MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James D. Wooten, II,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 30. 2023

Court of Appeals Case No. 22A-CR-2306

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-2204-F5-1798

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

[1] James D. Wooten, II, appeals the three-year executed sentence that was imposed following his conviction for intimidation, a Level 5 felony. Wooten argues that the sentence is inappropriate when considering the nature of the offense and his character in accordance with Ind. Appellate Rule 7(B). Wooten further alleges that the fully executed sentence in the Indiana Department of Correction (the DOC) was inappropriate because he required mental health treatment and the DOC was not the proper location for him to receive such evaluation and treatment.

[2] We affirm.

Facts and Procedural History

[3] On April 4, 2022, Adrian Jenkins was riding his bike on a trail near a bridge in Columbus. At some point, Jenkins dropped a bottle of lotion and stopped to pick it up. Wooten, who was sleeping under the bridge, woke up and approached Jenkins. Wooten told Jenkins to "get out of here [because it was his] area." *Appendix Vol. II* at 13. Wooten also threatened to kill "[Jenkins's] black ass." *Id.* Wooten then ran across the trail, walked to the base of the bridge, and returned to the scene with a knife. He again approached Jenkins and continued to make "racial remarks and threats." *Id.* As Wooten raised the knife in a "ready position," Jenkins rode away on his bike and called police. *Id.*

[4] Jenkins met the police officers near the scene and told them that Wooten claimed to be associated with the Aryan Brotherhood, a neo-Nazi white supremacist prison gang, and was not permitted to have a black male near him. Jenkins also informed the officers that Wooten called him a "n****r" and that Wooten could not talk "without losing [his] train of thought." *Id.* at 14. Two days later, the police apprehended Wooten and found a knife in his possession that Jenkins subsequently identified as the weapon that Wooten had used to threaten him.

[5] Wooten was charged with intimidation, a Level 5 felony, and on August 15, 2022, Wooten entered into a plea agreement for the charged offense with open sentencing. A presentence investigation report (PSI) was ordered, which reflected that Wooten had juvenile adjudications for battery and possession of marijuana, three prior felony convictions, and eight misdemeanor convictions, including one for intimidation. The PSI further showed that Wooten had violated his probation on two occasions.

[6] Wooten stated to the interviewing probation officer during the preparation of the PSI that he was under the influence of methamphetamine when he committed the charged offense and that he had threatened Jenkins to protect his property. Wooten reported that he had been diagnosed with schizophrenia and had stopped using prescribed medication because others had been stealing his drugs. Wooten admitted that he had used marijuana, oxycontin, methamphetamine, and heroin in the past and that he had undergone substance

abuse treatment on two prior occasions. The PSI rated Wooten as a high risk to reoffend.

[7] At the September 20, 2022 sentencing hearing, the trial court identified Wooten's criminal history, prior probation violations, and the nature and circumstances of the offense, as aggravating factors. Wooten's decision to plead guilty and his mental health issues were found to be mitigating circumstances. The trial court then imposed the advisory sentence of three years to be executed at the DOC and ordered that Wooten undergo mental health evaluation and treatment during his incarceration.

[8] Wooten now appeals.

Discussion and Decision

I. Nature of the Offense and Character of the Offender

[9] Wooten argues that the three-year executed sentence is inappropriate when considering the nature of the offense and his character pursuant to App. R. 7(B). Wooten claims that a fully executed sentence was not warranted because "of the two mitigating circumstances" that the trial court identified at sentencing. *Appellant's Brief* at 8.

[10] Whether a sentence is inappropriate 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. *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The defendant has the burden of persuading us that the

sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). More particularly, the defendant must show that his sentence is inappropriate with "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).

[11] In 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. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). A defendant bears a particularly heavy burden of persuading this court that his sentence is inappropriate when the trial court imposes the advisory sentence. *Fernbach v. State,* 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied.* We are unlikely to consider an advisory sentence inappropriate. *Shelby v. State,* 986 N.E.2d 345, 371 (Ind. Ct. App. 2013), *trans. denied.*

[12] Wooten was convicted of intimidation, a Level 5 felony, and Ind. Code § 35-50-2-6 sets forth a minimum sentence of one year, a six-year maximum sentence, and an advisory sentence of three years. The trial court ordered Wooten to serve the fully executed advisory sentence at the DOC.

