

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Franklin Ralph Scott,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 30, 2023

Court of Appeals Case No.
22A-CR-2540

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge.

Trial Court Cause No.
03C01-2112-F6-6412

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Franklin Ralph Scott appeals following his convictions of Level 6 felony battery against a public safety official¹ and Level 6 felony resisting law enforcement.²

He raises two issues on appeal, which we revise and restate as:

1. Whether the State presented sufficient evidence to support Scott's convictions; and
2. Whether Scott's sentence is inappropriate in light of the nature of his offense and his character.

We affirm.

Facts and Procedural History

[2] At approximately 10:45 p.m. on December 10, 2021, Columbus Police Department officers were dispatched to Cork's Liquor following a 911 call that a man was being loud and obnoxious and refusing to leave. Officer Jeffrey Gilliam responded to the call in a marked police vehicle and uniform. Before he arrived, dispatch advised Officer Gilliam that the man had left the liquor store and was walking down the middle of the street. Shortly thereafter, Officer Gilliam found Scott walking along Center Street near the liquor store.

¹ Ind. Code § 35-42-2-1(e).

² Ind. Code § 35-44.1-3-1.

[3] Officer Gilliam observed Scott step to the side of the road and begin urinating. Officer Gilliam decided to arrest Scott for public nudity,³ and he turned on the emergency lights of his police vehicle. Officer Gilliam also focused his vehicle's spotlight on Scott, but Scott continued to walk away. Officer Gilliam got out of his car and walked toward Scott. Scott eventually stopped, turned toward Officer Gilliam, and "began to yell like, what...what do you want or something...something of that sort. He bladed his body away from [Officer Gilliam] and started taking shuffled steps away[.]" (Tr. Vol. II at 20.)

[4] Officer Gilliam ordered Scott to put his hands behind his back, but Scott refused. By this point, Officer Jackson Shepherd of the Columbus Police Department had also arrived at the scene. Officer Shepherd attempted to grab Scott from behind, and Scott "started to pull away and locked his hands together around his waist area." (*Id.*) The officers wrestled Scott to the ground, but Scott continued not to comply with the officers' instructions. Officer Shepherd warned Scott that if he did not present his hands to be handcuffed, Officer Shepherd would tase him. Scott continued to struggle with the officers, and Officer Shepherd deployed his taser on Scott twice. The officers were then able to handcuff Scott. During the struggle, Officer Gilliam sustained "scuffs and such on [his] hands and wrists." (*Id.* at 24.) Officer Shepherd also incurred cuts on his hand.

³ Ind. Code § 35-45-4-1.5(b).

[5] After being handcuffed, Scott continued to act “very aggressive” and attempted to kick the officers. (*Id.* at 23.) The officers restrained Scott’s legs, and Officer Gilliam transported Scott to the hospital. After Scott was handcuffed to a hospital bed, Scott “became very angry and irate and began to yell at officers and nurses and used profanity and such in a loud manner.” (*Id.* at 29.) Officer Gilliam attempted to take photographs of the injuries Scott sustained during his struggle with the officers, but Scott twice tried to kick Officer Gilliam. Scott’s first kick missed Officer Gilliam, and Scott’s second kick clipped Officer Gilliam’s right shoulder. While Officer Shepherd attempted to restrain Scott, Scott grabbed one of Officer Shepherd’s hands and clasped very hard, which caused Officer Shepherd pain. Scott ignored orders to release Officer Shepherd’s hand and released Officer Shepherd’s hand only after Officer Shepherd used his free hand to repeatedly strike Scott in the torso. After Scott was released from the hospital, officers transported him to the Bartholomew County Jail.

[6] On December 20, 2021, the State charged Scott with two counts of Level 6 felony battery against a public safety official, Level 6 felony resisting law enforcement, Class B misdemeanor disorderly conduct,⁴ and Class C misdemeanor public nudity. The trial court held a jury trial on August 30, 2022. At trial, Scott testified he was walking back to the homeless shelter where he lived when Officer Gilliam confronted him. Scott testified he did not

⁴ Ind. Code § 35-45-1-3(a).

comply with Officer Gilliam’s request to put his hands behind his back because Scott “felt that [he] needed to be told why...they were going to detain [him].” (*Id.* at 99.) Scott also acknowledged that he tried to kick Officer Gilliam at the hospital but missed. Scott explained, “Well, I guess I’m not as good as what I would like to be.” (*Id.* at 91.) The jury returned guilty verdicts on one count of Level 6 felony battery against a public safety official, Level 6 felony resisting law enforcement, and Class B misdemeanor disorderly conduct. The jury returned verdicts of not guilty regarding the remaining counts.

