

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Michael Anthony Thompson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 27, 2022

Court of Appeals Case No.
21A-CR-2463

Appeal from the Monroe Circuit
Court

The Honorable Christine Talley
Haseman, Judge

Trial Court Cause No.
53C03-1904-F1-461

Bailey, Judge.

Case Summary

[1] Michael A. Thompson (“Thompson”) challenges his sentence, following his guilty plea, for Aggravated Battery, as a Level 3 felony.¹

[2] We affirm.

Issues

[3] Thompson raises the following two restated issues:

- I. Whether the trial court abused its discretion at sentencing.
- II. Whether Thompson’s sentence is inappropriate given the nature of the offense and his character.

Facts and Procedural History

[4] The owner of an apartment building asked William Shouse (“Shouse”), the “maintenance man” for the building, to check on vacant apartment number five for possible trespassers. App. v. II at 32. On April 15, 2019, Shouse and Joshua Coleman (“Coleman”) went to the apartment building. Coleman stayed in the vehicle while Shouse went into the building. Shouse went up the stairs and knocked twice on the door of apartment number five. Having received no response to his knocking, Shouse used a key to unlock the apartment door.

¹ Ind. Code § 35-42-2-1.5.

Shouse attempted to enter the apartment but the door was blocked and would open only a few inches. Shouse then “popped the door open” and saw Thompson sitting on the steps in the apartment. Def. Ex. C at 74.

[5] Shouse asked, “Who the f--k are you?,” to which Thompson responded, “[W]ho the f--k are you?” *Id.* at 75. Shouse then said, “[T]his is my building. You need to get your s--t and get out.” *Id.* Thompson gave Shouse his name, said “I’m going to whoop your ass,” and “got in [Shouse’s] face.” *Id.* The two men “exchanged words” and Shouse informed Thompson that Shouse was calling the police. *Id.* While Shouse was on the 9-1-1 call, he observed Thompson walk over to a couch, pick up a knife, and walk back toward Shouse. When Thompson approached Shouse with the knife, Shouse said “you win.” Def. Ex. C at 76. As Shouse backed out of the apartment and began to climb over the banister to the stairs, Thompson raised the knife “two inches from [Shouse’s] face.” *Id.* Shouse jumped over the banister and landed on the stairs. Shouse saw that Coleman had entered the building and was located at the bottom landing.

[6] Coleman pushed Shouse out the front door and stated that they should leave. Shouse went out the front door as he was speaking on the phone to emergency personnel at 9-1-1. Before Coleman also could make it out the front door, Thompson came up “right behind” him. Def. Ex. D at 130. Thompson stated to Coleman, “[W]here’s your ID?” and reached for Coleman’s pocket. *Id.* at 132. Coleman pushed Thompson’s hand away from him and Thompson then

punched Coleman in the face. Coleman lost consciousness and did not regain it until he was later exiting the front door.

[7] As Coleman exited the building, Shouse observed that Coleman was “pouring blood.” *Id.* at 77. Coleman was bleeding from his eye, “his arm looked like a lobster just fileted wide open,” and his wrist was bleeding “real bad.” *Id.* at 78. Coleman fell against the side of a vehicle and was treated by emergency personnel on the scene. Coleman had “sustained penetrating stab wounds to his left scapula, left clavicle, left neck, left deltoid, and two slashing stab wounds to his right bicep and left wrist, which caused arterial bleeding.” App. v. II at 33. Coleman also “sustained a contusion/abrasion to his left eye” that was severe. *Id.*

[8] Thompson had exited the building, gone around the back, and jumped over a fence. Shouse was interviewed on the scene by law enforcement and told officers that the suspect was named Michael Thompson and was wearing a blue lanyard around his neck. Officers located Thompson approximately seventeen minutes after the 9-1-1 call. Shouse identified Thompson as the assailant. The officers searched Thompson and found Coleman’s wallet in Thompson’s pocket. Officers followed a trail of blood to a church about one block away. Behind an air conditioning unit on the west side of the church the officers found a black and silver multi-use tool that matched Shouse’s description of the knife Thompson had possessed.

[9] Coleman was taken to the hospital and underwent surgery to treat his injuries. Following the surgery, Coleman suffered “terrible” pain. Def. Ex. D at 153. Due to his injuries, Coleman suffered permanent vision loss in one eye and can now only see about two feet in front of him; anything further away is blurry to him. Coleman also has hearing loss in his left ear and nerve damage in his neck and hand. The tendons and nerves in Coleman’s hand were rebuilt because the knife cut all the nerves and tendons, which resulted in some lost function and feeling in the hand.

