

## 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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Joshua S. Deck,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 22, 2022

Court of Appeals Case No.  
21A-CR-2551

Appeal from the Henry Circuit  
Court

The Honorable Bob A. Witham,  
Judge

Trial Court Cause No.  
33C01-2105-F5-45

**Riley, Judge.**

## STATEMENT OF THE CASE

- [1] Appellant-Defendant, Joshua Deck (Deck), appeals his sentence following his guilty plea to domestic battery, having a prior conviction involving the same victim, a Level 5 felony, Ind. Code §§ 35-42-2-1.3(a)(1), (c)(4).
- [2] We affirm.

## ISSUE

- [3] Deck presents this court with one issue, which we restate as: Whether his five-year sentence is inappropriate given the nature of his offense and his character.

## FACTS AND PROCEDURAL HISTORY

- [4] Deck married Miranda Deck (Miranda) in 2012. On September 12, 2019, Deck was convicted of Level 5 felony domestic battery against Miranda. On December 29, 2020, Miranda procured a protective order against Deck prohibiting him from, among other things, coming to her home. In 2020, during a period of separation in his marriage to Miranda, Deck began a relationship with Haley Stoops (Stoops), who became impregnated with Deck's child.
- [5] On May 1, 2021, Officer James Hunt (Officer Hunt) of the Middletown Police Department performed a welfare check on Stoops at her residence.<sup>1</sup> Stoops,

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<sup>1</sup> The transcript of Deck's guilty plea hearing is not part of the record on appeal. The facts pertaining to the offense are taken from Officer Hunt's probable cause affidavit.

who was seven months pregnant, reported that she had been in an altercation that morning with Deck and that Deck had struck her in the stomach. Officer Hunt observed that Stoops had a laceration on her left cheek and injury to her nose. While finishing the welfare check on Stoops, Officer Hunt was alerted that there was a domestic battery in progress at Miranda's home in the 800 block of Locust Street in Middletown. Officer Hunt was acquainted with Deck and knew that Miranda had an active protective order against him.

[6] When Officer Hunt arrived at Miranda's front door, Deck ran out the home's back door. Officer Hunt issued a verbal command to Deck to stop running, but he did not. After searching the area unsuccessfully for Deck, Officer Hunt spoke to Miranda, who reported that Deck had entered her home while she was away at work. When Miranda returned home from work and discovered Deck, they began to argue. Miranda observed that Deck was intoxicated. Deck yelled, threw objects, and flipped over a coffee table. Miranda reported that when she attempted to leave, Deck confronted her and slapped her. After taking Miranda's report, and just as Officer Hunt was about to leave, Miranda ran to his car and told the officer that Deck had returned and was in her garage. Officer Hunt discovered Deck attempting to walk out the back door of Miranda's home, and the officer could smell an overwhelming odor of alcohol emanating from Deck's breath. Deck was taken into custody.

[7] On May 3, 2021, the State filed an Information, charging Deck with Level 5 felony domestic battery of Miranda, having a prior conviction involving the same victim; Class A misdemeanor resisting law enforcement for fleeing from

Officer Hunt; and Class A misdemeanor invasion of privacy for violating the protective order issued in favor of Miranda. On May 7, 2021, Deck entered into an agreement with the State whereby he would plead guilty to the Level 5 felony domestic battery charge and the State would dismiss the two other pending Class A misdemeanor charges. Deck's plea agreement contained no sentencing recommendation provision.

[8] On May 10, 2021, Deck pleaded guilty to Level 5 felony domestic battery. By agreement of the parties, Deck's sentencing hearing was scheduled for June 29, 2021, and Deck was released from custody pending sentencing so that he could obtain treatment for his alcoholism. The trial court ordered Deck to appear on June 21, 2021, for an appointment with the Henry County Probation Department so that his presentence investigation report (PSI) could be compiled. As part of that order, the trial court advised Deck that his failure to appear for this appointment could result in a warrant being issued for his arrest. Deck failed to appear for his PSI appointment and his sentencing hearing. On July 30, 2021, a warrant was issued for his arrest, and Deck was taken into custody on August 4, 2021.

[9] On August 6, 2021, Deck was again released pending the preparation of his PSI and his sentencing hearing, which was reset for October 21, 2021, so that he could obtain treatment. On August 15, 2021, while on pre-sentence release, Deck was arrested in Tennessee for aggravated burglary for allegedly threatening Stoops with death and forcing his way into a home where at least two juveniles were present. Also on August 15, 2021, Deck was charged in

Kentucky with operating under the influence and receiving stolen property based on allegations that Deck crashed a car that had been reported stolen in Tennessee. An officer responding to the scene reported that Deck appeared to be passed out behind the wheel of the car, which was still running. On August 20, 2021, the trial court granted the State's request to revoke Deck's pre-sentencing release in the instant matter.

