangled his ex-girlfriend, a jury convicted Corey Adam Ray of strangulation as a Level 6 felony, domestic battery as a Class A misdemeanor, and being a habitual offender. The trial court sentenced him to an aggregate term of four years in the Indiana Department of Correction, and Ray appeals his sentence arguing that it is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

### **Facts and Procedural History**

[2] In December 2019, R.S. returned home after a long day at work. Upon entering her apartment, she felt as if “somebody was there” and began to search her home. Tr. at 11. She found Ray asleep in one of the bedrooms. The two had been in an on-and-off relationship for approximately one year.

[3] R.S. was upset that Ray was in her apartment because the two had a tense argument earlier that day, and she wanted Ray to leave her home immediately. So, she woke him to ask him to leave, which led to an argument. During their argument, R.S. slammed a soda bottle on a desk, spraying Ray. This incident enraged Ray, and he charged at R.S. while she ran to another bedroom to hide.

[4] Ray pushed the bedroom door open, tackled R.S. onto the bed, and pinned her to the bed with his knees. He then wrapped his belt around R.S.’s neck and began strangling her. R.S. managed to squeeze two fingers between her neck and the belt, but she still had trouble breathing and “felt like [she] was fading out.” *Id.* at 15. As Ray was choking R.S., he told her that she could not “leave

and be happy” and needed to “deal with the consequences.” *Id.* at 15, 16. He also told her that she had to die. *Id.*

[5] Eventually, Ray loosened the pressure on R.S.’s neck, and she broke free from his grip. She ran to the kitchen and shouted for help. Meanwhile, Ray argued with her and took her phone so that she could not call the police. Ray then cornered R.S. in the kitchen, put her in a headlock, and covered her mouth and nose with his hand to quiet her. R.S., again, felt as if she could not breathe. She struggled with Ray and grabbed a knife from the kitchen counter and stabbed his arm. When she then tried to run away from Ray, he grabbed her and told her that she “[didn’t] get to leave and live” or be happy while he was in pain and that she had to die. *Id.* at 21. Ray subsequently punched R.S. in the face twice, causing her to fall to her knees. R.S. had blood running from her nose to the floor. At this point, Ray stopped harming R.S., and she went to the bathroom to clean her bloody nose. In the meantime, he asked her not to call the police and left her apartment.

[6] After composing herself, R.S. called the police. Officer Jennifer McIntire and Lieutenant Stason Wiete from the West Lafayette Police Department arrived at the scene shortly after. They noticed that R.S.’s face was badly injured, and there was blood smeared on the floor. Ray was later arrested, and the State charged him with strangulation as a Level 6 felony, domestic battery as a Class A misdemeanor, and alleged that Ray was a habitual offender. After the case went to trial, a jury found Ray guilty of all charges.

[7] The trial court sentenced Ray to a total of four years in the Indiana Department of Correction. He was sentenced to concurrent one-year sentences for the strangulation and domestic battery convictions, and the strangulation conviction was increased by three years under the habitual offender enhancement. The trial court concluded his remorse was a mitigating factor, but aggravating factors were that he continued to use illegal drugs before and after trial and was rearrested while out on bond. Ray now appeals.

### **Discussion and Decision**

[8] The Indiana Constitution authorizes 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). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[9] Our role is only to "leaven the outliers," which means we exercise our authority only in "exceptional cases." *Id.* at 160. Thus, we generally defer to the trial court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "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).

[10] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 6 felony is a fixed term of imprisonment between six months and two and one-half years, with the advisory sentencing being one year. Ind. Code § 35-50-2-7(b). Relatedly, the sentencing range for a habitual offender enhancement for a Level 6 felony is between two and six years. Ind. Code § 35-50-2-8(i). Finally, a person convicted of a Class A misdemeanor may only be imprisoned for up to one year. Ind. Code § 35-50-3-2.

[11] Here, Ray's three-year sentence enhancement for his habitual offender conviction was three years less than the maximum and only one year more than the minimum. His one-year sentence for Level 6 felony strangulation was the advisory sentence, and while his sentence for his Class A misdemeanor domestic battery conviction was a full year as allowed by Indiana Code section 35-50-3-2, the sentence is to be served concurrent with the strangulation sentence.

[12] We do not find that Ray's aggregate sentence is inappropriate. He concedes his one-year sentence for strangulation was appropriate, but he argues the three-year sentence enhancement for being a habitual offender was inappropriate in

light of the nature of the offense. Appellant’s Br. at 8. In particular, he argues that his sentence should have been lower because the prerequisite felony convictions underlying his habitual offender enhancement were unrelated to his present Level 6 felony strangulation offense. He also asserts that two of his three prior felony convictions were only Level 6 felonies, while the third felony—a Class B felony—was over a decade old. Further, he argues that all three felonies were victimless, nonviolent drug offenses.

[13] All of those considerations are consistent with Ray’s habitual offender sentence, which was three years below the maximum and one year above the minimum. Moreover, our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Here, Ray beat and strangled R.S. twice. He first choked R.S. with his belt after tackling and pinning her to a bed with his knees. Then, after R.S. escaped, Ray chased her, put her in a headlock, and covered her mouth and nose so that she could not call for help. Each time, R.S. felt like she could not breathe, and Ray told her that she could not leave him and that she had to die. Further, Ray twice punched R.S. in the face, giving her a bloody nose, and he asked her not to call the police. The nature of Ray’s offense does not make his sentence inappropriate.

[14] As to his character, Ray acknowledges his criminal history, but he argues that it should not be used against him because: (1) evidence regarding his three prior felony convictions were used to support his habitual offender enhancement; (2)

his prior convictions related only to substance abuse; and (3) he wishes to rehabilitate his drug addiction.

[15] The law is well-established that it is proper to consider a defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Ray was thirty-nine years old at sentencing, and his criminal history goes back to at least when he was fourteen. Omitting the offense at issue here, his criminal history includes five prior felony convictions and two misdemeanor convictions for drug-related offenses, operating a vehicle while intoxicated, and theft. Ray's criminal history also includes four petitions to revoke his probation, and we note that he was convicted of another Level 6 felony after the commission of the instant offenses. Further, Ray has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

[16] We cannot say that Ray has shown "substantial virtuous traits or persistent examples of good character" such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Thus, Ray has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

[17] Affirmed.

Robb, J., and Riley, J., concur.