MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Marietto V. Massillamany
Massillamany Jeter & Carson, LLP
Fishers, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Nicole Wiggins
Deputy Attorney General

Alexa Rojas
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jared M. Sanner,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 5, 2022

Court of Appeals Case No. 21A-CR-2072

Appeal from the Madison Circuit Court

The Honorable Mark K. Dudley, Judge

Trial Court Cause No. 48C06-2002-F5-439

Tavitas, Judge.

Case Summary

[1] Jared Michael Sanner appeals his sentence of thirteen years, with ten years executed and three years suspended to probation. Sanner contends that the trial court abused its discretion when sentencing him and that his sentence of thirteen years, with ten years executed, is inappropriate. Finding the trial court did not abuse its discretion and that the sentence is not inappropriate, we affirm.

Issues

[2] Sanner presents two issues on appeal, which we restate as:

I. Whether the trial court abused its discretion when sentencing Sanner.

II. Whether Sanner's sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

[3] Jared Sanner and K.M. had an "on again, off again" relationship that began in 2015.[1] Tr. Vol. II p. 29. In February 2020, Sanner began staying at K.M.'s house, where she lived with her one-year old son ("Child"). On February 20, 2020, K.M. went to get dinner with her mother, and Sanner agreed to watch Child, who was nearing bedtime. While K.M. was at dinner, Sanner was

[1] K.M. accused Sanner of domestic violence incidents in 2017 and 2019, but charges were either not sought or dropped.

apparently upset that he was required to watch Child and texted K.M. that he was about "to just have the cops come get [Child] [because] I'm done playing games." State's Ex. 53. K.M. left the dinner early to make sure Child was safe.

[4] When K.M. arrived at her house, Sanner accused her of being "a drunk w***e instead of taking care of [her] kid." Tr. Vol. II p. 33. He proceeded to hit and punch K.M. in the head, stomach, and legs and "throw[] [her] all around the living room." *Id*. at 34. Child was in the same room at the time.

[5] The abuse escalated when K.M. attempted to "get [Child] in the other room to lay down." *Id*. at 35. There, Sanner choked K.M. and was "hitting [her] consistently," a minimum of fifty to sixty times. *Id*. Sanner also "grabbed [K.M.] by her neck when she was holding [Child] and started throwing things around [Child's] room." *Id*. at 37.

[6] Later that evening, Sanner kicked K.M. in her head and other parts of her body. He then "pinned" her on the bed with his knees and choked her again, causing K.M. to gag. *Id*. at 39. Sanner continued to batter K.M. several times throughout the night and, at one point, smashed K.M.'s phone when she tried to contact the police. Sanner again choked K.M., and this time she blacked out.

[7] The abuse continued the next morning. When K.M. woke up, she tried to leave the house. This awakened Sanner, who began arguing with K.M. again. He then threw her to the ground, kicking, hitting, and stepping on her "everywhere." *Id*. at 51.

[8] K.M. eventually made it to her room where she tried to contact the police on a "back-up" phone she kept. *Id*. at 48. Sanner choked her and threatened to "kill [her] if he was going to jail anyways" to "make it worth it." *Id*. at 52. Sanner eventually fled, and K.M. was able to contact the police.

[9] As a result of Sanner's battery, K.M. was covered in bruises, and her lips were bloodied. Her eyes had petechia—ruptured blood vessels characteristic of choking. She had trouble speaking due to the trauma to her windpipe. A physician's assistant at the emergency room described K.M. as "one (1) of the most traumatic . . . appearing patience [sic] I've seen in five (5) years." *Id*. at 6.[2]

[10] When Sanner learned the police had a warrant for his arrest, he sent K.M. the following text messages:

> Wow dude . . . [K.M.] I just want all this to stop . . . you did it thanks . . . Now there's no going back . . . you killed me yet again . . . [K.M.] why???? U just took everything I've ever worked for from me.

State's Ex. 53-54. Sanner continued to contact K.M. against her wishes and attempt to draw her sympathy for a period before trial.

[11] Ultimately, the State charged Sanner with: Count I, criminal confinement, a Level 3 Felony; Count II, domestic battery resulting in serious bodily injury, a

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[2] The trial judge agreed, stating "It's certainly one (1) of the worse [sic] that I've seen as a Judge. . . It's rather striking how much you [Sanner] did to [K.M.]." Tr. Vol. II p. 142.