[7] The trial court then held a sentencing hearing on September 26, 2022. During the sentencing hearing, Scott explained he did not agree with the jury’s verdict and asserted “the police used excessive force.” (*Id.* at 126.) Scott also acknowledged he was addicted to alcohol. Scott testified he sought treatment for this addiction “every now and then but it kind of wasn’t really helping.” (*Id.* at 132.) The State noted Scott’s extensive history of misdemeanor convictions and asked the trial court to sentence Scott to an executed term of two years followed by placement in community corrections. Scott asked the trial court not to sentence him to any time beyond what he served awaiting his trial and sentencing.

[8] When sentencing Scott, the trial court found five aggravating circumstances:

1. The defendant has a prior lengthy criminal history involving substance use and resisting law enforcement. He has at least 24 previous misdemeanor convictions.

2. The defendant had ample opportunity for treatment.
3. The defendant lacks any remorse for the convictions, and to the contrary, blames others instead.
4. The defendant was on probation at the time of the incident.
5. The defendant has had opportunity for probation on 9 separate occasions and had 9 petitions to revoke filed. He was unsuccessfully discharged at least twice.

(App. Vol. II at 86.) The trial court did not find any mitigating circumstances. The court then sentenced Scott to a term of 600 days for his conviction of Level 6 felony battery against a public safety official, 600 days for his conviction of Level 6 felony resisting law enforcement, and 180 days for his conviction of Class B misdemeanor disorderly conduct. The trial court ordered the Level 6 felony sentences to be served concurrently and the Class B misdemeanor disorderly conduct sentence to be served consecutive to the felony sentences, for an aggregate sentence of 780 days.

Discussion and Decision

1. Sufficiency of the Evidence

- [9] Scott contends the State failed to present sufficient evidence to support his felony convictions because “[t]he State failed to prove that he knowingly or intentionally resisted law enforcement or battered a public safety official.”

(Appellant’s Br. at 14.) We review such claims pursuant to a well-settled standard of review:

Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

- [10] Intent is a function of cognitive processing, and “a defendant’s intent normally cannot be established with mathematical precision and can rarely be proved by direct evidence[.]” *Phipps v. State*, 90 N.E.3d 1190, 1195 (Ind. 2018) (internal citation and quotation marks omitted). However, as our Indiana Supreme Court has explained, “a person’s intent may be determined from their conduct and the natural consequences thereof and . . . intent may be inferred from circumstantial evidence.” *Coleman v. State*, 546 N.E.2d 827, 831 (Ind. 1989), *reh’g denied*. “A person engages in conduct ‘intentionally’ if, when he engages in the conduct, it is his conscious objective to do so.” Ind. Code § 35-41-2-2(a). Likewise, someone “engages in conduct ‘knowingly’ if, when he engages in the conduct, he is aware of a high probability that he is doing so.” Ind. Code § 35-41-2-2(b).

1.1 Resisting Law Enforcement

- [11] Indiana Code section 35-44.1-3-1(a) states that a person commits resisting law enforcement if the person “knowingly or intentionally...forcibly resists, obstructs, or interferes with a law enforcement officer or a person assisting the officer while the officer is lawfully engaged in the execution of the officer’s duties[.]” The offense is elevated to a Level 6 felony if while committing the offense, the offender “inflicts bodily injury on or otherwise causes bodily injury to another person[.]” Ind. Code § 35-44.1-3-1(c)(1)(B)(ii). Scott asserts he did not knowingly or intentionally resist law enforcement because “[f]rom the moment he encountered Officer Gilliam, Scott wanted to know what was going on, and his intent was only to extricate himself from what clearly appeared to be an unwarranted assault on his person.” (Appellant’s Br. at 14.) He contends he “had no idea Officer Shepherd was coming up from behind him” and “did not know it was an officer grabbing him[.]” (*Id.* at 13.)
- [12] However, “a private citizen may not use force to resist a peaceful arrest by an individual who he knows, or has reason to know, is a police officer performing his duties, regardless of whether the arrest in question is lawful.” *Woodson v. State*, 123 N.E.3d 175, 178 (Ind. Ct. App. 2019). Officer Gilliam exited a fully marked police car, and he was in uniform when he confronted Scott. Scott’s refusal to stop and put his hands behind his back required both Officer Shepherd and Officer Gilliam to resort to physical force to bring Scott under control. Scott continued to refuse to present his hands to be handcuffed, and he relented only after Officer Shepherd tased him twice. While Scott asserts he did

not know it was a police officer who grabbed him from behind, Officer Shepherd grabbed Scott after Scott refused Officer Gilliam's commands. Thus, the jury could reasonably conclude Scott's assertion that he did not know he was resisting and struggling with law enforcement officers lacks credulity. The State presented sufficient evidence that Scott knowingly or intentionally forcibly resisted the officers when he refused to present his hands to be handcuffed and struggled against the officers. *See Thrash v. State*, 88 N.E.3d 198, 207-08 (Ind. Ct. App. 2017) (holding State presented sufficient evidence the defendant resisted law enforcement when he refused an officer's commands to show his hands and refused to remove his hands and arms from underneath his body after being placed on the ground).

