

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Tyree Q. Barfield
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Mark S. Lea,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 24, 2023

Court of Appeals Case No.
23A-CR-78

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2207-F5-255

Memorandum Decision by Judge Bradford
Judges Riley and Weissmann concur.

Bradford, Judge.

Case Summary

- [1] In April of 2022, Mark Lea was incarcerated in the Allen County Jail when he became angry after being instructed to return to his cell. When Lea returned to his cell, he kicked the door repeatedly and told a confinement officer that he was going to kill himself, requiring the officer to restrain him for his own protection. When the officer opened the cell door and attempted to do this, Lea forcibly resisted, resulting in the officer being knocked to the ground and hitting his head, which required a visit to the hospital. The State charged Lea with Level 5 felony battery resulting in bodily injury to a public safety official. After Lea was found guilty as charged, the trial court sentenced him to five years of incarceration. Lea contends that his sentence is inappropriately harsh. Because we disagree, we affirm.

Facts and Procedural History

- [2] On April 28, 2022, Officer Shane Zakhi was working as a confinement officer through the Allen County Sheriff's Department and conducting his normal duties at the Allen County jail. At 8:00 p.m., Officer Zakhi instructed all inmates to return to their cells for the night. Officer Zakhi repeated this verbal command a second time when the inmates did not return to their cells. After this second command, Lea was still using one of the telephones, and, when Officer Zakhi approached him and instructed him to return to his cell, he "aggressively slammed" the telephone against the wall and walked back to his cell while using profanity. Tr. Vol. II p. 117. When Officer Zakhi told Lea that

he was going to be locked down for forty-eight hours for refusing to obey instructions, he became “argumentative and irate[.]” Tr. Vol. II p. 119.

[3] Officer Zakhi resumed his duties but returned when he heard Lea kicking his cell door. Lea was still argumentative, so Officer Zakhi started to walk away. Lea told Officer Zakhi that he was “gonna kill himself[.]” which required Officer Zakhi to immediately secure Lea to prevent him from harming himself. Tr. Vol. II p. 121. When Officer Zakhi approached Lea’s cell to secure him, Lea told him, “now you have to open my door.” Tr. Vol. II p. 122. Officer Zakhi opened the door and instructed Lea to put his hands behind his back, but Lea refused. Officer Zakhi attempted to secure Lea by placing two open hands on him. Officer Zakhi told Lea to turn around and place his hands behind his back, but Lea got into a “fighter’s stance,” with splayed feet and tensed muscles, to avoid being handcuffed. Tr. Vol. II p. 124.

[4] Officer Zakhi removed Lea from his cell and attempted to secure him against a nearby pillar. Because Lea was still resisting, Officer Zakhi put both arms around Lea in an attempt to safely bring him to the ground. Officer Zakhi slipped and fell while trying to secure Lea but stood back up. Lea became “more aggressive[.]” hooked his arm underneath Officer Zakhi’s arm, pushed him against the wall, and knocked him to the ground. Tr. Vol. II p. 126. Officer Zakhi hit the back of his head on the concrete floor, “became dazed and dizzied[.]” and was taken to a hospital. Tr. Vol. II pp. 126–27.

[5] On July 21, 2022, the State charged Lea with, and he was subsequently found guilty of, Level 5 felony battery resulting in bodily injury to a public safety

official. At sentencing, the trial court identified Lea's failed efforts at rehabilitation and criminal record as aggravating circumstances. The trial court did not identify any mitigating factors and sentenced Lea to five years of incarceration.

Discussion and Decision

[6] Lea contends that his five-year sentence is inappropriately harsh. "The 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." Ind. Appellate Rule 7(B). A reviewing court will give "substantial deference" and "due consideration to the trial court's decision." *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Whether the reviewing court regards a sentence as inappropriate turns on a "sense of the culpability of the defendant, the severity of the crime[s], 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). "The principal role of appellate review should be to attempt to leaven the outliers" and not to achieve a perceived "correct" result. *Id.* at 1225. The defendant bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). To carry this burden, Lea must provide "compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and [his] character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015); *Reid v. State*,

876 N.E.2d 1114, 1116 (Ind. 2007). Lea was convicted of a Level 5 felony, which has a sentencing range of between one and six years with an advisory of three. Ind. Code § 35-50-2-6(b).

[7] We conclude that neither the nature of Lea’s offense nor his character warrant a revision of his sentence. “The nature of the offense is found in the details and circumstances surrounding the offense and the defendant’s participation therein.” *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. It seems to us that Lea’s offense was marginally more egregious than typical offenses of its kind. When Officer Zakhi attempted to secure Lea, he repeatedly refused to cooperate and forcibly resisted. Lea assumed a “fighter’s stance” and drove Officer Zakhi into the wall, causing Officer Zakhi to hit his head on the concrete floor and sending him to the hospital. Tr. Vol. II p. 124. Lea’s actions prior to the battery also reveal that he had deliberately engineered the confrontation. Lea kicked his cell door, told Officer Zakhi that he was going to kill himself to force him to open the door, stood in the doorway of his cell, and tensed his muscles so that he could not be handcuffed. Lea’s antagonization and deliberate engagement of Officer Zakhi renders his implication that the two fell accidentally dubious, to say the least. Finally, Lea committed the battery while housed in a facility where individuals who have committed crimes are placed so that they will not commit more. The nature of Lea’s offense does not render his sentence inappropriate.

[8] Lea’s character also does not warrant a sentence reduction. “A defendant’s life and conduct are illustrative of his or her character.” *Morris*, 114 N.E.3d at 539.

Lea's willingness to attack a correctional officer while in jail demonstrates that he is unable or unwilling to control his temper or modify his violent impulses even in a strictly-controlled environment. Additionally, a defendant's criminal history is reflective of his character, *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007), and Lea's record consists mostly of crimes similar to the instant one. Lea has three prior misdemeanor convictions, including resisting law enforcement and battery resulting in bodily injury, as well as two felony convictions for resisting law enforcement using a vehicle and burglary.

[9] Lea contends that he needs additional rehabilitative services outside the confines of a prison cell, but he has been given many chances to receive rehabilitative services in the past and has squandered them. Lea participated in substance-abuse treatment through Allen County Community Corrections in 2016. In 2020, Lea was ordered to attend an Alcohol Countermeasures Program. After Lea was convicted of burglary, he was sentenced to four years of probation and ordered to complete the Reentry Court Program. Approximately one month after he had started the program, Lea was terminated and referred to probation. Lea subsequently violated the terms of his probation, and his probation was revoked. Lea was later placed in the Community Transition Program, and, approximately two months later, he violated his placement in *that* program. Lea's failure to conform his behavior to the norms of society when shown lenience in the past also reflects poorly on his character.

[10] Moreover, at the time of sentencing, Lea had charges pending for resisting law enforcement, possession of a narcotic drug, leaving the scene of an accident, possession of marijuana, and operating a motor vehicle without a license. Finally, Lea has expressed a lack of acceptance of responsibility, stating in his presentence interview that he “did not do anything to [Officer Zakhi.]” Appellant’s App. Vol. II p. 90. Lea also claimed that he “would have complied if [he] would have known [Officer Zakhi] was going to get physical with [him.]” Appellant’s App. Vol. II p. 90. Due to the seriousness of Lea’s offense, his record of similar offenses, his repeated failure to take advantage of less-restrictive alternatives to incarceration, and his lack of acceptance of responsibility, Lea has failed to persuade us that the nature of his offense and his character justify a more lenient sentence.

[11] We affirm the judgment of the trial court.

Riley, J., and Weissmann, J., concur.