Level 5 Felony; Count III, domestic battery, a Level 6 Felony; Count IV, domestic battery by bodily waste, a Level 6 felony; Count V, intimidation, a Level 6 Felony; Count VI, strangulation, a Level 6 Felony. The State later dismissed Count IV. A jury trial was held in August 2021. Four witnesses, including K.M., testified against Sanner. Sanner did not cross examine K.M. Instead, after K.M.'s direct testimony, Sanner pleaded guilty to all counts in open court.

[12] A sentencing hearing was held on August 23, 2021. The trial court questioned Sanner regarding his decision to plead guilty only after three witnesses and K.M. testified:

> Court: Then why did we have a trial?
>
> Sanner: Um, like I said, with everything that I was charged in the very beginning, like ah, I knew that some of those charges didn't happen. So, that's why I wanted to a have a trial.
>
> Court: Some of those charges disappeared before we started the trial. Why did we have a trial? Why did she have to sit here?

Tr. Vol. II p. 128. Ultimately, Sanner stated, "Yeah, no – I got no good explanation, Your Honor." *Id*. at 129.

[13] The trial court found four aggravators: (1) Sanner's criminal history; (2) the multiplicity of the counts; (3) the nature and circumstances of the offenses are greater than necessary to prove the charges; and (4) lack of remorse. The trial

court found one mitigator—that Sanner pleaded guilty before the end of the trial, which it gave "very minimal mitigation, weight or effect." *Id.* at 139. In addition, the trial court awarded restitution to K.M. but did not consider restitution as a mitigating factor.

[14] The trial court entered convictions on Count I, criminal confinement, a Level 3 felony; Count II, domestic battery resulting in serious injury, a Level 5 felony; Count V, intimidation, a Level 6 felony; and Count VI, strangulation, a Level 6 felony; and sentenced Sanner to thirteen years, with ten years executed in the Department of Correction and three years suspended to probation.[3] Sanner now appeals.

Discussion and Decision

[15] Sanner contends the trial court abused its discretion by: (1) finding he lacked remorse; (2) giving Sanner's guilty plea little weight as a mitigator; and (3) failing to consider the restitution Sanner owes to K.M. as a mitigator. In addition, Sanner contends his sentence is inappropriate in light of the nature of the offense and the character of the offender. We disagree.

I. Abuse of Discretion

[16] Sanner argues the trial court abused its discretion in finding that he lacked remorse and by failing to properly consider mitigating factors. "[S]ubject to the

[3] The trial court did not enter a conviction on Count III due to double jeopardy concerns.

review and revise power [under Indiana Appellate Rule 7(B)], sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse occurs only if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[17] A trial court may abuse its discretion in a number of ways, including:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490-91), *cert. denied*.

[18] "This Court presumes that a court that conducts a sentencing hearing renders its decision solely on the basis of relevant and probative evidence." *Schuler*, 132 N.E.3d at 905. "When an abuse of discretion occurs, this Court will remand for resentencing only if 'we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that

enjoy support in the record.'" *Ackerman*, 51 N.E.3d at 194 (quoting *Anglemyer*, 868 N.E.2d at 491).

A. Lack of Remorse

[19] Sanner argues the trial court abused its discretion by finding he lacked remorse. We disagree. A trial court may properly consider a lack of remorse as an aggravator when the defendant has pleaded guilty. *Veal v. State*, 784 N.E.2d 490, 494 (Ind. 2003) (citing *Brooks v. State*, 497 N.E.2d 210, 221 (Ind. 1986)). "A defendant lacks remorse when he displays disdain or recalcitrance, the equivalent of 'I don't care.'" *Bluck v. State*, 716 N.E.2d 507, 513 (Ind. Ct. App. 1999) (citing *Smith v. State*, 655 N.E.3d 532, 539 (Ind. Ct. App. 1995)). "This has been distinguished from the right to maintain one's innocence, i.e., 'I didn't do it.'" *Bluck*, 716 N.E.2d at 513 (citation omitted).

