

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin L. Haller,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 19, 2023

Court of Appeals Case No.
23A-CR-1537

Appeal from the Ripley Superior
Court

The Honorable
Jeffrey Sharp, Judge

Trial Court Cause No.
69D01-2210-F6-116

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] Justin Haller appeals his two-and-one-half year sentence for Level 6 felony domestic battery in the presence of a child.¹ He argues his sentence is inappropriate based on the nature of the crime and his character. We affirm.

Facts and Procedural History

[2] Haller and the victim, A.H., had been married for fourteen years in 2022, and have two minor children, then ages seven and four. On September 16, 2022, Haller and A.H. argued, and then A.H. left the family home with their two children. She returned the next day to retrieve some personal belongings and observed the house was “a wreck.” (Tr. Vol. II at 45.) The couples’ seven-year-old daughter was with A.H. and went into the backyard. Inside the house, A.H. found drug paraphernalia and asked Haller about the items. Haller and A.H. verbally argued. A.H. attempted to record the argument but her phone “kept clicking off.” (*Id.*) Haller “grabbed her and pushed her at that point, in the bedroom.” (*Id.*)

[3] A.H. went into the backyard to collect personal belongings that had been thrown outside. She put her phone inside her shirt and started recording the encounter. Haller “saw [A.H.’s] phone inside her shirt . . . [and] reached to grab it.” (*Id.* at 46.) A.H. “tucked her chin down so he couldn’t grab it” and Haller “grabbed her face and kept trying to get at the phone.” (*Id.*) A.H. bit

¹ Ind. Code § 35-42-2-1.3(b)(2).

Haller's hand to get him to release her, and he "grabbed her hair and started to pull her down onto the ground and across, across the items that were [in the backyard]." (*Id.*)

[4] The couple's seven year old daughter "got up and started yelling at [Haller] and started hitting him[.]" (*Id.*) The physical altercation between Haller and A.H. did not stop until their daughter "jumped up to try to intervene and get it to cease." (*Id.*) Shortly thereafter, police responded to a report of domestic violence. The responding officer observed A.H. had a "big red mark on the side of her, on the, it would be the left side of her face and jaw, like down towards her neck." (*Id.* at 47.) Based thereon, police arrested Haller.

[5] Later that day, police asked A.H. if she wanted to complete a "Lethality Assessment[.]" (Ex. Vol. I at 8.) A Lethality Assessment is "an assessment that is provided by Safe Passage and by the Prosecutor's Office to go through and kind of help determine the level of care or assistance that somebody might need after the fact and whether or not we should be attempt[ing] to get them immediate assistance." (Tr. Vol. II at 48.) On the assessment, A.H. indicated Haller had, in the past, attempted to choke or strangle her, spied on her and sent threatening messages, and threatened to kill her. In addition, she indicated on the assessment that she believed Haller might kill her.

[6] On October 6, 2022, the State charged Haller with Level 6 felony domestic battery in the presence of a child. Haller posted bond and the trial court entered a no contact order prohibiting him from having contact with A.H. and their

children. On March 24, 2023, Haller went to A.H.'s parents' house, where she and the children were living, and spoke with A.H. When A.H. became upset, Haller left the scene and A.H.'s stepfather called police. When police arrived, A.H.'s stepfather told them Haller "walked right in like he owned the place." (*Id.* at 19.) Haller had also sent A.H. multiple text messages in violation of the no contact order.

[7] Police went to Haller's residence to arrest him for invasion of privacy based on his violation of the no contact order. After their arrival, they discovered Haller had "aluminum foil with burnt residue on it and also a green straw that had a crystal-like substance inside the straw" in his pockets. (*Id.* at 24.) The officer ran a field test and determined the substance was methamphetamine. Based thereon, the State charged Haller, in a case separate from the one before us, with Level 6 felony possession of methamphetamine,² Class A misdemeanor invasion of privacy,³ and Class C misdemeanor possession of paraphernalia.⁴

[8] On May 9, 2023, Haller pled guilty to Level 6 felony domestic battery in the presence of a child. On June 6, 2023, the trial court held a sentencing hearing. During the hearing, A.H. asked the trial court to remove the no contact order because she was experiencing financial burdens as a single parent. She testified the couple's children were "constantly asking where their dad is." (*Id.* at 56.)

² Ind. Code § 35-48-4-6.1(a).

³ Ind. Code § 35-46-1-15.1(a)(11).

⁴ Ind. Code § 35-48-4-8.3(b)(1).

A.H. claimed they were “a broken family” and that could not be remedied because of the no contact order. (*Id.*) In addition, A.H. told the court she thought she and Haller were “capable of living together peacefully again” and she would participate in couple’s counseling if the no contact order was removed. She did not believe Haller would “intentionally harm [her] or [their] children” (*id.* at 63), and Haller’s behavior during the September 17, 2022, incident was “not who he truly is” because he was under “the influence of drugs.” (*Id.* at 64.)