[13] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant's participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, the evidence showed that Wooten, under the influence of methamphetamine, brandished a knife and

threatened Jenkins because he irrationally feared that Jenkins might steal some of his property. Wooten uttered racial slurs at Jenkins and claimed to be affiliated with a white supremacist group. We observe that a racial motivation for committing a crime renders the nature of the offense more heinous and is a valid aggravating factor. *Witmer v. State,* 800 N.E.2d 571, 573 (Ind. 2003). In short, Wooten has failed to paint a picture of his offense in a positive light.

[14] Turning to Wooten's character, we note that "character is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. When assessing the character of an offender, one relevant factor is the offender's criminal history. *Denham v. State,* 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied.* The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Rutherford v. State,* 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Even a minor criminal history is a poor reflection of a defendant's character. *Prince v. State,* 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020).

[15] Wooten had two prior juvenile adjudications, three prior felony convictions, and eight misdemeanor convictions including one for intimidation—the same offense he committed in this instance. Wooten had also violated his probation on two prior occasions.

[16] The record also shows that Wooten had been given multiple opportunities to obtain substance abuse and mental health treatment. Wooten, however, ceased going to the doctor, stopped using his medications, and continued to commit crimes and abuse illegal substances. Indeed, Wooten admitted that he was using methamphetamine when he committed the instant offense. Clearly, Wooten has not been leading a law-abiding life and has not been deterred from engaging in criminal conduct. All these factors reflect poorly on Wooten's character. *See, e.g., Kovats v. State,* 982 N.E.2d 409, 417 (Ind. Ct. App. 2013) (observing that the defendant did not possess a "stellar character" considering her criminal history and multiple probation violations); *see also Romey v. State,* 872 N.E.2d 192, 207 (Ind. Ct. App. 2007) (assessing defendant's character and noting that he had used illegal drugs throughout his life), *trans. denied.* In short, Wooten's character does not justify a revision of his sentence.

II. Placement in the DOC

[17] Finally, Wooten maintains that his placement in the DOC to serve his entire sentence is inappropriate. Wooten claims that the trial court should have suspended a portion of the sentence so he could "be evaluated and receive treatment for his mental health." *Appellant's Brief* at 8, 12.

[18] Our Supreme Court has determined that the "location where a sentence is to be served is an appropriate focus for application of our review and revise authority." *Biddinger v. State,* 868 N.E.2d 407, 414 (Ind. 2007); *see also King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). A defendant has no right to a

suspended sentence, as the suspension of a sentence is a matter of grace and a judicial favor to a defendant. *Turner v. State*, 878 N.E.2d 286, 296 (Ind. Ct. App. 2007), *trans. denied*. Trial courts are in the best position to know the availability and feasibility of alternative placements and treatment options, and "a defendant challenging the placement of a sentence must convince us that the given placement is itself inappropriate," not that another placement would have been more appropriate. *Fonner v. State,* 876 N.E.2d 340, 344 (Ind. Ct. App. 2007); *King,* 894 N.E.2d at 267. It is quite difficult for a defendant to prevail on a claim that the placement of his sentence is inappropriate. *Fonner,* 876 N.E.2d at 343.

[19] At the sentencing hearing, the parties and the trial court recognized that Wooten was suffering from mental health disorders. The trial court acknowledged those issues and identified Wooten's mental health condition as a mitigating factor. The trial court also ordered Wooten to undergo mental health treatment while incarcerated, noting that the DOC has "some of the best mental health treatment[s] in our justice system right now." *Transcript* at 8.

[20] While Wooten alleges that a portion of his executed sentence should be suspended so he can receive mental health treatment outside the DOC, he fails to specify the type of treatment that he needs. Moreover, Wooten does not allege that placement in the DOC would render his mental health treatment unsuccessful or impractical. In short, Wooten has failed to persuade us that the order to serve his executed three-year sentence in the DOC is inappropriate based on his character and the nature of the offense he committed.

[21] Judgment affirmed.

Riley, J. and Pyle, J., concur.