MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Melissa Sue Rachels,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

February 19, 2024

Court of Appeals Case No.
23A-CR-1591

Appeal from the
Hamilton Superior Court

The Honorable
William J. Hughes, Judge

Trial Court Cause No.
29D03-2207-F5-4900

Memorandum Decision by Senior Judge Baker
Judges Mathias and Kenworthy concur.

Baker, Senior Judge.

Statement of the Case

[1] Melissa Sue Rachels appeals her conviction and sentence for invasion of privacy as a Level 6 felony, alleging that the evidence was insufficient to sustain her conviction and her sentence is inappropriate. Finding the evidence to be sufficient and no error with her sentence, we affirm.

Facts and Procedural History

[2] Rachels had a child with C.F., and in September 2020, a no contact order was entered against Rachels prohibiting her from having contact with C.F.

[3] In June 2022, Rachels, C.F., and their son were court ordered to attend reunification therapy. On June 24, 2022, an employee of the counseling center called Rachels to schedule an appointment for July 12. Later the same day, the employee called Rachels again and told Rachels that her appointment had to be rescheduled to a different day and location. She informed Rachels that C.F.'s appointment was scheduled for July 12, and, due to the no contact order, Rachels' appointment had to be rescheduled. Rachels expressed to the employee that she understood the situation and the rescheduling of her appointment.

[4] On July 12, C.F. was present at the counseling center for his appointment, and, as he was leaving, he encountered Rachels in the parking lot:

> I was heading towards my car and probably about two car lengths away, I'd say, I saw, ah, Ms. Rachels hiding behind the front driver's side wheel of a vehicle and she kind of jumped up quickly and it startled me and I immediately knew it was her, so I started backing up and ah, I came to the point where she was starting to walk forward and she kind of waved at me and I just kept backing up . . . .

Tr. Vol. 2, p. 52. C.F. went back into the building and called the police. When the police arrived and spoke to Rachels, she initially refused to provide her name. Her reason for being there fluctuated between having an appointment and attempting to see her son. After speaking with someone from the counseling center, the officers explained to Rachels that she did not have an appointment, her son was not there, and she was not to be there due to the no contact order. The encounter ended with the officers taking Rachels into custody.

[5] The State charged Rachels with stalking, as a Level 5 felony; invasion of privacy, as a Class A misdemeanor; and invasion of privacy as a Level 6 felony. Prior to trial, the State dismissed the stalking charge, and a bench trial was held on the remaining charges. The court found Rachels guilty of the charges, merged the misdemeanor count into the felony count, and sentenced her to two years. She now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[6] Rachels first contends the State's evidence is insufficient to sustain her conviction of invasion of privacy. In reviewing such challenges, we neither reweigh the evidence nor judge the credibility of witnesses. *Sandleben v. State*, 29 N.E.3d 126, 131 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the judgment and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the judgment will not be disturbed. *Labarr v. State*, 36 N.E.3d 501, 502 (Ind. Ct. App. 2015).

[7] To convict Rachels of invasion of privacy as a Level 6 felony, the State must have proved beyond a reasonable doubt that (1) Rachels (2) knowingly or intentionally (3) violated a protective order issued as a condition of her probation and (4) has a prior, unrelated conviction for invasion of privacy. *See* Appellant's App. Vol. II, pp. 18, 55; *see also* Ind. Code § 35-46-1-15.1(a)(6) (2019). Here, Rachels challenges the State's evidence only as to the element of intent; specifically, she claims the State presented no evidence that she knowingly violated the protective order.

[8] Though the statute's intent element provides two alternatives, here the State charged Rachels only with a knowing violation. A person engages in conduct "knowingly" if, when she engages in the conduct, she is aware of a high

probability that she is doing so. Ind. Code § 35-41-2-2(b) (1977). A person's intent can be proved by circumstantial evidence. *Myers v. State*, 221 N.E.3d 694, 699 (Ind. Ct. App. 2023), *trans. denied*. For instance, intent can be inferred from a person's conduct and "'the natural and usual sequence to which such conduct logically and reasonably points.'" *Id.* (quoting *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018)).