[9] When determining Haller’s sentence, the trial court found as aggravators Haller’s prior criminal history and the fact he violated the conditions of his bond twice, resulting in two additional criminal charges. The trial court found to be mitigating that Haller had “always been employed and other than the substance abuse, a productive and contributing member of society.” (*Id.* at 73.) While not listing them as aggravators, the trial court noted its concerns about Haller’s substance abuse and the prior unreported allegations of domestic violence. The trial court sentenced Haller to two-and-one-half years, with two years suspended to probation because the trial court wanted Haller to “focus more on treatment[.]” (*Id.* at 75.) The trial court left the no contact order in place but told Haller that it would be willing to review the situation and lift the no contact order if Haller showed improvement. The trial court allowed the parties to meet in a clinical setting to “work on [their] marriage.” (*Id.*)

Discussion and Decision

[10] Haller contends his two-and-one-half year sentence is inappropriate based on the nature of his offense and his character. Our standard of review regarding such claims is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted).

[11] “Our analysis of the nature of the offense requires us to look at the nature, extent, heinousness, and brutality of the offense.” *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). As our Indiana Supreme Court has explained, “compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality)” may lead to a downward revision of the defendant's sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, “we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense

accounted for by our legislature when it set the advisory sentence.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). The sentencing range for a Level 6 felony is six months to two-and-one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(a). The trial court sentenced Haller to two-and-one-half years, which is the maximum for his crime.

[12] Haller contends the maximum sentence was not appropriate because he “did not cause A.H. significant harm nor was that his intention.” (Br. of Appellant at 11.) However, Haller pushed A.H. in the house and then grabbed her jaw causing bruising. Finally, he pulled her by her hair in the backyard until his seven-year-old daughter intervened. Haller and A.H. both indicated this was not the first physical altercation between the couple. A.H. also indicated on the Lethality Assessment that Haller had choked her in the past and that she feared he may kill her. Based thereon, we conclude Haller’s sentence was not inappropriate for the nature of his offense. *See Kunberger v. State*, 46 N.E.3d 966, 974 (Ind. Ct. App. 2015) (sentence was not inappropriate given the nature of domestic violence incident between defendant and ex-girlfriend).

[13] Haller argues his sentence is inappropriate based on his character because he has a limited criminal history, he was employed, he took responsibility for his actions by pleading guilty, he demonstrated remorse for his actions, his sentence would cause a hardship for his family, and he was a “productive citizen” prior to the crime. (Br. of Appellant at 12.) “When considering the character of the offender, one relevant fact is the defendant’s criminal history.” *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender’s

continued criminal behavior after judicial intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019). Haller has two prior misdemeanor convictions related to alcohol abuse – a Class A misdemeanor operating a vehicle while intoxicated in 2001 and a Class B misdemeanor public intoxication in 2007.

[14] Additionally, we note, and the trial court found as an aggravator, Haller’s bond revocation based on his arrest for other crimes – possession of methamphetamine, possession of paraphernalia, and invasion of privacy.

While arrests without convictions

may not be properly considered as evidence of criminal history . . . a record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court’s assessment of the defendant’s character in terms of the risk that he will commit another crime.

Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005) (internal citation omitted).

Again, while not lengthy, the additional charges while out on bond reflect poorly on Haller’s character.

[15] Regarding his employment, guilty plea, remorse, the hardship imprisonment will cause his family, and Haller’s claim he was a productive citizen prior the crime, we note the trial court listened to testimony regarding those factors and noted some when pronouncing Haller’s sentence, though it did not find those factors to be mitigating. The trial court is not required to give a proffered mitigator the same weight that a defendant proposes, *Rascoe v. State*, 736 N.E.2d

246, 248-9 (Ind. 2000), and we do not review the weight given to aggravators and mitigators. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g* 878 N.E.2d 218 (2007).

[16] Further, the trial court expressed concern regarding Haller's substance abuse and his continued criminal conduct:

The Pre-Sentence Investigation says he was last released on May 12th and his last reported meth use was May 17th. Five days after getting out of jail, you used methamphetamine, by your own admission. You haven't learned a darn thing. I know in your mid [sic] you want to change. Ninety percent of the people that sit in that chair want to change. . . . [T]he question is are you willing to do things that you need to do to change and right now you are not exhibiting that by continuing to use methamphetamine, by continuing to get new charges. You received a Possession of Meth charge in April, just sixty days ago. . . . I have not seen anything that would change that you are not going to go back and create that same kind of hell for your wife and kids that was created back in September and then what would have been created in May, if you were using methamphetamine because once again, sir, you wouldn't be [Haller]. You would be [Haller] on meth and that guy is just going to be a problem for your wife and kids.

(Tr. Vol. II at 75-6.) Based on the trial court's statement regarding its concerns, Haller's criminal history, and his accumulation of additional charges while out on bond, we cannot say his sentence is inappropriate based on his character. *See, e.g., Pedigo v. State*, 146 N.E.3d 1002, 1016 (Ind. Ct. App. 2020) (continued substance abuse reflected poorly on defendant's character such that his sentence was not inappropriate), *trans. denied*; and *see Rutherford v. State*, 866 N.E.2d 867,

874 (Ind. Ct. App. 2007) (while criminal history of three misdemeanor convictions was “not aggravating to a high degree, it still is a poor reflection on his character”).

Conclusion

[17] Haller has not demonstrated his sentence for Level 6 felony domestic battery in the presence of a child is inappropriate based on the nature of his offense and his character. Accordingly, we affirm.

[18] Affirmed.

Bailey, J., and Felix, J., concur.