[10] On October 12, 2021, the Henry County Probation Department filed its PSI outlining the following facts concerning Deck and his criminal history. As a juvenile, Deck was adjudicated for battery (twice), conversion (twice), burglary, criminal mischief, and resisting law enforcement. Following these adjudications, Deck received community service, formal probation, and a placement in the Henry County Youth Center. In 1997, Deck was remanded to the Indiana Boys School.

[11] In 1998, Deck was charged with burglary and was waived into the adult justice system. Deck was convicted of the lesser-included offense of Class D felony theft and was sentenced to one and one-half years in the Department of Correction (DOC). In 1999, Deck committed criminal confinement and domestic battery, for which he was sentenced to eighteen months, all suspended to time-served. When Deck's probation in that matter was revoked, he was placed on work release, a placement which, in 2001, was also revoked when Deck was convicted of Class D felony failure to return to lawful detention, for which he received two years in the DOC and one year on work release, in addition to having his original eighteen-month sentence revoked to the DOC.

Also in 2001, Deck was given an aggregate sentence of one year, all suspended to probation, for Class A misdemeanor resisting law enforcement and Class B misdemeanor public intoxication. He was also ordered to complete the “A&D Program.” (Appellant’s App. Vol. II, p. 74). The State filed a petition to revoke Deck’s probation in that matter.

[12] In 2002, Deck was sentenced in four separate criminal matters to one-year, suspended, for Class A misdemeanor check deception; sixty days, suspended, for Class B misdemeanor battery; three years in the DOC for felony possession of stolen property; one and one-half years in the DOC for Class D felony theft; and to one year for Class A misdemeanor criminal mischief. In 2005, Deck received another eighteen-month suspended sentence for Class D felony check fraud. Deck was unsatisfactorily released from his probation in that matter.

[13] In 2006, Deck was convicted of Class C felony escape and was sentenced as an habitual offender, resulting in an aggregate sentence of twenty years, with four years suspended to probation. In 2007, Deck was again sentenced for Class C felony escape, this time receiving a sentence of eight years, enhanced by eight years for being an habitual offender. In 2009, Deck’s sentences were modified to work release, and that placement was again modified in 2011 to probation. However, less than one month after Deck was placed on probation, the State filed a notice to revoke his probation due to Deck having been charged with the new offenses of Class D felony domestic battery, strangulation, and interference with the reporting of a crime. In 2012, Deck was convicted of Class D felony battery and received one and one-half years, suspended to probation. In

addition, Deck's probation for his escape conviction was revoked and he was remanded to the DOC for four years.

[14] In 2018, Deck was arrested on misdemeanor domestic battery and criminal recklessness charges involving Miranda, but those charges were dismissed. However, in a separate 2018 misdemeanor domestic battery case involving Miranda, Deck was convicted and sentenced to one year, with all but six days suspended to probation. In 2019, Deck was placed on three years of probation following his conviction for Level 5 felony domestic battery against Miranda. This 2019 domestic battery is the enhancing felony for the instant conviction.

[15] As of the preparation of his PSI, Deck had pending cases in Indiana for Class B misdemeanor leaving the scene of an accident, Class B misdemeanor criminal recklessness, and five charges for offenses against Stoops alleged to have occurred on the same day as the instant offense, namely, Level 5 felony battery resulting in bodily injury to a pregnant woman; Level 5 felony criminal confinement with bodily injury; Level 5 felony battery by means of a deadly weapon; Level 5 felony strangulation of a pregnant victim; and Level 6 felony intimidation with a threat to commit a forcible felony. In addition to these Indiana charges, Deck faced charges in Kentucky for Class D felony receiving stolen property and Class B misdemeanor driving under the influence stemming from his conduct on August 15, 2021.<sup>2</sup>

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<sup>2</sup> The PSI investigator was unable to confirm that Deck had charges pending in Tennessee.

- [16] Deck reported to his PSI investigator that he has consumed alcohol regularly since the age of fourteen. Deck underwent treatment for alcoholism in the summer of 2019 and again for a period of weeks in the summer of 2021, when he also reported having been diagnosed with bipolar disorder and schizophrenia. Following his 2021 inpatient treatment, Deck did not follow through on recommendations to complete intensive outpatient treatment, maintain a medication regime of Vivitrol, and to comply with the recommendations of his psychological evaluation.
- [17] On October 21, 2021, the trial court convened Deck's sentencing hearing. Deck reported his current address as Miranda's house. Deck testified that after his father had died on January 28, 2021, he "snapped" and "went out of control" and "got [him]self in a whole bunch of trouble." (Transcript p. 7). Deck explained that he broke down because of the pressure of his family fighting after his father's death, his marital problems with Miranda, and the impending birth of his child with Stoops. Deck requested that he receive probation or home detention so that he could pursue treatment for his alcoholism.
- [18] The trial court found as aggravating circumstances that Deck had a criminal history which included ten felony convictions; had violated the conditions of his probation in the past; and that he had been released from custody in this case to obtain treatment but had failed to appear for court. The trial court found as mitigating circumstance that Deck had pleaded guilty and accepted responsibility. The trial court sentenced Deck to five years in the DOC. The trial court observed that it did not recommend Deck for Recovery While



Incarcerated, but that it might reconsider that ruling at a later date depending on the disposition of Deck's other pending criminal cases.

