MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ezekhia R. Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 13, 2023

Court of Appeals Case No.
22A-CR-1958

Appeal from the
Marion Superior Court

The Honorable
Mark D. Stoner, Judge
The Honorable
Jeffrey L. Marchal, Magistrate

Trial Court Cause No.
49D32-2103-F1-7546

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Ezekhia R. Brown ("Brown") was convicted of Level 1 felony rape with a deadly weapon,[1] Level 6 felony kidnapping,[2] and Level 6 felony auto theft.[3] The trial court sentenced Brown to an aggregate sentence of thirty years executed. Brown claims that his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] On the evening of February 27, 2021, M.S. parked her car on a side street, retrieved a box from the car, locked the car, and walked towards her friend's apartment building. There was a couple walking ahead of M.S. when Brown emerged from the bushes and began walking towards M.S. Brown then pointed a gun at M.S. and ordered her to turn around and return to her car. Brown followed M.S. to her car and told her to place the box she was holding into her car. While pointing the gun at M.S., Brown told M.S. to walk down the street. M.S. complied with all of Brown's demands. Brown directed M.S. to an isolated area behind a shed then demanded that M.S. take off her clothes while he was pointing the gun at her. Brown then made M.S. turn around and put her hands on the shed. He pulled her pants down and raped her. While raping M.S., Brown forced her to call him "Daddy." Tr. Vol. II p. 54. When Brown finished raping M.S., he "ejaculated on the ground[,]" and told M.S. to "hurry

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[1] Ind. Code § 35-42-4-1(a)(1).

[2] I.C. § 35-42-3-2(a).

[3] I.C. § 35-43-4-2(a).

up and put [her] clothes back on." *Id.* M.S. complied. M.S. tried to make conversation with Brown and asked him why he raped her. Brown told M.S. that he initially planned to rob the couple walking in front of her but changed his mind when he saw M.S. because "he wanted to know what it was like [to rape someone]." *Id.* at 55. Brown ordered M.S. to walk back to her car and told her not to tell anybody about what happened because he remembered faces. Brown left with M.S.'s car.

[3] M.S. went inside her friend's apartment, told one friend about the rape, and called the police. The police took M.S.'s statement, and the medics took M.S. to the hospital where she was examined. Later that evening, M.S.'s car was found abandoned, and Brown's fingerprints were found on the driver's side door. Additionally, Brown's DNA was found on M.S.'s bodysuit and on swabs from M.S.'s genitals. M.S. identified Brown in a photo array. Brown was arrested.

[4] On March 12, 2021, the State charged Brown with: Count 1, rape as a Level 1 felony; Count 2, kidnapping as a Level 3 felony; Count 3, auto theft as a Level 6 felony; and Count 4, pointing a firearm as a Class A misdemeanor. The State dismissed Count 4 prior to trial. Defendant waived jury trial and on June 29, 2022, a bench trial was held. Brown was found guilty of Counts 1, 2,[4] and 3. The trial court imposed a thirty-year sentence executed for Count 1, a one-year

[4] In compliance with the constitutional prohibition against double jeopardy, the trial court reduced Count 2 from a Level 3 felony to a Level 6 felony.

sentence executed for Count 2, and a one-year sentence executed for Count 3. The trial court ordered that Brown serve the three sentences concurrently, resulting in an aggregate sentence of thirty years executed. Brown now appeals his sentence.

Discussion and Decision

[5] 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." 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 this 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)).

[6] Brown contends that the nature of his offense did not warrant his sentence. When considering the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). Indiana Code section 35-50-2-7(b) provides: "a

person who commits a Level 1 felony . . . shall be imprisoned for a fixed term of between twenty (20) and forty (40) years, with the advisory sentence being thirty (30) years." The trial court, therefore, imposed the advisory thirty-year sentence.

