

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jamey Wayne Thomas,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 16, 2021

Court of Appeals Case No.
21A-CR-588

Appeal from the Tippecanoe
Superior Court

The Honorable Randy J. Williams,
Judge

Trial Court Cause No.
79D01-1909-F5-139
79D01-2101-F5-8

Pyle, Judge.

Statement of the Case

[1] Jamey Thomas (“Thomas”) appeals the aggregate five-year and 240-day sentence imposed after he pleaded guilty to Level 6 felony intimidation¹ and Class A misdemeanor domestic battery² in Cause Number 79D01-1909-F5-139 (“Cause Number F5-139”) and Level 6 felony operating a vehicle as an habitual traffic violator,³ Class A misdemeanor battery resulting in bodily injury,⁴ and Class C misdemeanor operating a vehicle while intoxicated⁵ in Cause Number 79D01-2101-F5-8 (“Cause Number F5-8”). His sole argument is that his sentence is inappropriate in light of the nature of his offenses and his character. Concluding that Thomas’ sentence is not inappropriate, we affirm the trial court.

[2] We affirm.

Issue

Whether Thomas’ sentence is inappropriate.

¹ IND. CODE § 35-45-2-1.

² I.C. § 35-42-2-1.3.

³ IND. CODE § 9-30-10-16.

⁴ I.C. § 35-42-2-1.

⁵ I.C. § 9-30-5-2.

Facts

- [3] In November 2020, in Cause Number F5-139, Thomas pleaded guilty, pursuant to a plea agreement, to Level 6 felony intimidation for threatening his neighbor and to Class A misdemeanor domestic battery for striking his domestic partner in the face. Pursuant to the terms of the plea agreement, the State dismissed an additional charge of Level 5 felony battery with a deadly weapon. The plea agreement further provided that Thomas would receive the sentence that the trial court “deem[ed] appropriate after hearing any evidence or argument from counsel.” (App. Vol. 2 at 88).
- [4] While waiting to be sentenced in Cause Number F5-139, Thomas committed additional offenses. Specifically, in Cause Number 79D05-2012-CM-3667 (“Cause Number CM-3667”), the State charged Thomas with two counts of Class A misdemeanor battery resulting in bodily injury.
- [5] In January 2021, while still waiting to be sentenced in Cause Number F5-139, Thomas was further charged with Level 5 felony operating a vehicle after forfeiture of license for life and Class C misdemeanor operating a vehicle while intoxicated following an incident in the drive-thru lane at McDonald’s.
- [6] In March 2021, pursuant to the terms of a plea agreement, the State dismissed Cause Number CM-3667 and refiled one of the Class A misdemeanor battery resulting in bodily injury charges in Cause Number F5-8. Thomas subsequently pleaded guilty, in Cause Number F5-8, to Level 6 felony operating a vehicle as an habitual traffic violator and Class C misdemeanor operating a vehicle while

intoxicated for the McDonald's incident and to the Class A misdemeanor battery resulting in bodily injury. Pursuant to the terms of the plea agreement, the State dismissed the Level 5 felony operating a vehicle after forfeiture of license for life charge. The plea agreement further provided that Thomas would receive the sentence that the trial court "deem[ed] appropriate after hearing any evidence or argument from counsel." (App. Vol. 2 at 197).

[7] Also in March 2021, the trial court held a sentencing hearing in Cause Numbers F5-139 and F5-8. Thomas testified that he had completed several programs while incarcerated in the county jail awaiting sentencing and asked the trial court to "see that [he was] not beyond reform[.]" (Tr. Vol. 2 at 37). Thomas further testified that he suffered from mental health issues.

[8] In addition, at the sentencing hearing, the trial court reviewed forty-eight-year-old Thomas' thirty-year criminal history, which includes multiple felony convictions for possession of marijuana, battery resulting in bodily injury with a prior conviction, theft, residential entry, being an habitual traffic offender, escape, operating a vehicle after a lifetime forfeiture, and possession of methamphetamine. Thomas' most recent felony conviction was in 2016. Thomas' criminal history also includes multiple misdemeanor convictions for resisting law enforcement, public intoxication, possession of marijuana, assisting a criminal, criminal mischief, operating while intoxicated, battery, driving while suspended, and possession of a synthetic or lookalike substance. Thomas' most recent misdemeanor conviction was in 2019.

