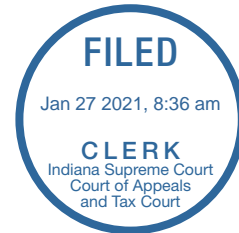


MEMORANDUM DECISION

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

John Jeffery Bates,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2021

Court of Appeals Case No.
20A-CR-1674

Appeal from the Jennings Circuit
Court

The Honorable Jon W. Webster,
Judge

Trial Court Cause Nos.
40C01-1810-F5-73
40C01-1805-F6-148

Weissmann, Judge.

- [1] John Jeffery Bates appeals his three-year prison sentence for domestic battery and intimidation, making facile reference to his character to argue the sentence is inappropriate. Finding the sentence is not inappropriate, we affirm.

Facts

- [2] While Bates was living with his ex-girlfriend H.R., police were dispatched to H.R.'s home on at least two occasions when Bates was drunk. Police first responded in May 2018, when Bates argued with H.R.'s twelve-year-old son and threatened to break the child's neck. Bates also told a neighbor who attempted to intervene that he would knock her teeth down her throat. Bates was charged with two counts of Level 6 felony intimidation and one count of misdemeanor domestic battery.
- [3] Police next responded in September 2018, when Bates slapped H.R. so hard the shape of his hand was visible on her face. H.R.'s son heard the slap. Bates was charged the next month with one count of Level 5 felony domestic battery, one count of Level 5 felony battery, and one count of Level 6 felony domestic battery.
- [4] Ultimately, Bates pleaded guilty through a single plea agreement to one count of Level 6 felony intimidation for the May incident and one count of Level 6 felony domestic battery for the September incident. As part of the agreement, the State dropped the four other charges against Bates and capped his possible

sentence at three years imprisonment.¹ Bates’s pre-trial release for these charges was revoked when he was charged with invasion of privacy in a separate case.

- [5] At sentencing, the trial court found many aggravators, including Bates’s criminal history and high risk of recidivism. The trial court recognized two mitigators, Bates’s guilty plea and his G.E.D. The court then sentenced Bates to the maximum under his plea agreement. For each charge, Bates received one and a half years executed and one year of probation to be served consecutively, for a total of three years imprisonment and two years of probation. Bates now appeals.

Discussion and Decision

- [6] Bates challenges his sentence under Indiana Appellate Rule 7(B), arguing that his sentence is “inappropriate in light of the nature of the offense and the character of the offender.” App. R. 7(B). We conduct this review with “substantial deference” to the trial court because the “principal role of [our] review is to attempt to leaven the outliers, and not to achieve a perceived correct sentence.” *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014) (quotations and citations omitted). The two prongs are “separate inquiries that we ultimately balance. . .” *Turkette v. State*, 151 N.E.3d 782 (Ind. Ct. App. 2020), *trans. denied*. Bates bears the burden of showing the sentence is inappropriate. *Id.*

¹ Two counts of felony non-support of a dependent were also part of this agreement. The sentences for these counts were fixed by the plea agreement, and Bates does not appeal them.

Where, as here, the defendant only argues the character prong of Rule 7(B), the burden may be “heightened by the need to prove the nature of his character should overcome the admittedly serious nature of his offense.” *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017).²

- [7] Bates’s argument does not touch on the nature of the offenses, but we must consider both prongs in our assessment. *Id.* at 1103. For both Level 6 felonies, Bates was sentenced to six months longer than the advisory sentence of one year of imprisonment. *See* Ind. Code § 35-50-2-7(b). The severity of Bates’s offenses supports the sentence. He committed separate acts of aggression on two occasions against three different people – his ex-girlfriend, her son, and a neighbor who tried to intervene. His intimidation charge resulted from threats made against a child. And his behavior and demeanor caused his ex-girlfriend to “live in fear.” App. Vol. II p. 138.
- [8] Bates ignores the concerning nature of his offenses, instead focusing on aspects of his character which he feels warrant a suspended sentence, namely: his regret concerning his drug and alcohol abuse; his desire to seek drug treatment to avoid reoffending in the future; his desire to seek help for his anger

² Some panels of this Court have found that defendants who fail to argue both the “character” and “nature of offense” prongs have waived their Rule 7(B) claims. *See, e.g., Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013); *Sanders v. State*, 71 N.E.3d 839, 843 (Ind. Ct. App. 2017) *trans. denied*; *Moon v. State*, 110 N.E.3d 1156, 1162-63 (Ind. Ct. App. 2018), *trans. denied*. Others have disagreed. *See, e.g., Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *Reis v. State*, 88 N.E.3d 1099, 1103 (Ind. Ct. App. 2017); *Turkette v. State*, 151 N.E.3d 782, 786 (Ind. Ct. App. 2020), *trans. denied*. In *Shoun v. State*, our Supreme Court did not find waiver where a defendant exclusively challenged his sentence under the character prong. 67 N.E.3d 635 (Ind. 2017). We follow our Supreme Court’s example here. Additionally, the State does not argue waiver.

management issues; and his health issues, including high blood pressure, lower-back problems, and a shattered wrist. None of these considerations convince us that Bates's three-year executed sentence is inappropriate.

- [9] Bates admits that he has had addiction and anger management issues for at least fifteen years and that he will continue to hurt people in his life without treatment. Tr. Vol. II, pp. 19, 24. Despite these admissions, Bates "never tried to get that help." *Id.* at 24. This is not an example of good character meriting leniency. *See, e.g., Turkette*, 151 N.E.3d at 789 (observing that defendant's drug addiction, though it encouraged her criminality, did not reflect well on her character because she had not taken advantage of opportunities for rehabilitation).
- [10] Bates has also failed to show why his health problems might warrant a suspended sentence. Finally, he has a history of violating probation and was assessed as a high risk to reoffend. Bates fails to convince us that he presents the type of compelling good character which would tip the scales so forcefully as to demand sentencing relief.
- [11] In light of both the nature of the offenses and the character of the offender, we find that Bates's sentence is not inappropriate. We affirm the trial court's judgment.

Mathias, J., and Altice, J., concur.