

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dee Shawn Davis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 15, 2021

Court of Appeals Case No.
20A-CR-2090

Appeal from the Hamilton Superior
Court

The Honorable William J. Hughes,
Judge

Trial Court Cause No.
29D03-2004-F5-2572

Friedlander, Senior Judge.

- [1] Dee Shawn Davis appeals the sentence the trial court imposed after accepting his plea of guilty to domestic battery with a prior conviction involving the same family member, a Level 5 felony.¹ We affirm.
- [2] Davis and C.C. were in a relationship in the past, and they have two children together. On April 8, 2020, Davis struck C.C. in the face, pulled her by her hair, and pushed her head against a wall. C.C. called 911, but Davis took her phone away and ended the call. An officer arrived and noted that C.C. had abrasions and bruises on her neck and an arm. Davis has a prior conviction of domestic battery involving C.C.
- [3] On April 29, 2020, the State charged Davis with two counts of strangulation, both Level 6 felonies; two counts of domestic battery, one as a Level 5 felony (based on his prior conviction for the same offense against the same person) and one as a Class A misdemeanor; and one count of interfering with the report of a crime, a Class A misdemeanor. Davis requested a speedy trial.
- [4] On September 24, 2020, just over two weeks before the trial date, Davis notified the trial court that he would plead guilty to the domestic battery charges. Next, the State dismissed both strangulation charges and the charge of interfering with the report of a crime. The court accepted Davis' guilty plea, determined the

¹ Ind. Code § 35-42-2-1.3 (2019).

Class A misdemeanor domestic battery charge merged with the Level 5 felony charge, and sentenced Davis to three years. This appeal followed.

[5] Davis raises one issue: whether his sentence is inappropriate in light of the nature of the offense and his character. Article 7, section 6 of the Indiana Constitution authorizes the Court to review and revise criminal sentences. This authority is carried out under Indiana Appellate Rule 7(B), which states the Court may revise a sentence “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.”

[6] A trial court’s sentencing judgment “should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). As a result, the Court’s principal role on appellate review is to “attempt to leaven the outliers” rather than to achieve a perceived correct result in each case. *Id.* at 1225. We consider not only the aggravators and mitigators considered by the trial court, but also any other factors appearing in the record. *Pelissier v. State*, 122 N.E.3d 983 (Ind. Ct. App. 2019), *trans. denied*. The appellant bears the burden of persuading the Court that the sentence is inappropriate. *Id.*

[7] At the time Davis committed domestic battery, the maximum sentence for a Level 5 felony was six years, the minimum sentence was one year, and the advisory sentence was three years. Ind. Code § 35-50-2-6 (2014). Davis received the advisory sentence. When a trial court imposes the advisory sentence, the defendant bears “a particularly heavy burden” of persuading an

appellate court that the sentence is inappropriate because the advisory sentence is the starting point the General Assembly has selected as an appropriate sentence for the offense. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

[8] Turning to the nature of the offense, Davis committed domestic battery against C.C. by striking her in the face. But his attack on her included more than the one strike. Davis also strangled C.C., pushed her head into a wall, and took her phone away from her after she called 911. An officer saw abrasions and bruises on C.C.'s neck and an arm. At sentencing, C.C. told the trial court she has night terrors and post-traumatic stress disorder stemming from the attack, with ongoing trust issues and fear of intimacy.

[9] As for the character of the offender, Davis was twenty-three years old at sentencing and has a lengthy criminal record despite his relatively young age. He was adjudicated a juvenile delinquent in several cases for acts that would have been crimes if committed by an adult, including two counts of misdemeanor battery. As an adult, Davis has accrued twelve misdemeanor convictions, including convictions of battery and domestic battery, the latter offense involving C.C. It reflects poorly on Davis that past encounters with the justice system have not deterred him from committing violent crimes. In addition, Davis has been put on probation six times, and trial courts have revoked his probation in each case.

[10] Davis argues he took responsibility for his offense by pleading guilty. A guilty plea may not be considered significantly mitigating “when the defendant receives a substantial benefit in exchange for the plea.” *Anglemyer v. State*, 875 N.E.2d 218, 221 (Ind. 2007), *on reh’g*. In this case, the State dismissed three other charges against Davis after he pleaded guilty. Davis has failed to demonstrate that his advisory sentence is inappropriate in light of the nature of the offense or his character.

[11] For the reasons stated above, we affirm the judgment of the trial court.

[12] Judgment affirmed.

Bradford, C.J., and Altice, J., concur.