[9] The trial court also noted that there had been “23 petitions to revoke probation with 15 true.” (Tr. Vol. 2 at 47). In addition, the trial court pointed out that Thomas had been on probation at the time he had committed the offenses in Cause Number F5-139 and had been out on bond in Cause Number F5-139 when he had committed the offenses in Cause Number F5-8. The trial court further pointed out that Thomas had made at least seven prior attempts at rehabilitation, which had all failed.

[10] At the end of the sentencing hearing, the trial court found as mitigating factors that Thomas: (1) had completed programs while incarcerated and awaiting sentencing in the instant causes; (2) had pleaded guilty; and (3) suffered from mental health issues. The trial court further found the following aggravating factors: (1) Thomas’ criminal history; (2) Thomas was on probation when he committed the offenses in Cause Number F5-139; (3) the State had filed twenty-three petitions to revoke his probation, and fifteen had been found to be true; (4) Thomas had a history of substance abuse; (5) Thomas was out on bond when he committed the offenses in Cause Number F5-8; and (6) Thomas’ previous attempts at rehabilitation had failed.

[11] Thereafter, in Cause Number F5-139, the trial court sentenced Thomas to two (2) years for the Level 6 felony intimidation conviction and one (1) year for the Class A misdemeanor domestic battery conviction. The trial court further ordered the sentences to run consecutively with each other for an aggregate sentence of three (3) years. In addition, the trial court ordered two (2) years executed in the county jail and one (1) year suspended to supervised probation.

[12] In Cause Number F5-8, the trial court sentenced Thomas to two (2) years for the Level 6 felony operating a vehicle as an habitual traffic violator conviction, 180 days for the Class A misdemeanor battery resulting in bodily injury conviction, and sixty (60) days for the Class C misdemeanor operating a vehicle while intoxicated conviction. The trial court further ordered the sentences to run consecutively with each other for an aggregate sentence of two (2) years and 240 days. In addition, the trial court ordered one (1) year executed in the county jail, one (1) year executed in the county community corrections program, and 240 days suspended to unsupervised probation.

[13] The trial court further ordered the sentences in both cause numbers to run consecutively to each other, resulting in an aggregate sentence of five (5) years and 240 days, with three (3) years executed in the county jail, one (1) year executed in the county community corrections program, one (1) year of supervised probation, and 240 days of unsupervised probation.

[14] Thomas now appeals his sentence.

Decision

[15] Thomas argues that his five-year, 240-day aggregate sentence for his two felony and three misdemeanor convictions is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offenses and the character of the offender. The defendant bears the burden of persuading this Court that his

sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[16] The Indiana Supreme Court has further explained that “[s]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Id.* at 1222. “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).

[17] 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. *Childress*, 848 N.E.2d at 1081. Here, Thomas was convicted of two Level 6 felonies, two Class A misdemeanors, and a Class C misdemeanor. The sentencing range for a Level 6 felony is between six (6) months and two and one-half (2½) years, and the advisory sentence is one (1) year. IND. CODE § 35-50-2-7(b). The maximum sentence for a Class A misdemeanor is one year, and the maximum sentence for a Class C misdemeanor is sixty (60) days. IND. CODE §§ 35-50-3-2 and -4. In Cause Number F5-139, the trial court sentenced Thomas to two (2) years for the Level

6 felony conviction and one (1) year for the Class A misdemeanor conviction. In Cause Number F5-8, the trial court sentenced Thomas to two (2) years for the Level 6 felony conviction, 180 days for the Class A misdemeanor conviction, and sixty (60) days for the Class C misdemeanor conviction. The trial court further ordered the sentences in each cause to run consecutively with each other and between causes, for an aggregate sentence of five (5) years and 240 days.

[18] Regarding the nature of the offenses, in Cause Number F5-139, Thomas struck his domestic partner in the face and threatened his neighbor. In Cause Number F5-8, Thomas, who was an habitual traffic violator, drove his vehicle in a McDonald's drive-thru lane while he was intoxicated.

[19] Regarding Thomas' character, we note that Thomas has an extensive thirty-year criminal history that includes multiple felony and misdemeanor convictions. Over the years, the State has filed twenty-three petitions to revoke Thomas' probation, and fifteen of those petitions have been found to be true. In addition, Thomas was on probation at the time he committed the offenses in Cause Number F5-139 and was out on bond in Cause Number F5-139 when he committed the offenses in Cause Number F5-8. Thomas' former contacts with the law have not caused him to reform himself. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*. Thomas has failed to persuade this Court that his aggregate five-year and 240-day sentence is inappropriate.

[20] Affirmed.

Bailey, J., and Crone, J., concur.