

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Cara Schaefer Wieneke
Brooklyn, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano-Colon
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Derrick Rodgers, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 5, 2021

Court of Appeals Case No.
20A-CR-1919

Appeal from the Vigo Superior
Court

The Honorable Sarah K. Mullican,
Judge

Trial Court Cause No.
84D03-1905-F3-1875

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Derrick Rodgers, Jr. (Rodgers), appeals the trial court's imposition of his sentence following his plea agreement to battery by means of a deadly weapon, a Level 5 felony, Ind. Code § 35-42-2-1.

[2] We affirm.

ISSUE

[3] Rodgers presents one issue for our review, which we restate as follows: Whether Rodgers' sentence is inappropriate based on the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] On May 22, 2019, Rodgers, who was homeless, was spending time at a homeless camp with his girlfriend, Jessica Maryon (Maryon). Maryon was "messaging around" with Michael Brown (Brown) and the two entered a tent at the campsite. (Appellant's App. Vol. II, p. 17). Rodgers was "pissed off mad." (Appellant's App. Vol. II, p. 17). Rodgers confronted Brown, asking, "You fucking around with my old lady or something like that." (Appellant's App. Vol. II, p. 18). Rodgers then battered Brown and Maryon with an axe. Brown incurred "four lacerations on his arm and one on his right shoulder." (Appellant's App. Vol. II, p. 17). Maryon received a blow to the head and a laceration on the back left side of her head. Following the assault, Rodgers left the campsite.

[5] During their interviews with law enforcement, both Brown and Maryon were questioned about their attacker. Brown was shown a photo array of six different individuals, out of which he identified Rodgers. Although Maryon initially refused to disclose the name of her assailant because she “love[d] him,” she informed law enforcement that Rodgers was her boyfriend and “moved her head in an up and down motion, indicating ‘Yes[.]’” when asked if Rodgers had caused her injury. (Appellant’s App. Vol. II, p. 17).

[6] On May 24, 2019, the State filed an Information, charging Rodgers with Counts I-II, aggravated battery, Level 3 felonies; Counts III-IV, domestic battery by means of a deadly weapon, Level 5 felonies; and Count V, battery by means of a deadly weapon, a Level 5 felony. On July 27, 2020, Rodgers plead guilty to battery by means of a deadly weapon, a Level 5 felony, in exchange for the dismissal of the remaining charges. A judgment of conviction was entered accordingly. On September 21, 2020, the trial court sentenced Rodgers to a term of six years, with five years executed at the Department of Correction and one year suspended to probation.

[7] Rodgers now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[8] Rodgers contends that his six-year sentence with five years executed and one year suspended to probation is inappropriate and requests us to revise his sentence under Indiana Appellate Rule 7(B) by considering placement in a residential treatment facility. Appellate Rule 7(B) provides that an appellate

court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentence is inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

Rodgers plead guilty to a Level 5 felony, battery by means of a deadly weapon. A person who commits a Level 5 felony shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three years. *See* I.C. § 35-50-2-6. Here, while the trial court imposed the maximum of six-years allowed under the statute, the court suspended one year of the sentence to probation.

[9] With respect to the nature of the offense, we note that Rodgers assaulted his girlfriend and Brown at a homeless camp. Rodgers had become angered because Maryon was “messaging around” with Brown and he struck them both with an axe. (Appellant’s App. Vol. II, p. 17). His assault was unprovoked and violent. In his appellate brief, Rodgers “does not dispute that his actions were violent and could have led to the victim being seriously injured or even killed.” (Appellant’s Br. p. 8).

[10] Turning to Rodgers' character, we note his lengthy criminal history. A criminal history is a relevant fact "[w]hen considering the character of the offender." *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2017). "The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id.* Rodgers' criminal history includes convictions for theft, a Class D felony in 2003; possession of marijuana, a Class A misdemeanor in 2004; robbery, as a Class B felony in 2007 and 2010; domestic battery, as a Class A misdemeanor in 2018; three Counts of fraud, as Level 6 felonies in 2018; battery against a public safety official, a Level 6 felony in 2018; and theft, as a Level 6 felony in 2019. In the past, Rodgers has "been sentenced to [the] Indiana Department of Correction, formal probation, and Adult and Mental Health Court deferral program." (Appellant's App. Vol. II, p. 88). In 2010, he violated the terms of the Adult Mental Health Deferral Agreement. His behavior while attending the program was described as "okay initially and then . . . he kind of quit following everything." (Transcript Vol. II, p. 22).

[11] At the time of sentencing in his current cause, Rodgers had multiple charges pending. In September 2018, Rodgers was charged with public intoxication, as a Class B misdemeanor, and resisting law enforcement, as a Class A misdemeanor. A month later, in October 2018, Rodgers was charged with intimidation, a Level 6 felony. Approximately a year later, in April 2019, Rodgers was charged with criminal trespass, a Class A misdemeanor.

[12] In addition to his criminal history and pending charges, Rodgers “reported abuse of methamphetamine and marijuana.” (Appellant’s App. Vol. II, p. 91). Though it was recommended that Rodgers participate in treatment for drug and alcohol issues, Rodgers never stopped abusing either. Rodgers has also been diagnosed with bipolar disorder and schizoaffective disorder. The record reflects that at the time of his arrest, he was not consistently taking his medication and was abusing illegal drugs. When he used illegal drugs “on top of” his prescribed medications, “that makes everything worse.” (Tr. Vol. II, p. 19). Although Rodgers was aware of his mental health diagnosis, he did not consistently participate in treatment. His case manager “always complained about [Rodgers] never following through with anything” and the case manager would go “around town . . . trying to find him.” (Tr. Vol. II, p. 23). Rodgers had periods of compliance with his treatment plan, followed by long periods of noncompliance where he would not take his medication. Prior to the assault, Rodgers was “using drugs and he was skipping out on his meds.” (Tr. Vol. II, p. 29). No evidence was presented that his medical condition played any role in the current offense. *See Corrales v. State*, 815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004) (“[I]n order for a [defendant’s] mental health to provide a basis for establishing a mitigating factor, there must be a nexus between the defendant’s mental health and the crime in question.”).

[13] To the extent that Rodgers now claims that “[p]lacement in a residential facility, as opposed to prison, would serve to protect society while rehabilitating” him, the argument is unavailing. (Appellant’s Br. p. 8). The

question under Indiana Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). Based on the evidence before us, we affirm the trial court's imposition of Rodgers' sentence as he failed to carry his burden of persuading this court that his sentence is inappropriate in light of the nature of the offense and his character.

CONCLUSION

[14] Based on the foregoing, we hold that Rodgers' sentence was not inappropriate in light of the nature of the offense and his character.

[15] Affirmed.

[16] Najam, J. and Crone, J. concur