MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Sean C. Mullins
Office of the Lake County Public Defender
Appellate Division
Appellate Public Defender
Crown Point, 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

Dashone Tamele Woods,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 9, 2021

Court of Appeals Case No. 21A-CR-87

Appeal from the Lake Superior Court

The Honorable Jamise Y. Perkins, Judge Pro Tempore

Trial Court Cause No. 45G02-1812-F1-39

Kirsch, Judge.

[1] Dashone Tamele Woods ("Woods") pleaded guilty to aggravated battery,[1] a Level 3 felony and was sentenced to fourteen years executed in the Indiana Department of Correction ("DOC"). On appeal he raises one issue: whether his fourteen-year sentence is inappropriate.

[2] We affirm.

Facts and Procedural History

[3] On December 3, 2018, while on house arrest and GPS monitoring after being charged with other offenses, Woods went to J.H.'s apartment in Hammond, Indiana to buy marijuana. *Appellant's Conf. App. Vol. Two* at 65, 71; *Appellant's App. Vol. Two* at 82; *Tr. Vol. 2* at 29. After an altercation, Woods shot J.H. in J.H.'s torso *Tr. Vol. 2* at 19; *Appellant's Conf. App. Vol. Two* at 71. Woods took a package of J.H.'s cookie dough that J.H. had just purchased and then fled. *Tr. Vol. 2* at 29, 33; *Appellant's Conf. App. Vol. Two* at 15. As a result of his injuries, J.H. bled into his chest cavity, and his lung collapsed. *Tr. Vol. 2* at 19. J.H. was transported to the University of Chicago Hospital for medical treatment, and a tube was placed in his chest to help drain blood. *Id*.

On December 6, 2018, the State charged Woods with burglary, a Level 1 felony, robbery resulting in serious bodily injury, a Level 2 felony, and armed robbery, a Level 3 Felony. *Appellant's Conf. App. Vol. Two* at 13-16. On

[1] *See* Ind. Code § 35-42-2-1.5.

November 18, 2020, the parties entered into a plea agreement where Woods agreed to plead guilty to a new charge, aggravated battery, a Level 3 felony. *Appellant's App. Vol. Two* at 47-49. The same day, the trial court held a hearing, where Woods pleaded guilty, and the trial court accepted his guilty plea. *Tr. Vol. 2* at 2, 12. On December 16, the trial court held a sentencing hearing. *Id.* at 16-41. Woods offered brief testimony, the parties presented arguments, and the trial court discussed the aggravating and mitigating factors proffered by the parties. *Id.* at 18-41. On December 16, 2020, the trial court issued its sentencing order, which found the following aggravating and mitigating circumstances:

> **Aggravating Circumstances:**
>
> 1. [Woods] has a history of juvenile adjudications, misdemeanor convictions and felony convictions. He has three prior misdemeanor convictions (including one gun conviction), and three felony convictions (including two (2) gun convictions).
>
> 2. [Woods] has been arrested more than twenty-five times, which the Court finds is evidence of [Woods's] character and the fact that his prior arrest[s] revealed to the Court that [Woods's] antisocial behavior has not been deterred, even after having been subjected to police authority.
>
> 3. [Woods] has also had the benefit of supervision and short-term incarceration.
>
> 4. [Woods] was on GPS monitoring at the time he committed this offense.

Mitigating Circumstances:

1. [Woods] admitted his guilt by way of plea agreement, thus saving the Court and the taxpayers of this county the time and expense of a trial. However, the Court gives this factor minimal weight based on the defendant's comments in open court thereby attempting to mitigate his conduct.

2. [Woods] was diagnosed with post-traumatic stress disorder (PTSD). The Court also gives this minimal weight.

The Court finds that the aggravating factors outweigh the mitigating factors.

Appellant's App. Vol. Two at 82-83.

[4] The trial court sentenced Woods to fourteen years in the DOC, directed DOC to place Woods in the Purposeful Incarceration Program, and upon completion of the program, "the sentencing judge will consider a modification to [Woods's] sentence." *Id*. at 83. Woods now appeals. We will provide additional facts as necessary.

Discussion and Decision

[5] Woods contends his fourteen-year sentence is inappropriate considering the nature of his offense and his character. Under Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find the sentence is inappropriate considering the nature of the offense and the character of the offender. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The "nature of offense" compares the

defendant's actions with the required showing to sustain a conviction under the charged offense, *Cardwell v. State,* 895 N.E.2d 1219, 1224 (Ind. 2008), while the "character of the offender" permits for a broader consideration of the defendant's character. *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. Whether a sentence is inappropriate turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and other factors that come to light. *Cardwell*, 895 N.E.2d at 1224.

[6] We defer to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "Such deference should prevail unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). We seek to leaven the outliers, not to achieve a perceived correct result. *Cardwell*, 895 N.E.2d at 1225. "[W]e reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019).

Nature of Offense

[7] Woods argues his sentence is inappropriate because his conduct in committing aggravated battery was no more egregious than a typical instance of aggravated battery. The nature of the offense is found in the details and circumstances of the commission of the offense. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App.

