MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

John H. Gonzalez,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 7, 2022

Court of Appeals Case No. 21A-CR-2271

Appeal from the Putnam Superior Court

The Honorable Charles D. Bridges, Judge

Trial Court Cause No. 67D01-2002-MR-000165

May, Judge.

[1] John H. Gonzalez appeals following his convictions of murder,[1] Level 6 felony automobile theft,[2] and Level 6 felony firearm theft,[3] and the finding that he is a habitual offender.[4] He raises three issues for our review, which we revise and restate as:

> 1. Whether the trial court abused its discretion in denying Gonzalez's motion for change of venue;
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> 2. Whether the trial court abused its discretion by relying on inappropriate aggravating factors in imposing sentence; and
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> 3. Whether Gonzalez's sentence is inappropriate in light of the nature of his offenses and his character.

We affirm.

Facts and Procedural History

[2] Gonzalez and Lisa Attkisson[5] were involved in a romantic relationship and lived together at Attkisson's house on Berry Street in Greencastle, Indiana. In

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[1] Ind. Code § 35-42-1-1.

[2] Ind. Code § 35-43-4-2.

[3] Ind. Code § 35-43-4-2.

[4] Ind. Code § 35-50-2-8.

[5] The record is unclear regarding the correct spelling of the victim's surname. In their appellate briefs, both Gonzalez and the State spell the victim's surname "Atkisson." (*See* Appellant's Br. at 6 & Appellee's Br. at

early January 2020, Attkisson told Gonzalez to move out. Gonzalez was angry about being asked to leave the house, and he called Attkisson a "bitch" while moving out. (Tr. Vol. II at 247.) Gonzalez and Attkisson continued to communicate even after Gonzalez moved out, and Gonzalez would still visit Attkisson at her house. However, during this period, the relationship was volatile, with Gonzalez periodically screaming at Attkisson, calling her derogatory names, and threatening to make Attkisson's life "a living hell." (Tr. Vol. III at 119.) Gonzalez stayed at Attkisson's house overnight from January 24, to January 25, 2020. In the late morning of January 25, 2020, Gonzalez shot Attkisson and then used a wooden plank to hit her over the head, fracturing her skull.

[3] During the afternoon of January 25, 2020, Gonzalez visited Gregory Harris, an acquaintance of both Gonzalez and Attkisson, at Harris's house in Cloverdale. Harris observed Gonzalez driving Attkisson's vehicle, a black Ford Escape, and described Gonzalez as acting "in a hurry and fidgety." (Tr. Vol. II at 244.) Gonzalez offered to sell Harris an iPhone, but Harris declined. Also on January 25, 2020, Gonzalez met up with Dabryn Tanner, another romantic partner, in Brazil, Indiana, and the couple spent the next several days driving through Indiana, Illinois, and Missouri. During this time, Gonzalez sold a gun to one of his friends, and Tanner accompanied Gonzalez as he sold an iPhone

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6.) However, the trial transcript and the charging information spell the victim's surname "Attkisson." (*See* Tr. Vol. II at 31 & App. Vol. II at 24.) We adopt the spelling used in the trial transcript.

at a Wal-Mart kiosk in Terre Haute. Tanner believed Gonzalez sold these items so they would have more money to purchase drugs.

[4] One of Attkisson's adult sons, Devan Attkisson, regularly communicated with Attkisson. In late January 2020, Devan noticed his mother stopped answering his texts and phone calls. Devan also noticed his mother's car was not in the driveway when he drove by her house, and on January 28, 2020, he visited her house after his work shift ended. The door was locked, and the lights were turned off, so Devan crawled through a window to enter the house. He immediately noticed the house was cold and the air conditioner was running even though it was the middle of winter. Devan then found Attkisson's body lying on the bedroom floor, and Devan's girlfriend, who had accompanied him to the house, called 911. After looking around the house, Devan also noticed his mother's pink, 9-millimeter handgun was missing. Attkisson had a large gash on the top of her head, and she had been shot in the abdomen. A bloody piece of wood was on the floor near her body, and there was blood spatter on the walls. After an autopsy, the forensic pathologist listed Attkisson's cause of death as blunt force trauma to the head.

