MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Chad A. Montgomery
Montgomery Law Office
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Terrell Kuba Brown,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

October 18, 2022

Court of Appeals Case No. 22A-CR-1184

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2109-F5-161

Pyle, Judge.

Statement of the Case

[1] Terrell Brown ("Brown") appeals the four-year sentence imposed after he pleaded guilty, pursuant to a plea agreement, to Level 5 felony domestic battery with bodily injury to a pregnant woman.[1] His sole argument is that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that Brown's sentence is not inappropriate, we affirm the trial court's judgment.

[2] We affirm.

Issue

Whether Brown's sentence is inappropriate.

Facts

[1] On September 14, 2021, D.Y. ("D.Y."), who was pregnant with Brown's child, was taking care of a friend's children ("the children"). Twenty-three-year-old Brown arrived at the residence and began arguing with D.Y. During the course of the argument, which occurred in the presence of the children, Brown struck D.Y. in the face with a closed fist. When D.Y. attempted to telephone 911, Brown took D.Y.'s cell phone and left the residence. D.Y. followed Brown to his vehicle to retrieve her cell phone, and Brown struck her in the face again. One of the children, who was less than sixteen years old and who had heard

[1] IND. CODE § 35-42-2-1.3.

Brown threaten to kill D.Y. and had seen Brown twice strike D.Y. in the face, contacted the police. An officer who arrived at the scene noticed that D.Y.'s face was bruised and swollen.

[2] The following day, the State charged Brown with Level 5 felony domestic battery with bodily injury to a pregnant woman, Level 6 felony domestic battery committed in the presence of a child less than sixteen years old, Level 6 felony intimidation, Level 6 felony possession of marijuana, and Class A misdemeanor interference with the reporting of a crime.

[3] In March 2022, pursuant to a plea agreement, Brown pleaded guilty to Level 5 felony domestic battery with bodily injury to a pregnant woman, and the State dismissed the remaining charges. The plea agreement left sentencing to the discretion of the trial court.

[4] At the April 2022 sentencing hearing, the trial court reviewed Brown's pre-sentence investigation report ("the PSI"), which revealed that Brown has an extensive criminal history. Specifically, Brown has one felony conviction for robbery and six misdemeanor convictions, including convictions for criminal mischief, battery, possession of a controlled substance, possession of marijuana, invasion of privacy, and operating a vehicle with an alcohol concentration equivalent to .15 or more.

[5] The PSI also revealed that, over the years, the State had filed thirteen petitions to revoke Brown's probation. Twelve of those petitions resulted in true findings, and one of those petitions was pending at the time of the sentencing

hearing. The State had also filed two petitions to revoke Brown's pretrial release in other cases, and the trial courts in those cases granted the petitions. The State further pointed out that Brown was on probation in two different cases at the time he committed the offense in this case and had also violated the terms of pretrial release in this case. Also at the sentencing hearing, Brown told the trial court that he had recently been diagnosed with anxiety and depression and that he had successfully completed rehabilitative programs while incarcerated at the county jail for the current offense.

[6] Thereafter, the trial court found the following aggravating factors: (1) Brown's criminal history; (2) the circumstances of the offense, including Brown striking a pregnant D.Y. in the presence of a child less than sixteen years old; (3) the State has filed thirteen petitions to revoke Brown's probation, with twelve having been found to be true and one still pending; (4) the State had filed two petitions to revoke Brown's pretrial release in other cases, and the trial courts in those cases granted the petitions; (5) Brown was on probation in two cases at the time he committed the offense in this case; (6) Brown violated pretrial release in this case; (7) Brown has been unsuccessfully discharged from probation in the past; (8) Brown is unlikely to respond to probation or short-term placement; and (9) prior attempts at rehabilitation have failed.

[7] The trial court also found the following mitigating factors: (1) Brown pleaded guilty; (2) Brown has substance abuse and mental health issues; and (3) Brown successfully completed rehabilitative programs while incarcerated at the county jail for the current offense. The trial court then sentenced Brown to four (4)

years in the Department of Correction, with two and one-half (2½) years executed and one and one-half (1½) years suspended to community corrections.

[8] Brown now appeals his sentence.

Decision

[9] Brown argues that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on the "culpability of the defendant, the severity of the crime, 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).

[10] When 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. *Childress*, 848 N.E.2d at 1081. Here, Brown was convicted of a Level 5 felony. The sentencing range for a Level 5 felony is between one (1) and six (6) years, and the advisory sentence is three (3) years. IND. CODE § 35-50-2-6. The trial court sentenced Brown to four (4) years, with two and one-half (2½) years executed and one and one-half (1½) years suspended to community corrections.

[11] Regarding the nature of the offense, we note that Brown threatened to kill a pregnant D.Y. and struck her in the face with a closed fist in the presence of at least one child who was less than sixteen years old. When D.Y. attempted to telephone 911, Brown took D.Y.'s cell phone and left the residence. D.Y. followed Brown to his vehicle to retrieve her phone, and Brown struck her in the face again. The child who was less than sixteen years old contacted the police.

[12] Regarding Brown's character, we note that Brown has an extensive criminal history that includes one felony and six misdemeanor convictions. In addition, over the years, the State has filed thirteen petitions to revoke Brown's probation. Twelve of those petitions resulted in true findings, and one of those petitions was pending at the time of the sentencing hearing. In addition, the State had filed two petitions to revoke Brown's pretrial release in other cases, and the trial courts in those cases granted the petitions. We further note that Brown was on probation in two cases at the time he committed the offense in this case, and Brown violated his pretrial release in this case. Brown's extensive criminal history reflects poorly on his character for the purposes of sentencing. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). We further note that Brown's former contacts with the law have not caused him to reform himself. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*.

[13] Based on the nature of the offense and his character, Brown has failed to persuade this Court that his four (4) year sentence, with two and one-half (2½)

years executed and one and one-half (1½) years suspended to community corrections, is inappropriate.

[14] Affirmed.

Bradford, C.J., and Weissmann, J., concur.