[10] The State charged Thompson with Count I, attempted murder, a Level 1 felony;² Count II, robbery resulting in serious bodily injury, as a Level 2 felony;³ Count III, intimidation, as a Level 5 felony;⁴ and Count IV, criminal trespass, as a Class A misdemeanor,⁵ and alleged that he was a habitual offender. On May 14, 2019, Thompson was examined by Dr. Ned Masbum to determine if Thompson was competent to stand trial. Dr. Masbaum noted that Thompson had been diagnosed as schizophrenic in the past but “denied experiencing delusions or hallucinations” at the time of the evaluation. Def. Ex. J at 169. Dr. Masbaum found that Thompson was competent to stand trial, noting that Thompson, “in spite of his history of disorders[,] was of sound mind at the time

² I.C. § 35-42-1-1(1); I.C. § 35-41-5-1(a).

³ I.C. § 35-42-5-1(a)(1).

⁴ I.C. § 35-45-2-1(a)(1) and (b)(2)(A).

⁵ I.C. § 35-43-2-2(b)(4).

of the alleged offenses” and “was able to appreciate the wrongfulness of his conduct at that time.” Def. Ex. K at 172. On May 15, 2019, Thompson also participated in a sanity and competency examination with Dr. Rebecca Mueller. Dr. Mueller found that Thompson was sane and “was able to appreciate the wrongfulness of his conduct at the time of the alleged offense.” Def. Ex. I at 167.

[11] In May of 2021, the State amended Count I to charge Thompson with aggravated battery as a Level 3 felony, and Thompson pled guilty to the amended charge. As part of the plea agreement, the State agreed to dismiss the remaining counts and habitual offender enhancement allegation and the sentence was left open to the court. The trial court found a sufficient factual basis for the plea, accepted the plea, and entered judgment accordingly.

[12] Following Thompson’s July 16 sentencing hearing, the trial court stated that it had “reviewed the aggravators and mitigators argued by both parties and ... taken into consideration the arguments in support of or against each of the aggravators and mitigators raised by each party.” Tr. v. II at 126-27. As aggravating factors, the court found that Thompson had a criminal history that included other violent offenses, had committed two offenses while on probation or court supervision, used a weapon in the commission of the offense, presented a danger to the community, and was at a high risk of reoffending. The court found that Thompson’s guilty plea and remorse were mitigating factors, though the court gave limited weight to the latter factor because Thompson “acknowledged that he does not think about the victim in the case” and the

victim suffered significant injuries. *Id.* at 132. The court declined to find provocation or self-defense as mitigators because Coleman did nothing to provoke or threaten Thompson.

[13] After noting that it had reviewed the mental health evaluations and Thompson’s video-taped interview recorded “within minutes of the incident,” the trial court also declined to find Thompson’s “serious mental illness” to be a mitigating factor. *Id.* at 135-36. Specifically, the trial court noted that the mental health evaluators found Thompson to be competent to stand trial and sane at the time of the crime, Thompson was “coherent” and “responded appropriately” when he was interviewed approximately ten to fifteen minutes after the incident, Thompson “understood the wrongfulness of his actions” as demonstrated by his immediate flight from the scene of the crime and hiding the weapon used in the crime, and “[n]one of the video evidence of [Thompson] almost immediately after the incident and then at the hospital indicates to the Court that [Thompson] was suffering from a schizophrenic episode.” *Id.* at 136-37.

[14] The trial court sentenced Thompson to a term of thirteen years to be fully executed in the Department of Correction. This appeal ensued.

Discussion and Decision

Sentencing

[15] Thompson maintains that the trial court erred in sentencing him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion occurs if the decision is “clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*. A trial court abuses its discretion in sentencing if it does any of the following:

- (1) fails “to enter a sentencing statement at all;” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any[]—but the record does not support the reasons;” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.”

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)).

[16] So long as a sentence is within the statutory range, the trial court may impose it without regard to the existence of aggravating or mitigating factors. *Anglemyer*, 868 N.E.2d at 489. If the trial court does find the existence of aggravating or mitigating factors, it must give a statement of its reasons for selecting the sentence it imposes. *Id.* at 490. However, the relative weight or value assignable to reasons properly found, or those which should have been found, is

not subject to review for abuse of discretion, *Gross*, 22 N.E.3d at 869, and a trial court is under no obligation to explain why a proposed mitigator does not exist or why the court found it to be insignificant, *Sandleben v. State*, 22 N.E.3d 782, 796 (Ind. Ct. App. 2014), *trans. denied*. Moreover, the “trial court is not obligated to accept the defendant’s argument as to what constitutes a mitigating factor, and the court is not required to give the same weight to proffered mitigating factors as does a defendant.” *Smoots v. State*, 172 N.E.3d 1279, 1288 (Ind. Ct. App. 2021).