[19] Deck now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

[20] Deck requests that we revise his sentence, which he contends is inappropriately harsh. "This court has the power to review and revise a criminal sentence when it is 'inappropriate in light of the nature of the offense and the character of the offender.'" *Bailey v. State*, 979 N.E.2d 133, 143 (Ind. 2012) (citing Ind. Appellate Rule 7(B) and Ind. Const. art. 7, § 4). However, our supreme court has observed that "[s]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). This deference should prevail unless it is "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). The principal role of such review is to attempt to leaven the outliers. *Cardwell*, 895 N.E.2d at 1225. In the end, whether we determine that a sentence is inappropriate turns on 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.* at 1224. The defendant bears the burden to persuade the

reviewing court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018).

A. *Nature of the Offense*

[21] When assessing the nature of an offense, the advisory sentence is the starting point that the legislature selected as an appropriate sentence for the particular crimes committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Deck pleaded guilty to a Level 5 felony. A Level 5 felony carries a sentencing range of between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). The trial court imposed a five-year sentence, which represents the near-maximum for the offense. *See id.*

[22] We agree with Deck that the nature of his offense is “admittedly troublesome[.]” (Appellant’s Br. p. 9). On May 1, 2021, Deck became intoxicated and not only went to Miranda’s home in violation of a protective order, but he also entered and waited for her to return from work. Upon Miranda’s return to what should have been her sanctuary, Deck subjected her to a drunken rampage which culminated in Deck striking Miranda. Deck was not even deterred by the arrival of the police, as he returned to Miranda’s home even after running away from Officer Hunt. We also note that it is alleged that Miranda was the second target of Deck’s drunken wrath that day. While Deck argues that “there appears to be no evidence of serious bodily injury to either victim[.]” Deck’s behavior is part of a demonstrated pattern of domestic abuse, and the fact that he did not inflict further damage on Miranda does not render

his sentence inappropriate. (Appellant's Br. p. 10); *see Kunberger v. State*, 46 N.E.3d 966, 973 (Ind. Ct. App. 2015) (rejecting defendant's argument that his maximum sentence for domestic battery was inappropriate because his victim did not suffer injuries warranting a more severe charge). In short, Deck has failed to convince us that his five-year sentence for domestic battery is inappropriate given the nature of the offense.

#### B. *Character of the Offender*

[23] Upon reviewing a sentence for inappropriateness in terms of the defendant's character, we look to his life and his conduct. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. We begin by observing that Deck's record in the justice system, as set forth above, is a lengthy and dense thicket of criminality. Deck's adjudications as a juvenile for offenses including burglary and battery eventually led to his placement in the Indiana Boys School. Deck was waived into the adult court system, and he has since amassed ten felony convictions, including three for domestic battery. Although Deck pleaded guilty in this case, our review of the record leads us to conclude that he has not demonstrated a great deal of remorse concerning his offense. Indeed, we find it troubling that at Deck's October 21, 2021, sentencing hearing, he listed Miranda's house as his current address, even though the protective order for Miranda is not set to expire until December of 2022. We also observe that, time and time again, Deck received suspended sentences, work release, and probation, which he violated on nearly every occasion that he received more

lenient treatment. None of these circumstances reflect well on Deck's character.

[24] Deck directs our attention to his difficult life circumstances and his recent mental health diagnosis. Deck also emphasizes his desire to receive treatment for his alcoholism and his mental health. Like the trial court, we find Deck's arguments to ring hollow. Many of the difficulties in Deck's life are of his own making, and he has failed to take advantage of opportunities for treatment previously afforded him to address his alcoholism and mental health, especially his most recent opportunity when he was twice released pending sentencing in this matter to procure treatment, but failed to appear for his scheduled court dates, failed to follow through on the brief treatment he did undertake, and instead was arrested in two states for new criminal offenses. This is a far cry from the overwhelming evidence of positive character traits necessary to overcome our deference to the trial court's sentencing decision. *See Stephenson*, 29 N.E.3d at 122. Accordingly, we do not disturb the trial court's five-year sentence.

## CONCLUSION

[25] Based on the foregoing, we conclude that Deck's sentence is not inappropriate given the nature of his offense and his character.

[26] Affirmed.

[27] May, J. and Tavitas, J. concur