[9] We first note it is undisputed that at all times relevant to this appeal there was a valid no contact order in place that prohibited Rachels from "harassing, annoying, telephoning, contacting, or directly or indirectly communicating" with C.F. Appellant's Br. p. 8 n.2; Ex. Vol. 3, p. 22. In addition, the evidence at trial established that the July 12 appointment was only for C.F. Rachels understood that her appointment had been changed and she was no longer scheduled at the counseling center on July 12 due to the no contact order. However, she went to the counseling center anyway and hid between cars in the parking lot, popping up and waving as C.F. neared and then advancing toward him. In light of this evidence that Rachels understood that C.F. would be at the counseling center on July 12 and that she was not to be there, the court could reasonably infer that she acted knowingly when she went to the counseling center, hid between cars in the parking lot, and waved at and approached C.F.

II. Inappropriate Sentence

[10] Rachels argues that her sentence is inappropriate and not justified by the nature of the offense and her character. 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 determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (quoting *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007)). Our Supreme Court has long said that "sentencing 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). Accordingly, the defendant bears the burden of persuading the appellate court that her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

A. Nature of the Offense

[11] Our analysis of the nature of the offense starts with the advisory sentence, as it is the starting point selected by the legislature as an appropriate sentence for the crime. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017). The trial court found Rachels guilty of Level 6 felony invasion of privacy. A person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b) (2019). The court sentenced Rachels to two years.

[12] The nature of the offense is found in the details and circumstances surrounding the offense and the defendant's participation therein. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When evaluating a defendant's sentence that 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. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*.

[13] Rachels' invasion of privacy offense is not particularly remarkable. She submits that the non-violent nature of her offense supports a lesser sentence, but the absence of physical harm is not an automatic mitigating factor. *See Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018) (noting that "'the absence of physical harm is not an automatic mitigating circumstance such that it would require a lesser sentence than would otherwise be imposed'") (quoting *Neale v. State*, 826 N.E.2d 635, 638 (Ind. 2005)), *trans. denied*. We are not persuaded that the circumstances surrounding Rachels' offense render her sentence inappropriate.

B. Character of the Offender

[14] Our analysis of a defendant's character involves a broad consideration of a defendant's qualities, including age, criminal history, background, past rehabilitative efforts, and remorse. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). In examining a defendant's criminal history, the significance varies based on the gravity, nature, temporal proximity, and number of prior offenses in relation to the current offense. *Id.* However, even a minor criminal record reflects poorly on a defendant's character. *Id.* In addition, the fact that a defendant has committed an offense while on probation is a "substantial consideration" in our assessment of her character. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*.

[15] Rachels' criminal history consists of four misdemeanor convictions, and she has been placed on probation four times, two of which resulted in revocations for new offenses. Notably, she was on probation when she committed the present offense, and she has had disciplinary issues when in jail, including battery on a staff member. The court considered this history to be aggravating.

[16] Rachels asserts that her mental health issues render her sentence particularly harsh. However, the court took her mental health issues into account at sentencing:

> I do think that this is a case where there is a definite mental health component. . . . However, there comes a point when we must do something about her mental health crisis and her willingness to participate in treatment. For a period of time, Ms. Rachels was compliant after her last sentencing in this court. It appears that she was compliant while she was in active mental health treatment and as soon as she began [sic] out of active mental health treatment, she became non-compliant. And ended up where we are today. . . . I find as a mitigating factor that your actions are in part explained by your mental health although they are not excused by your mental health.

[17] Tr. Vol. 2, pp. 110-11. Finally, the court recommended that Rachels receive mental health treatment while she is incarcerated.

[18] While we recognize Rachels' struggles with her mental health, as did the trial court, she has not presented any factors on appeal that constitute a substantial virtuous trait or persistent example of good character that would compel us to override the deference we give to the trial court's judgment. *See Stephenson v.*

State, 29 N.E.3d 111, 122 (Ind. 2015) (deference to trial court's judgment should prevail unless overcome by compelling evidence such as substantial virtuous traits or persistent examples of good character that portray defendant's character in positive light). In sum, Rachels has not shown that her sentence is inappropriate in light of the nature of the offense and her character.

Conclusion

[19] Based on the foregoing, we conclude there was sufficient evidence to support Rachels' conviction of invasion of privacy, and her sentence was not inappropriate in light of the nature of the offense and her character.

[20] Affirmed.

Mathias, J., and Kenworthy, J., concur.

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