[5] In the course of their investigation, law enforcement located the iPhone Gonzalez sold at the kiosk and obtained a warrant to search the contents of the phone. The phone included several photographs taken around 11:30 a.m. on January 25, 2020, of Attkisson lying on the floor, covered in blood. The phone also had a three-minute video showing Attkisson as she lay dying. Moreover, the data on the phone revealed that during the early morning hours of January

25, 2020, Gonzalez had watched several YouTube videos showing how to fire the type of handgun Attkisson owned, and he read articles online related to how to load and unload that type of handgun. Gonzalez also searched: "How Loud is a CPX gun?" and "CPX Gun Shot Sound and Distance." (Tr. Vol. III at 156-57.) The phone data also revealed Gonzalez had searched "Putnam County, Indiana January 2020 death news" and "News Greencastle, Indiana" around 4:00 p.m. on the afternoon of January 27, 2020. (*Id*. at 158.)

[6] Gonzalez used Attkisson's credit cards to make purchases throughout his multi-day excursion with Tanner, and the police found Gonzalez in a small town near the Illinois-Iowa border by tracking the card's activity. Officers encountered Gonzalez as he was walking near Attkisson's car and arrested him. Gonzalez was wearing bloodstained sneakers at the time of his arrest, and subsequent DNA analysis revealed the presence of Attkisson's DNA on the shoes. In the vehicle, police found an instruction manual for the type of gun Attkisson owned, Attkisson's driver's license, a bill of sale for the vehicle listing Attkisson as the purchaser, and Attkisson's passport.

[7] On February 5, 2020, the State charged Gonzalez with murder, Level 6 felony automobile theft, and Level 6 felony theft of a firearm. The State also filed an information alleging Gonzalez was a habitual offender. On February 13, 2020, the State charged Gonzalez with Level 4 felony unlawful possession of a

firearm by a serious violent felon[6] and Level 5 felony carrying a handgun without a license,[7] but the State dismissed those two charges before trial.

[8] On February 5, 2021, Gonzalez filed a verified motion for change of venue. Gonzalez asserted:

> 2. That this is a high profile case and there has been an extensive amount of media coverage regarding these allegations in the Wabash Valley area, both in print and television media, and counsel is concerned that said coverage has contributed to an environment wherein Defendant's rights to a fair trial and his presumption of innocence have been removed.
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> 5. That there have been extensive assumptions of guilt made by members of the local community, including commentary from law enforcement officers and jailers, which is documented on social media and by the Defendant.

(App. Vol. II at 237.) The trial court denied the motion for change of venue on March 10, 2021, but the trial court reconsidered and set the motion for hearing on June 16, 2021. Jared Jernagan, editor of Banner-Graphic, a newspaper serving the Greencastle, Indiana, area, testified regarding the newspaper's coverage of Attkisson's murder. Jernagan testified the Banner-Graphic has a circulation of approximately 10,000 papers a week, and the newspaper

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[6] Ind. Code § 35-47-4-5(c).

[7] Ind. Code § 35-47-2-1.

published several articles reporting on Attkisson's murder. One of these articles, published on February 7, 2020, mentioned Gonzalez was found in possession of several of Attkisson's belongings and had previously been incarcerated in the Indiana Department of Correction. A second article, published February 8, 2020, bore the headline, "Accused murderer has history of violent crime[.]" (Tr. Vol. V at 21.) This article reported Gonzalez had been charged with Class B felony rape for sexually assaulting an Indiana State University student, but that charge was dismissed when Gonzalez pled guilty to Class D felony sexual battery. The article also detailed several of Gonzalez's other encounters with the criminal justice system, including robbery and battery convictions. Regarding its coverage of Attkisson's murder, Jernagan testified the newspaper is "very careful in any story of this nature to use words as alleged or things of that nature." (Tr. Vol. II at 13.)

[9] Gonzalez also presented evidence of social media websites created following Attkisson's death, including a GoFundMe page created to finance Attkisson's burial and a Facebook page titled "Justice for Lisa." (*Id*. at 19.) The State argued at the hearing that while the case had attracted pretrial publicity, the publicity was not prejudicial, and the State noted procedures outlined in case law for trial courts to follow in selecting a jury in situations where a case received pre-trial media attention. The trial court took the motion under advisement and indicated it would postpone ruling on the matter pending jury selection.