[20] Our Supreme Court has held that a trial court's determination of a defendant's remorse is "similar to a determination of credibility." *Pickens v. State*, 767 N.E.2d 530, 535 (Ind. 2002). "Without evidence of some impermissible consideration by the court, we accept its determination of credibility." *Id.*

[21] Sanner argues the trial court abused its discretion by "punish[ing]" Sanner for going to trial. Appellant's Br. p. 9; *see e.g., Bluck*, 716 N.E.2d at 512 ("It is not an aggravating factor for a defendant, in good faith, to consistently maintain his innocence, and a court may not enhance a sentence for that reason."). That is not, however, what the trial court did. The trial court clearly stated, "I'm not

penalizing you for exercising your right to have a jury trial, but I am penalizing you for what you said to me today." Tr. Vol. II p. 138.

[22] In support of Sanner's argument that the trial court abused its discretion in finding Sanner's unsatisfactory answers as to why he went to trial demonstrated lack of remorse, Sanner cites *Sloan v. State*, which held "it was error for the court to use the fact that Sloan did not provide an explanation as to why he committed the offense to enhance his sentence." 16 N.E.3d 1018, 1027 (Ind. Ct. App. 2014). *Sloan*, however, is distinguishable from the present case. In *Sloan*, the defendant maintained his innocence throughout the proceedings and did not testify at the sentencing hearing. *Id*. at 1024, 1027. Naturally, it was improper for the trial court to find that Sloan's failure to explain his offense showed lack of remorse when Sloan denied committing the offense in the first place and had a right to maintain his innocence.

[23] In contrast, here, Sanner maintained his innocence until K.M testified, and the trial court did not ask Sanner to explain an offense that he denied committing. Rather, the trial court suspected Sanner had only gone to trial in the hope that K.M. would not testify and found Sanner was being dishonest in denying that was the reason.[4] Given the curious timing of Sanner's guilty plea and the

[4] The trial court's suspicions are not unfounded. The victim's "[n]on-cooperation by recantation or failure to appear at trial is an epidemic in domestic violence cases . . . Batterers put hydraulic pressures on domestic violence victims to recant, drop the case, or fail to appear at trial." Tom Lininger, *Evidentiary Issues in Federal Prosecutions of Violence Against Women*, 36 Ind. L. Rev. 687, 709 n. 76 (2003) (estimating as many as 80% of domestic violence victims refuse to cooperate at trial).

evidence of his attempts to dissuade K.M from testifying, we do not think the trial court's questions were off limits. Further, as the trial court was in the best position to observe the sincerity of Sanner's responses, we do not find the trial court abused its discretion by finding that Sanner's answers demonstrated a lack of remorse.

[24] Even if Sanner's answers did not demonstrate a lack of remorse, a sentence may still be upheld "[w]hen a trial court improperly applies an aggravator but other valid aggravating circumstances exist[.]" *Carranza v. State*, 184 N.E.3d 712, 717 (Ind. Ct. App. 2022). Here, Sanner's explanation for why he went to trial was only one of the reasons the trial court found lack of remorse —Sanner also blamed the victim in his presentencing investigation report. *See* Tr. Vol. II p. 138. Sanner does not contest this finding nor the three other aggravators found by the trial court. Accordingly, we find no abuse of discretion.

B. Mitigators

[25] Sanner argues the trial court gave insufficient weight to two mitigating factors: Sanner's guilty plea and the trial court's order of restitution.[5] "An allegation that the trial court failed to identify or find a mitigating factor requires the

[5] Sanner also argues "[t]he trial court failed to consider the likelihood of Sanner responding affirmatively to probation or short-term imprisonment as a mitigating factor." Appellant's Br. p. 6**.** Sanner dedicates a single sentence in his Summary of the Argument section to this point. Under Indiana Appellate Rule 46(A)(8)(a), an "argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning" and "must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on[.]" Sanner has provided neither cogent reasoning nor citation for this argument. Accordingly, we find it waived. *See McMahon v. State*, 856 N.E.2d 743, 751 (Ind. Ct. App. 2006).

defendant to establish that the mitigating evidence is both significant and clearly supported by the record." *Anglemyer*, 868 N.E.2d at 493 (citing *Carter v. State*, 711 N.E.2d 835, 838 (Ind. 1999)). "The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id*. at 491. The trial court "'is not obligated to accept the defendant's contentions as to what constitutes a mitigating circumstance or to give the proffered mitigating circumstances the same weight the defendant does.'" *Weisheit v. State*, 26 N.E.3d 3, 9 (Ind. 2015) (quoting *Wilkes v. State*, 917 N.E.2d 675, 690 (Ind. 2009)), *cert. denied*.