- [17] The trial court imposed upon Thompson a thirteen-year sentence, fully executed. The sentencing range for aggravated battery, as a Level 3 felony, is between three and sixteen years, with an advisory sentence of nine years. I.C. § 35-50-2-5(b). Thus, Thompson’s sentence is within the sentencing range.
- [18] Thompson’s only argument as to why the trial court abused its discretion when it imposed the thirteen-year sentence is that the court allegedly “disregarded [the] significant mitigating factors” of provocation, self-defense, trespass, and insanity. Appellant’s Br. at 13. However, it is clear from the record that the trial court did, in fact, consider each of those alleged mitigators. Not only did the trial court specifically state that it had reviewed and considered all the aggravators and mitigators advanced by each party, but it explained its reasons for rejecting certain mitigators offered by Thompson. Although it was not required to explain why it found such mitigators insignificant, *id.*, the trial court did so. The court stated that provocation was not a mitigating factor because

there was no evidence that Coleman did anything to provoke Thompson.⁶ Nor did Coleman take any actions against Thompson that would require Thompson to act in self-defense. And Coleman was not trespassing on Thompson's property as Thompson had no legal right to the apartment he was in and, in any case, Coleman did not enter that apartment; Coleman only entered into the public area of the apartment building.

[19] Regarding Thompson's mental health, the trial court found that Thompson's mental illness did not cause his battery of Coleman or prevent him from knowing that the battery was wrong. Those findings were supported by the evaluations of the mental health professionals, Thompson's actions seeking to evade capture immediately following the incident, and Thompson's own coherence and appropriate responses immediately after the incident as shown by video recordings. That evidence reasonably led the trial court to conclude that there was no support for Thompson's claim that he "could have been" experiencing a mental health impairment when he committed the crime. Appellant's Br. at 23. The trial court was not obliged to accept Thompson's argument that his mental illness was a mitigating factor in the absence of evidence in the record clearly supporting that contention.

⁶ Although Thompson asserts that the provocation from Shouse should "carry mitigating value" as to Thompson's battery of Coleman, he cites no supporting legal authority. Appellant's Br. at 15. Thompson has therefore waived that assertion. Ind. Appellate Rule 46(A).

[20] The trial court did not fail to consider mitigating factors clearly supported by the record, and its sentencing decision was not clearly against the logic and effect of the facts and circumstances before it or the reasonable deductions therefrom. The court did not abuse its discretion in Thompson’s sentencing.

Appellate Rule 7(B)

[21] Thompson contends that the sentence for his Level 3 felony conviction of aggravated battery is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[22] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to “leaven the outliers.” *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of 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.” *Id.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

Deference to the trial court “prevail[s] 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).

[23] We begin by noting that Thompson’s thirteen-year sentence for his Level 3 felony is within the statutory sentencing range and is not at the highest level of the range. *See* I.C. § 35-50-2-5(b) (providing the sentencing range for a Level 3 felony is between three and sixteen years, with an advisory sentence of nine years).

[24] Moreover, our review of the record discloses nothing about the nature of the offense that would warrant revising Thompson’s sentence. “The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant’s participation.” *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. Here, the record discloses that Thompson brutally and repeatedly stabbed Coleman, without provocation, and then stole Coleman’s wallet while Coleman was unconscious from the attack. Thus, there is no compelling evidence showing any restraint in the commission of Thompson’s crime or otherwise casting the offense in a better light. Furthermore, the “damage done to others” as an

ultimate consequence of Thompson's crime was severe injuries, some of which are permanent. *Cardwell*, 895 N.E.2d at 1224. We see nothing in the nature of Thompson's offense that suggests the sentence—which is within the statutory boundaries and is three years less than the maximum sentence allowed—is too harsh for the crime committed.

[25] Nor does Thompson's character warrant a sentence revision. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020) (quotation and citation omitted), *trans. denied*. Thompson has an extensive criminal history that includes crimes of violence. He also has a history of probation violations and was under court supervision at the time he committed the crime. Moreover, Thompson has a history of behaving poorly while incarcerated, including several threats to and assaults of correctional officers and staff. Thompson's criminal history and his poor behavior while incarcerated reflect poorly on his character.

[26] We cannot say that Thompson's sentence of thirteen years imprisonment for his Level 3 felony conviction is inappropriate in light of the nature of the offense and his character.

Conclusion

[27] The trial court did not abuse its discretion in sentencing Thompson, and his sentence is not inappropriate.

[28] Affirmed.

Najam, J., and Bradford, C.J., concur.