[10] The trial court held a jury trial beginning on August 6, 2021. Both the State and Gonzalez questioned the venire regarding their exposure to any media discussing Attkisson's death. In the first round of voir dire, several prospective jurors indicated they had heard about the case through articles in the Banner-Graphic, and the State asked:

> The question for this is do you think that the fact that you read a story in the paper, do you think you can be a fair juror and in a fair way listen to those facts and not make your decision based upon what you read in the newspaper story, and, secondly, follow the instructions of the Judge, because he's going to give you instructions. Does anybody believe they cannot do that? If they do, please raise their hand.

(Supp. Tr. Vol. II at 11.) Two prospective jurors raised their hands and indicated they knew Attkisson's relatives. The trial court later excused these two prospective jurors. Gonzalez asked the venire if anyone had heard about the murder through any source besides the Banner-Graphic, and an unidentified prospective juror indicated the prospective juror had heard about Attkisson's death through Facebook posts by one of Attkisson's sons. However, the prospective juror acknowledged not knowing much about the details of the case.

[11] In the second round of voir dire, both prospective juror 15 and prospective juror 21 indicated they had read articles about the case in the Banner-Graphic. Other unidentified prospective jurors also acknowledged hearing about the murder on Facebook or through the newspaper. Gonzalez asked:

> Do any of you—raise your hand if you think that you're going to have a problem being a fair juror before the State of Indiana or the defendant by being influenced by anything in the Banner-Graphic? Anybody see anything in the Banner-Graphic that you think caused you to make up your mind as to who the individual was that murdered Lisa Attkisson. It's allegations, how cases start with the filing of charges.

(*Id*. at 80.) The record does not indicate any prospective jurors raising their hand in response, and Gonzalez proceeded to question the venire regarding other topics. After the second round of voir dire, the trial court was able to seat a jury. While the trial court did not issue a formal ruling on the motion for change of venue following jury selection, the trial court retained jurisdiction and the bifurcated trial proceeded in front of a Putnam County jury. At the conclusion of the trial on the three criminal charges, the jury returned a verdict of guilty on all counts. The trial court then held a hearing regarding the habitual offender enhancement, and Gonzalez admitted the enhancement applied to him.

[12] On October 7, 2021, the trial court held a sentencing hearing. Attkisson's two sisters and Attkisson's mother testified at the sentencing hearing, and they each asked the trial court to impose a lengthy sentence. In argument to the trial court, the State pointed to Gonzalez's criminal history, including his history of offenses against women; Gonzalez's status as a probationer at the time of the offense; his lack of remorse; and the brutality of the crime. Gonzalez's counsel noted as potential mitigating factors Gonzalez's acknowledgement that he was a habitual offender and Gonzalez's educational achievement in graduating from

high school. As Gonzalez's counsel began to detail Gonzalez's troubled childhood, Gonzalez interrupted to say:

> Your Honor, if I may. He ain't got to do all this. It's, you know, the family, you know, they've told you what they expect of you, and I don't need no sympathy for my messed up childhood. So you've already got your mind made up what you're going to do, so he doesn't need to do any of this. You can just go ahead and continue with the sentencing.

(Tr. Vol. IV at 76.)

[13] The trial court then pronounced:

> Well, Mr. Gonzalez, I must admit that is the first semblance of, other than acknowledging that you are a habitual, some remote semblance of giving two hoots and a holler about anything, so I guess I appreciate that. So, first, the short list, mitigating factors. I—and I find this to be a very weak mitigating factor, but you did, in fact, acknowledge habitual offender as I said earlier. Excuse me.
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> Now the longer list, the aggravating factors. Mr. Gonzalez, I do find that you are a very high risk to reoffend. It doesn't take a Rhodes Scholar to figure that out. Simply looking at your criminal history would predict that. The nature and the circumstances of the offense as [the State] pointed out rather, disturbing to say the least.
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> Your lengthy criminal history, as I mentioned earlier, is an aggravating factor, as is premeditation. Like [the State] said, it's not an element of the crime anymore in Indiana, but it certainly is an aggravating factor, and that is evidenced, of course, by your lengthy research prior to committing the offense.

