

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Keith Rogers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

May 20, 2021

Court of Appeals Case No.
21A-CR-40

Appeal from the Knox Superior
Court

The Honorable Gara U. Lee,
Judge

Trial Court Cause No.
42D01-1810-F3-18

Crone, Judge.

Case Summary

- [1] Keith Rogers appeals the six-year aggregate sentence imposed by the trial court following his convictions for level 5 felony domestic battery resulting in serious bodily injury and level 6 felony possession of methamphetamine. He contends that his sentence is inappropriate in light of the nature of his offenses and his character. Concluding that he has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] In 2017, Rogers pled guilty to one count of level 5 felony battery resulting in serious bodily injury. The victim was T.M. Rogers was sentenced to a three-year suspended sentence with two years served on GPS home monitoring. On October 15, 2018, T.M. called the Knox County Prosecutor's Office victim advocate line and reported that her now live-in boyfriend, Rogers, had been beating her and had possibly broken her arm. Police officers arrived at the couple's home, and Rogers answered the door. T.M. was found hiding in a closet, and she had a large bruise on her arm. T.M. showed officers the freezer where Rogers kept methamphetamine. The officers found a small amount of methamphetamine in the freezer. T.M. was subsequently treated at the hospital. She had fingerprint bruises on her arms, a fractured radial head on her elbow, and a healing fracture to her tailbone.
- [3] The State charged Rogers with level 3 felony aggravated battery, level 5 felony domestic battery resulting in serious bodily injury, level 5 felony domestic

battery with a prior conviction, and level 6 felony possession of methamphetamine. In addition, the trial court revoked his probation in the prior case involving battery against T.M. On July 24, 2020, Rogers pled guilty, pursuant to a plea agreement, to level 5 felony domestic battery resulting in serious bodily injury and level 6 felony possession of methamphetamine in exchange for dismissal of the other charges, as well as dismissal of charges in a pending unrelated case.¹ The trial court sentenced Rogers to concurrent executed sentences of six years for the level 5 felony and two and one half years for the level 6 felony, for an aggregate sentence of six years. This appeal ensued.

Discussion and Decision

[4] Rogers asks that we reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” “Sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Indeed, “appellate review should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual

¹ Rogers was charged with level 6 felony stalking and class A misdemeanor invasion of privacy on October 18, 2019, under cause number 42C01-1910-F6-414. T.M. was the alleged victim.

count.” *Id.* at 1225. In conducting our review, our principal role is to leaven the outliers. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016). We do “not look to see whether the defendant’s sentence is appropriate or if another sentence might be *more* appropriate; rather, the test is whether the sentence is “inappropriate.” *Id.* at 581 (quoting *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied* (2014)). “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.” *McFall v. State*, 71 N.E.3d 383, 390 (Ind. Ct. App. 2017). The defendant bears the burden of persuading this Court that his sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[5] As for the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. The sentencing range for a level 6 felony is between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7. Here, although the trial court imposed the maximum sentence on both counts, the court ordered the sentences served concurrently, resulting in an aggregate sentence two and one-half years below the maximum possible sentence.

[6] Notably, Rogers makes no reference to the facts underlying his convictions, nor does he make any specific argument as to why the nature of his offenses

warrants a sentence reduction. Rather, he simply directs us to general legal authority which provides that the “maximum punishment” is most appropriate for the “worst offenders.” Appellant’s Br. at 9 (citing *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002)). However, as already noted, Rogers did not receive the maximum aggregate sentence for his crimes, and thus his general assertion is inapposite. Rogers has not met his burden to demonstrate that his sentence is inappropriate in light of the nature of his offenses.

[7] Regarding Rogers’s character, on appellate review, analysis of the character of the offender involves a broad consideration of a defendant’s qualities as shown by his life and conduct. *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). One relevant fact is the defendant’s criminal history, and “[t]he significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017) (citation omitted), *trans. denied*. Prior to the current offenses, Rogers was convicted of battery resulting in serious bodily injury against the same victim, T.M. He was on probation for that offense when he committed the current crimes, which demonstrates his disregard for the law. Despite his self-serving claims regarding his nonviolent character and “unlikelihood to reoffend in the future,” Appellant’s Br. at 10, we agree with the trial court that we “cannot be assured” that a domestic violence crime of the exact same nature is unlikely to reoccur because it has already reoccurred. Tr. Vol. 2 at 74. Moreover, Rogers was also charged with stalking and invasion of privacy regarding T.M. in a separate cause but obtained dismissal of those

charges in exchange for his current plea. Based on the foregoing, Rogers has not persuaded us that his character warrants a sentence reduction.

Accordingly, we affirm the sentence imposed by the trial court.

[8] Affirmed.

Riley, J., and Mathias, J., concur.