

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Carl Lamont Breeding,

Appellant-Defendant,

v.

State of Indiana,

Appellee-Plaintiff.

May 6, 2022

Court of Appeals Case No.
21A-CR-1945

Appeal from the Marion Superior
Court

The Honorable Amy M. Jones,
Judge

The Honorable Richard E.
Hagenmaier, Magistrate

Trial Court Cause No.
49D34-2010-F6-33112

Bradford, Chief Judge.

Case Summary

- [1] On October 23, 2020, police encountered Carl Breeding after he refused to leave the apartment of a woman who had offered him medical aid. Breeding attempted to flee from the officers before resisting the officers' attempts to restrain him. During the encounter, Breeding kicked one of the officers in the knee, causing the officer to suffer pain and discomfort. Breeding was subsequently convicted of Level 6 felony battery against a public safety official, Class A misdemeanor resisting law enforcement, and Class C misdemeanor possession of paraphernalia. He was sentenced to concurrent sentences of 910 days for battery against a public safety official, one year for resisting law enforcement, and sixty days for possession of paraphernalia. Breeding contends on appeal that his 910-day sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On October 23, 2020, Louann Ross was sitting outside her apartment building on Fort Wayne Avenue in Indianapolis when she saw Breeding looking “as if he had been beat up” with knots on his head and blood running down his face. Tr. Vol. II p. 141. Ross offered Breeding, whom she had seen around the neighborhood, aid. Breeding subsequently refused to leave Ross's apartment after being asked by Ross and two different neighbors, so Ross eventually called the police.

[3] Upon arriving at the scene, Indianapolis Metropolitan Police Officer John Gomez encountered Breeding and Raymond Taylor, a resident of the apartment building who had responded to a request for help from Ross. Although Officer Gomez initially focused his attention on Taylor, he quickly turned his attention to Breeding, who had started walking away. Officer Gomez ordered Breeding to stop but Breeding ignored Officer Gomez's order and continued to walk away. Officer Gomez spotted "a black object cupped in [Breeding's] left hand," which was later determined to be a black "meth pipe." Tr. Vol. II 187, 194. Breeding also ignored Officer Gomez's second order to stop.

[4] Officer Gomez approached Breeding and "tried to grab [his] left arm and put it behind his back." Tr. Vol. II p. 189. When Officer Gomez then "tried to go for" Breeding's right arm, Breeding "immediately pulled away." Tr. Vol. II p. 189. Officer Gomez ordered Breeding multiple times to put his arms behind his back, but Breeding refused to do so. While this was happening, Officer Travis McCauley arrived to assist Officer Gomez. Breeding continued to resist the officers' attempts to place him in handcuffs.

[5] At some point, in order to gain control over Breeding, Officer Gomez performed a "leg sweep" to "safely place" Breeding on the ground. Tr. Vol. II p. 191. Once on the ground, Breeding, "immediately turned away from" Officer Gomez and hid his hands against his stomach. Tr. Vol. II p. 191. The officers ordered Breeding multiple times to take his hands away from his stomach, but Breeding refused.

[6] At some point, Officer Michael Edward McCalip also arrived at the scene. As the three officers were attempting to restrain him, Breeding “tried to kick [the] officers multiple times.” Tr. Vol. II p. 196. Officer McCalip described Breeding as “out of control.” Tr. Vol. II p. 217. As Officer McCalip tried to hold down Breeding’s legs and place leg shackles on him, he continued to flail, kick, and twist. While twisting and kicking, Breeding kicked Officer McCalip’s left knee, causing him to experience pain and discomfort. The officers were eventually able to place Breeding in handcuffs and leg shackles and medics who arrived on the scene gave Breeding medication to calm him down. Breeding was eventually transported to an area hospital.

[7] On October 28, 2020, the State charged Breeding with Level 6 felony criminal confinement, Level 6 felony battery against a public official, Class A misdemeanor resisting law enforcement, Class A misdemeanor intimidation, and Class C misdemeanor possession of paraphernalia.¹ A jury trial was held on August 9, 2021. During trial, the trial court granted a directed verdict and dismissed the charge of intimidation. Following trial, the jury found Breeding not guilty of confinement and guilty of battery against a public official, resisting law enforcement, and possession of paraphernalia. On August 30, 2021, the trial court sentenced Breeding to concurrent sentences of 910 days for battery

¹ The confinement and intimidation charges related to Breeding’s alleged act of confining Ross, who is wheelchair bound, inside the bedroom of her apartment.

against a public safety official, one year for resisting law enforcement, and sixty days for possession of paraphernalia.