> You have violated the conditions of probation and parole. Your criminal history, in fact, includes violent criminal history, mostly against women, which is sadly telling about your character. Obviously, I'm in a position, a reduced sentence would depreciate the seriousness of the crime, and the harm, injury, or loss suffered by the victim in this case was way more than what is required. Like people do kill each other, that's a sad part of life. Very few people torture and brutally kill people for no apparent reason other than the sheer and total fun of it . . . [Gonzalez] has no idea what he's done and he doesn't care. It never has entered his mind and I doubt it ever will.

(*Id*. at 76-77.) With respect to the murder conviction, the court sentenced Gonzalez to a term of sixty-five years, and the trial court enhanced that sentence by an additional twenty years because of the habitual offender finding. The trial court also imposed a two-and-one-half year sentence for each of Gonzalez's theft convictions. The court ordered the theft sentences to be served concurrent with each other but consecutive to Gonzalez's sentence for murder. Thus, in total, the trial court sentenced Gonzalez to an aggregate term of eighty-seven-and-one-half years.

Discussion and Decision

1. Motion for Change of Venue

[14] Gonzalez argues his motion for change of venue should have been granted because prospective jurors were exposed to media coverage that detailed his inadmissible criminal history and the trial court failed to individually question

these jurors to make sure they could render an impartial verdict. Our standard of review following the denial of a motion for change of venue is well-settled:

> A trial court's denial of a motion for change of venue is reviewed for an abuse of discretion. An abuse of discretion does not occur where voir dire reveals that the seated panel was able to set aside preconceived notions of guilt and render a verdict based solely upon evidence of guilt. To show an abuse of discretion, the defendant must demonstrate the existence of two distinct elements: (1) prejudicial pretrial publicity and (2) the inability of jurors to render an impartial verdict.

Collins v. State, 826 N.E.2d 671, 675 (Ind. Ct. App. 2005) (internal citations omitted), *reh'g denied*, *trans. denied*, *cert. denied*, 546 U.S. 1108, 126 S. Ct. 1058 (2006).

[15] Initially, we address the State's argument that Gonzalez has waived his challenge to the trial court's denial of his motion for change of venue because he failed to exhaust his peremptory challenges. In *Myers v. State*, we explained:

> The Indiana Supreme Court has repeatedly held that in order to prove that an error occurred in the denial of a motion for change of venue from the county, the defendant must show that he exhausted his peremptory challenges in an effort to secure juror impartiality and also that the jury was so prejudiced against him that it was unable to render an impartial verdict in accordance with the evidence.

887 N.E.2d 170, 181 (Ind. Ct. App. 2008), *reh'g denied*, *trans. denied*. Indiana Code section 35-37-1-3(b) provides: "In prosecutions for murder, where the death penalty is not sought, and Level 1, Level 2, Level 3, Level 4, or Level 5

felonies, the defendant may challenge, peremptorily, ten (10) jurors." Gonzalez does not assert in his appellant's brief that he exhausted his peremptory challenges during jury selection, and the record of jury selection is unclear as to which jurors were excused for cause and which jurors were excused as the result of peremptory strikes made by either the State or Gonzalez. It is the appellant's burden to develop and present a complete record with respect to the issues on appeal, *Shoemaker v. Ind. State Police*, 62 N.E.3d 1242, 1245 (Ind. Ct. App. 2016), *trans. denied*, and we cannot conclude from the record presented to us that Gonzalez exhausted his peremptory challenges. Therefore, Gonzalez's challenge to the denial of his motion for change of venue is waived. *See Myers*, 887 N.E.2d at 181 (holding defendant waived challenge to denial of motion for change of venue by failing to exhaust peremptory challenges).