[26] Sanner first argues the trial court gave insufficient mitigating weight to Sanner's guilty plea, alleging it "sav[ed] the State time and resources of a trial[.]" Appellant's Br. p. 9. The trial court properly acknowledged Sanner's plea as a mitigating factor and assigned it "minimal mitigation, weight or effect." Tr. Vol. II p. 139. Contrary to Sanner's assertion, Sanner hardly saved the State the time and resources of a trial; by the time Sanner pleaded guilty in open court, the State had nearly concluded its case in chief. We will not second-guess the weight assigned to this mitigator by the trial court.

[27] Sanner next argues the trial court "failed to give appropriate weight to the restitution [Sanner] owed" to K.M. Appellant's. Br. p. 9. Indiana Code 35-38-1-7.1(b) provides that a trial court "may" consider as a mitigating factor whether "[t]he person has made or will make restitution to the victim of the crime for the injury, damage, or loss sustained." "The term 'may' in a statute

ordinarily implies a permissive condition and a grant of discretion." *Tongate v. State*, 954 N.E.2d 494, 496 (Ind. Ct. App. 2011) (citation omitted), *trans. denied*.

[28] In *Blixt v. State*, the defendant argued that the trial court failed to recognize restitution as a mitigating factor. 872 N.E.2d 149, 152 (Ind. Ct. App. 2007). In *Blixt*, we held the trial court did not abuse its discretion in declining to find restitution a mitigating factor when the defendant "did not present evidence that he had made restitution or voluntarily offered to make restitution . . . [n]or did he argue that, in the event that the trial court would order restitution, the order should be considered in mitigation of his sentence." *Id*. Here, just as in *Blixt*, Sanner did not offer or promise to make restitution, nor did he argue to the trial court that it should consider restitution a mitigating factor. The trial court had no obligation to consider restitution a mitigating factor, and we find the trial court did not abuse its discretion in declining to do so.

I. Inappropriate Sentence

[29] Finally, Sanner briefly argues his sentence was inappropriate. 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."[6] 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)).

[30] "'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

[6] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[31] 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, Sanner was sentenced for (1) criminal confinement, a Level 3 Felony; (2) domestic battery resulting in serious bodily injury, a Level 5 felony; (3) intimidation, a Level 6 Felony; and (4) strangulation, a Level 6 felony. A Level 3 felony carries a sentencing range of six and twenty years, with the advisory sentence set at ten years. Ind. Code § 35-50-2-5(b). A Level 5 felony carries a sentencing range of one and six years, with the advisory sentence set at three years. *Id*. § 35-50-2-6(b). A Level 6 felony carries a sentencing range of six months and two and one-half years, with the advisory sentence set at one year. *Id*. § 35-50-2-7(b). The trial court imposed an aggregate sentence of thirteen years, with ten years executed at the Indiana Department of Correction and three years suspended to probation.

[32] When considering the "nature of the offense," we 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*. We observe that Sanner's domestic violence: (1) occurred over a span of at least two consecutive days; (2) involved countless instances and variations of battery; (3) was perpetrated in front of a one-year old child; and (4) was accompanied by a threat to kill K.M. for calling the police. The trial court described the incident as "certainly one (1) of the worse [sic] that

I've seen as a Judge," and remarked, "It's rather striking how much you [Sanner] did to [K.M]." Tr. Vol. II p. 142. In light of the brutal, depraved, serial, and prolonged nature of Sanner's offenses, a sentence revision is not warranted.

[33] 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). "The 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. Sta*te, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*.

[34] Here, Sanner has an extensive criminal history, which includes four convictions for drug possession crimes, two convictions for resisting law enforcement, two convictions for driving with a suspended license, and two probation violations. In addition, Sanner repeatedly contacted K.M. against her wishes after the abuse and blamed her in his presentencing investigation report, all of which reflect poorly on his character. We cannot say his thirteen-year sentence is inappropriate.

Conclusion

[35] The trial court did not abuse its discretion, and Sanner's sentence was not inappropriate. Accordingly, we affirm.

[36] Affirmed.

Brown, J., and Altice, J., concur.