Discussion and Decision

[8] Breeding contends that his 910-day sentence is inappropriate. Indiana Appellate Rule 7(B) provides that “[t]he 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.” In analyzing such claims, we “concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant’s character.” *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted). The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[9] Again, Breeding was sentenced to 910 days, or two and one-half years, for his Level 6 felony battery conviction, one year for his Class A misdemeanor resisting law enforcement conviction, and sixty days for his Class C misdemeanor possession of paraphernalia conviction. A person convicted of a Level 6 felony “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.” Ind. Code § 35-50-2-7(b). “A person who commits a Class A

misdemeanor shall be imprisoned for a fixed term of not more than one (1) year.” Ind. Code § 35-50-3-2. Likewise, “[a] person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty (60) days.” Ind. Code § 35-50-3-4. In challenging the appropriateness of his sentence, Breeding argues that his “910-day prison sentence is the maximum sentence permitted by law for his Level 6 felony. His sentence is well above the ‘starting point’ for an appropriate sentence and is therefore presumptively inappropriate.” Appellant’s Br. p. 9. We disagree.

[10] With regard to the nature of his offense, Breeding asserts that his “battery offense is less egregious than the ‘typical’ offense of battery on a public safety official,” Appellant’s Br. p. 9, describing his encounter with police as follows:

While an officer was trying to lay on Breeding’s legs, Breeding kicked the officer *one time* in the leg. The kick Breeding landed was not intentional or malicious; rather, the record indicates it was incidental contact that occurred while Breeding was flailing face down on the ground. The officer testified that pain from the kick subsided in less than an hour. The nature of the offense does not call for the maximum prison sentence imposed here.

Appellant’s Br. pp. 9–10 (emphasis in original). We cannot say that Breeding’s actions were less egregious than a so-called “typical” battery on a public safety official. The record reveals that Breeding was out of control, and it took three officers to restrain him in both handcuffs and leg shackles and medication to calm him down. Even then, he battered one of the three officers, kicking the officer in the knee and causing the officer to suffer pain and discomfort.

Further, his interaction with police only occurred after he refused to leave the apartment of a wheelchair-bound individual who had offered him medical assistance.

[11] As for his character, Breeding asserts that his “employment history and willingness to work is evidence of good character that supports a sentence revision.” Appellant’s Br. p. 10. While Breeding may have demonstrated a willingness to work, we cannot say that either his employment status or his alleged issues with substance abuse and mental illness warrant a less onerous sentence. In addition, Breeding indicated to a probation officer that he was not willing to participate in any programs which might provide treatment or rehabilitation. The record also reveals that the trial court considered these factors, finding that they did not warrant significant mitigating weight.

[12] Further, “[w]hen considering the character of the offender, one relevant fact is the defendant’s criminal history.” *Garcia v. State*, 47 N.E.3d 1249, 1251 (Ind. Ct. App. 2015). “The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Id.* A review of the record reveals that Breeding has a substantial criminal history, consisting of two juvenile adjudications, four prior felony convictions and fourteen prior misdemeanor convictions. Of his prior felony convictions, one was for battery on a law enforcement officer causing injury and of his prior misdemeanor convictions, five were convictions for resisting law enforcement, two of the crimes committed in the instant case. Breeding’s probation has also been revoked on five prior occasions, suggesting that prior attempts at leniency

were unsuccessful. At the time of sentencing, Breeding also had two pending criminal cases, one of which included three misdemeanor charges and the other included one felony and two misdemeanor charges. Breeding was also found to be a “high” risk to reoffend. Appellant’s App. Vol. II p. 186. Breeding’s criminal history and failure to take advantage of prior lesser-restrictive attempts for rehabilitation demonstrate a disregard for the laws of this state and reflect poorly on his character. Breeding has failed to convince us that his aggregate four-year sentence is inappropriate. *See Sanchez*, 891 N.E.2d at 176 (“The defendant bears the burden of persuading us the sentence is inappropriate.”).

[13] The judgment of the trial court is affirmed.

Najam, J., and Bailey, J., concur.