[16] Waiver notwithstanding, Gonzalez's challenge fails on the merits because he cannot show the jury was unable to render an impartial verdict. Both the State and Gonzalez questioned the venire regarding the prospective jurors' exposure to media coverage, and both the State and Gonzalez asked such questions while discussing the high burden of proof the State was required to meet. While the trial court did not individually question the prospective jurors regarding their exposure to media coverage, the trial court chose to retain jurisdiction after hearing and observing the prospective jurors' responses to the parties' questions.

[17] In addition, we presume jurors listen to and follow the instructions given by the trial court. *Davis v. State*, 186 N.E.3d 1203, 1212 (Ind. Ct. App. 2022) ("When the jury is properly instructed, we will presume they followed such

instructions."). The trial court instructed the jury on the presumption of innocence and explained the "presumption of innocence continues in favor of the Defendant throughout each stage of the trial, and you should fit the evidence presented into the presumption that the Defendant is innocent, if you can reasonably do so." (Tr. Vol. II at 82.) The trial court also instructed the jury that the State was required to prove Gonzalez's guilt beyond a reasonable doubt and admonished the jury to render their decision "based only on the evidence presented during this trial and the Court's instructions on the law." (*Id*. at 79.) Thus, the trial court did not abuse its discretion in denying Gonzalez's motion for change of venue because Gonzalez did not show he was tried before a jury that could not render an impartial verdict. *See Green v. State*, 753 N.E.2d 52, 57 (Ind. Ct. App. 2001) (holding trial court did not abuse discretion in denying motion for change of venue because defendant did not show seated jurors were unable to render impartial verdict), *trans. denied*.

2. Aggravating Factors at Sentencing

[18] Sentencing decisions rest within the sound discretion of the trial court, and we review such decisions for an abuse of discretion. *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019). "An abuse of discretion will be found where the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*. For example, a trial court may abuse its discretion by:

> (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating

> factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law.

Id. "In cases where the trial court has abused its discretion, we will remand for resentencing only 'if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." *Bryant v. State*, 959 N.E.2d 315, 322 (Ind. Ct. App. 2011) (quoting *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007)). Trial courts are not required to explicitly weigh aggravators against mitigators, *Anglemyer*, 868 N.E.2d at 491, and one aggravating factor may justify imposing an enhanced sentence. *Deane v. State*, 759 N.E.2d 201, 205 (Ind. 2001).

[19] Gonzalez asserts: "The trial court abused its discretion in using Gonzalez's criminal history to support three separate aggravating circumstances, particularly considering his sentence was already enhanced twenty years for being a habitual offender." (Appellant's Br. at 18.) However, the factors found by the trial court were supported by the record, and although some factors are related, each factor is distinct.

[20] Both the defendant's risk to reoffend and the defendant's criminal history are proper considerations when imposing sentence. *See Mateo v. State*, 981 N.E.2d 59, 74 (Ind. Ct. App. 2012) ("Statements regarding a defendant's risk to reoffend or failure to rehabilitate are 'derivative of criminal history, [and] are

legitimate observations about the weight to be given to facts appropriately noted by a judge' in sentencing.") (quoting *Morgan v. State*, 829 N.E.2d 12, 17 (Ind. 2005)) (brackets in *Mateo*), *trans. denied*; *see also Weaver v. State*, 189 N.E.3d 1128, 1135 (Ind. Ct. App. 2022) (holding defendant's criminal history was sufficient to justify imposing enhanced, consecutive sentences). The presentence investigation report placed Gonzalez in the "VERY HIGH" risk category to reoffend. (App. Vol. III at 88.) It noted Gonzalez "was observably indifferent and apathetic" during the presentence investigation interview and "did not indicate any remorse in his responses or with his demeanor." (*Id*.) Moreover, the report listed three previous felony convictions and several unsatisfactory discharges from probation. In addition, committing a new crime while on probation or parole is different from simply having committed a crime in the past, and the presentence investigation report noted Gonzalez was on probation in Vigo County at the time of the instant offenses. Committing a new crime while on probation or parole shows a disregard for the court's authority and a lack of commitment to rehabilitation. *See Blanche v. State*, 690 N.E.2d 709, 716 (Ind. 1998) (holding both defendant's criminal history and his recent and repeated violations of probation were valid aggravating factors).