[7] Brown asserts that his sentence should have been less than the advisory because his "offense was not significantly more egregious or damaging than other acts which fit the statutory definition of rape with a deadly weapon[.]" Appellant's Br. p. 9. We disagree. This was a violent attack perpetrated on a stranger in the dark of night. Brown victimized M.S. outdoors, behind a shed. Brown told M.S. he intended to rob the couple walking in front of her but changed his mind when he saw M.S. because "he wanted to know what is was like [to rape someone]." Tr. Vol. II. p. 55. After raping M.S., Brown threatened her to not report the rape, stating that he "remember[s] faces." *Id.* The nature of the offense was both egregious and damaging. Brown has failed to portray the nature of his offense in a positive light—"accompanied by restraint, regard, or lack of brutality"—such that a below-advisory sentence is appropriate. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[8] Despite acknowledging that "M.S. testified that the rape had a profound effect on her mental health and sense of safety[,]" Brown argues that "there is no evidence that [M.S.'s] trauma was more serious than what is typically experienced by a victim of rape with a deadly weapon." Appellant's Br. p. 9. We refuse to make light of the effect that Brown's appalling and damaging actions had on M.S. M.S. testified that the rape affected her "tremendously"

because she felt "unsafe even leaving [her] home to go to work or just to run an errand or go get food" to the point where she had to have someone on the phone with her "or [she] physically could not step out of the door." Tr. Vol. II p. 123. M.S. had to sleep in the same bedroom as her roommate because she could no longer sleep alone, and M.S. was almost removed from her esthetics program due to her "missing so many days of class because [she] could not pull [herself] out of bed." *Id.* M.S. was suicidal to the point where "[she] would literally lay in bed and just think about how [she] can do it and how things would be a lot easier." *Id.* at 123–24. Brown's actions were not only egregious, but also damaging, and he has not shown that his advisory sentence was inappropriate.

[9] Brown also contends that his character makes the sentence inappropriate. When considering the character of the offender, one relevant fact is the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The significance of the criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* We note that Brown did not graduate high school because he did not acquire the requisite credits due "to his multiple stays in the Juvenile Detention Center and Residential Placement Facilities." Appellant's App. Vol. II p. 77. Furthermore, although Brown was only eighteen at the time he committed the instant offense, he has an extensive juvenile history. Brown's first involvement with the juvenile system occurred when he was arrested at the age of fourteen, and he was arrested at least eight more times after his first arrest. At the age of

seventeen, Brown had his first juvenile adjudication. Between June 2019 and October 2020, Brown's criminal history escalated, and he was adjudicated a juvenile delinquent for the following: (1) intimidation—threaten in retaliation for a prior lawful act; (2) auto theft; (3) escape—knowingly or intentionally violate a home detention order or intent[5]; and (4) resisting law enforcement—knowing or intentionally flees from law enforcement.[6] During that time period, Brown violated his probation at least six times. Continuing to commit crimes after frequent contacts with the judicial system is a poor reflection on Brown's character. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007); *see also Connor v. State*, 58 N.E.3d 215, 221 (Ind. Ct. App. 2016) (continued crimes indicate a failure to take full responsibility for one's actions).

[10] Brown asserts that his "intellectual disability, ADHD, conduct disorder, reactive attachment disorder, marijuana use disorder, and troubled childhood all contributed to the instant offense and his past criminal activity." Appellant's Br. pp. 12–13. However, Brown does not provide any evidence that demonstrates that those conditions obviated his criminal intent or otherwise had a profound effect on the instant offense and his past criminal acts. Brown then asks us to reconsider the current law—outlined in *Steinberg*—that for mental health to be a mitigating factor, there must be a nexus between defendant's mental health and the crime. *Steinberg v. State*, 941 N.E.2d 515, 534

[5] Brown was adjudicated a juvenile delinquent for escape in January and again in July of 2020.

[6] Brown turned eighteen years old two months prior to raping M.S.

(Ind. Ct. App. 2011). We decline to do so here. The trial court found Brown's age, substance abuse issues and mental health issues as mitigating. Those factors were so mitigating that the trial court found them "of equal weight" when weighed against Brown's juvenile criminal history, the nature and circumstances of the instant offense, and those same mitigating factors led the trial court "right back to the advisory sentence that the general assembly [ ] instructed [it] to look at." Tr. Vol. II. p. 144. Brown has failed to demonstrate any redeeming character that was not already considered as mitigating by the trial court. Brown's advisory sentence is not inappropriate in light of his character. *See Bryant v. State*, 984 N.E.2d 240, 253 (Ind. Ct. App. 2013) (the defendant's sentence was not inappropriate "in light of the vicious nature of the crime and [his] demonstrated unwillingness to reform").

[11] Based on the foregoing, we conclude that Brown's sentence is not inappropriate in light of the nature of the offense and his character.

[12] Affirmed.

Vaidik, J., and Tavitas, J., concur.