1.2 Battery Against Public Safety Official

[13] Scott also argues the State failed to present sufficient evidence that he knowingly or intentionally battered Officer Shepherd. The State alleged Scott "did knowingly or intentionally touch Jackson Shepherd, a public safety official, in a rude, insolent, or angry manner while the said official was engaged in the official's official duty." (App. Vol. II at 12.) In *Mishler v. State*, we explained that for battery "the requisite intent may be presumed from the voluntary commission of the act." 660 N.E.2d 343, 348 (Ind. Ct. App. 1996). Here, Scott was loud and belligerent when he was in the hospital bed and attempted to kick Officer Gilliam. As Officer Shepherd tried to restrain Scott, Scott clasped Officer Shepherd's hand so hard he caused Officer Shepherd pain. Scott continued to squeeze Officer Shepherd's hand even after being ordered to

release it, and Officer Shepherd had to repeatedly strike Scott in the torso before Scott finally released his hand. Thus, the State presented sufficient evidence for the jury to infer Scott knowingly and intentionally battered Officer Shepherd. *See id.* (holding it was reasonable for the jury to infer the two defendants committed battery when they hit and bumped the victim, knocking her down).

2. Inappropriateness of Sentence

[14] Scott also contends his sentence is inappropriate in light of the nature of his offense and his character. We evaluate such claims using a well-settled standard of review.

We “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. App. R. 7(B). Our role in reviewing a sentence pursuant to Appellate Rule 7(B) “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “The defendant bears the burden of persuading this court that his or her sentence is inappropriate.” *Kunberger v. State*, 46 N.E.3d 966, 972 (Ind. Ct. App. 2015). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014).

Belcher v. State, 138 N.E.3d 318, 328 (Ind. Ct. App. 2019), *trans. denied*.

[15] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *Mehringer v. State*, 152 N.E.3d 667, 675 (Ind. Ct. App. 2020), *trans. denied*. Indiana Code section 35-50-2-7(b) 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.” A person convicted of a Class B misdemeanor may be sentenced to a term of imprisonment of up to 180 days. Ind. Code § 35-50-3-3. Therefore, each of Scott’s 600-day felony sentences is above the advisory term, but below the maximum term, for a Level 6 felony conviction. With respect to Scott’s Class B misdemeanor disorderly conduct conviction, he received the maximum term.

[16] When analyzing a sentence that deviates from the advisory term, we look to “whether there is anything more or less egregious about the offense committed by the defendant that makes it different from the ‘typical’ offense accounted for by the legislature when it set the advisory sentence.” *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013) (quoting *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*). Scott walked away from Officer Gilliam when Officer Gilliam directed him to stop, and he refused to present his hands to be handcuffed. Two police officers were required to bring Scott under control, and Officer Shepherd deployed his taser twice before Scott could be handcuffed. Moreover, Scott’s obstinate behavior continued at the hospital when he yelled and cursed at the hospital staff and police. Scott also continued to struggle with the police officers at the hospital and, at one point, squeezed

Officer Shepherd's hand so hard it caused Officer Shepherd pain. Thus, Scott's persistent refusal to follow the officer's orders and his continued struggle against the officers after they resorted to physical force render the nature of his offenses more severe than the "typical" version of each offense. *See Garcia v. State*, 976 N.E.2d 85, 91 (Ind. Ct. App. 2012) (holding defendant's sentence was not inappropriate in light of the nature of his offense when he refused to allow officers to handcuff him, punched and kicked them, and attempted to grab one officer's gun), *trans. denied*.

- [17] "When considering the character of the offender, one relevant fact is the defendant's criminal history." *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*. Scott notes the instant case is his first felony conviction. However, Scott has a lengthy record of misdemeanor convictions. This record includes convictions of disorderly conduct, illegal possession of alcohol, possession of a controlled substance, operating a vehicle while intoxicated, and public intoxication. Moreover, Scott has at least seven past misdemeanor convictions of resisting law enforcement. Despite this lengthy history, Scott chose to persist in his criminal behavior. *See Morris v. State*, 114 N.E.3d 531, 540-41 (Ind. Ct. App. 2018) (holding defendant's previous felony conviction of a similar crime reflected poorly on his character), *trans. denied*. In addition, although many of Scott's prior sentences had been suspended to probation, he repeatedly violated the terms of his probation, which resulted in Scott being unsuccessfully discharged from probation twice. Thus, we cannot say Scott's sentence is inappropriate given his character. *See George v. State*, 141

N.E.3d 68, 74 (Ind. Ct. App. 2020) (holding sentence was not inappropriate in light of the defendant's character given his significant criminal history), *trans. denied*.

Conclusion

[18] The State presented sufficient evidence Scott acted with the requisite intent to be found guilty of resisting Officer Gilliam and Officer Shepherd and of battering Officer Shepherd by grabbing his hand so hard it caused pain. In addition, Scott's sentence is not inappropriate given the nature of his offense and his character. Therefore, we affirm the trial court.

[19] Affirmed.

Mathias, J., and Bradford, J., concur.