[21] Related to his argument regarding his criminal history, Gonzalez contends the trial court "abused its discretion in finding four separate aggravators regarding the circumstances of the crime." (Appellant's Br. at 19.) While reasonable minds can differ on the precise number of aggravating factors the trial court found that directly pertain to the seriousness of the crime itself, Gonzalez's

distinct actions in perpetrating the crime support multiple aggravating factors found by the trial court. The trial court's use of premeditation as an aggravating factor at sentencing was supported by the record given the research Gonzalez performed before murdering Attkisson. The State was not required to prove premeditation to obtain a conviction, *see* Ind. Code § 35-42-1-1 (defining murder as the knowing or intentional killing of another human being), and Gonzalez's planning of Attkisson's murder hours in advance renders it more serious. In addition to premeditation, the trial court's finding that Gonzalez caused more harm than necessary to carry out his offense was supported by the record. Attkisson would have died from blood loss after being shot, but Gonzalez chose to cause her further harm by bashing in her skull. Thus, the trial court did not abuse its discretion at sentencing because the aggravating factors found by the trial court were supported by the record and are not improper as a matter of law. *See Guzman v. State*, 985 N.E.2d 1125, 1133 (Ind. Ct. App. 2013) (holding trial court's finding of five valid aggravating factors were sufficient to warrant an enhanced sentence).

3. Inappropriateness of Sentence

[22] Lastly, Gonzalez contends his sentence is inappropriate given the nature of his offense and his character. Our standard of review regarding claims of inappropriate sentence is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the

> appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[23] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence 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." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-3 provides: "A person who commits murder shall be imprisoned for a fixed term of between forty-five (45) and sixty-five (65) years, with the advisory sentence being fifty-five (55) years." Plus, if the court finds a person convicted of murder is a habitual offender, the court shall impose an additional fixed term of between six years and twenty years. Ind. Code § 35-50-2-8(i)(1). Indiana Code section 35-50-2-7 provides: "A person who commits a Level 6 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year."

[24] Gonzalez's offense was callous and brutal. As we explained above, Gonzalez did not simply kill Attkisson. He researched the murder ahead of time by reading internet articles and watching videos regarding how to load and shoot Attkisson's handgun. In addition to shooting Attkisson, Gonzalez also brutally beat her. Instead of seeking medical attention for Attkisson, he documented her death with his cell phone as she lay dying. In fact, the Putnam County prosecutor described the cell phone video as worse than anything he had seen during "all [his] years in the bowels of the criminal justice system in Marion County," where he practiced before becoming prosecutor. (Tr. Vol. IV at 74.) After the murder, Gonzalez took steps to conceal his crime by turning on the air conditioner—which made it more difficult for investigators to determine Attkisson's time of death—and by attempting to dispose of the gun and cell phone. He also stole Attkisson's credit cards and car, rather than simply leaving Attkisson's possessions as they were. Therefore, the nature of Gonzalez's offense does not render his maximum sentence inappropriate. *See Spitler v. State*, 908 N.E.2d 694, 697 (Ind. Ct. App. 2009) (holding egregiousness of the defendant's offense supported imposition of maximum sentence), *trans. denied*.

[25] 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*. Gonzalez's criminal history is significant and serious. It also shows his propensity to victimize women. He pled guilty to sexual battery after initially being charged with rape, and he also has a conviction of

Class D felony domestic battery. In addition, Gonzalez was convicted of Level 5 felony robbery, and a charge of Level 5 felony battery resulting in serious bodily injury was pending against him at the time of his sentencing in the instant case. Thus, in light of Gonzalez's criminal history, we cannot say his sentence is inappropriate. *See id*. at 518 (holding defendant's sentence was not inappropriate given his extensive criminal history).

Conclusion

[26] While Gonzalez has waived his challenge to the trial court's denial of his motion for change of venue, his claim also fails on the merits because the record does not indicate the jury was unable to render an impartial verdict. Moreover, the trial court did not abuse its discretion in its finding of aggravating factors because the factors were supported by the record and not improper as a matter of law. Finally, Gonzalez's sentence is not inappropriate given the nature of his offense and his character. Therefore, we affirm.

[27] Affirmed.

Riley, J., and Tavitas, J., concur.