2017). The nature of the offense refers to a defendant's actions in comparison with the elements of the offense. *Cardwell*, 895 N.E.2d at 1224. We consider whether there is anything more or less egregious about the offense as committed by the defendant that makes it different from the typical offense accounted for by the legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017).

[8] The advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Kunberger v. State*, 46 N.E.3d 966, 973 (Ind. Ct. App. 2015); *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014), *trans denied*. Here, Woods was convicted of Level 3 felony aggravated battery. A person convicted of a Level 3 felony faces a sentencing range between three years and sixteen years, and the advisory sentence is nine years. Ind. Code § 35-50-2-5(b). Therefore, Woods's fourteen-year sentence is two years less than the maximum sentence and five years more than the advisory sentence.

[9] Woods argues that the nature of his offense was not egregious because, contrary to the State's argument, the serious injuries he inflicted on J.H. simply fulfilled the elements of his crime as set forth in Indiana Code section 35-42-2-1.5. That statute provides, in part, that a person commits aggravated battery as a Level 3 felony if the person causes another person "(1) serious permanent disfigurement; [or] (2) protracted loss or impairment of the function of a bodily member or organ[.]"

[10] We reject Woods's contention that his crime was not more egregious than a typical instance of aggravated battery. Woods used a gun to batter J.H., which is not an element of aggravated battery. *Appellant's Conf. App. Vol. Two* at 71; *see also* Ind. Code § 35-42-2-1.5. Also, Woods shot J.H. at J.H.'s apartment. *Appellant's Conf. App. Vol. Two* at 71. Woods also was trying to consummate a drug deal with J.H., and after he shot J.H., Woods committed another crime by taking J.H.'s cookie dough before he fled. *Appellant's Conf. App. Vol. Two* at 15. Woods committed the crime while he had pending charges in another case and was wearing a GPS device. *Id*. at 15, 65, 79, 82. We acknowledge that Woods's fourteen-year sentence is two years less than the maximum sentence and five years more than the advisory sentence. But the foregoing facts not only establish that Woods's crime was egregious, they also show that Woods has failed to present compelling evidence that portrays the nature of his offense in a positive light, such as by providing evidence that his offense was accompanied by restraint, regard, and lack of brutality. *See Stephenson*, 29 N.E.3d at 122. Woods's sentence was not inappropriate considering the nature of his offense.

Character of Offender

[11] Woods argues that his sentence is inappropriate considering his character by attempting to minimize the significance of his criminal record and by highlighting his diagnosis for post-traumatic stress disorder ("PTSD"). Our Supreme Court has emphasized that "the extent, if any, that a sentence should be enhanced [based upon prior convictions] turns on the weight of an

individual's criminal history." *Duncan v. State,* 857 N.E.2d 955, 959 (Ind. 2006). "This weight is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Bryant v. State,* 841 N.E.2d 1154, 1156 (Ind. 2006). Even a minor criminal history reflects poorly on a defendant's character. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).

[12] Woods's criminal history is significant and includes three prior misdemeanor convictions and three prior felony convictions. *Tr. Vol. 2* at 18; *Appellant's Conf. App. Vol. Two* at 66. In 2003, Woods was convicted in Illinois of felony aggravated discharge of a firearm. *Appellant's Conf. App. Vol. Two* at 62-63. Less than three years later, Woods was convicted again in Illinois of felony aggravated unlawful use of a weapon. *Id*. at 63. When he committed the offenses in this case, Woods was on house arrest and GPS monitoring after being charged with possession of an altered firearm and dealing in marijuana with a prior drug conviction. *Id*. at 47, 65, 69; *Tr. Vol. 2* at 29. Woods has also been arrested twenty-five times, including for offenses such as criminal sex assault, aggravated assault, domestic battery, and armed robbery. *Appellant's Conf. App. Vol. Two* at 59-65, 82. "A record of arrests reflects on the defendant's character in part because such record reveals that subsequent antisocial behavior by the defendant has not been deterred even having been subject to police authority and having been made aware of its oversight." *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019), *trans. denied*.

[13] Finally, Woods's PTSD diagnosis does not make his sentence inappropriate. In reviewing whether a defendant's sentence is inappropriate because of mental illness, the defendant must "present evidence establishing that his mental illness had a nexus to his" crime. *Denham v. State*, 142 N.E.3d 514, 518 (Ind. Ct. App. 2020), *trans denied*. Woods does not show, or even allege, that there was a nexus between his PTSD and his crime. Thus, taken together, Woods's attempts to minimize the significance of his criminal record and his request to consider his PTSD diagnosis fail to meet his burden to portray his character in a positive light by, for instance, showing substantial virtuous traits or persistent examples of good character. *See Stephenson*, 29 N.E.3d at 122. Thus, Woods has failed to demonstrate that his sentence is inappropriate in light of his character and the nature of his offense.

[14] Affirmed.

Altice, J., and Weissmann, J., concur.