

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Corey L. Preston,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

November 9, 2023

Court of Appeals Case No.
23A-CR-590

Appeal from the
Allen Superior Court

The Honorable
David M. Zent, Judge

Trial Court Cause No.
02D06-2208-F5-273

Memorandum Decision by Judge Vaidik
Judges Bradford and Brown concur.

Vaidik, Judge.

Case Summary

- [1] Corey L. Preston appeals his eleven-year sentence for Level 5 felony intimidation and a habitual-offender enhancement, arguing it is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

Facts and Procedural History

- [2] On August 1, 2022, a group of teenage friends—A.B., M.K. 1, M.K. 2, N.G. 1, N.G. 2, S.N., and G.N.—decided to walk to Promenade Park in downtown Fort Wayne. On the way, they stopped at a Shell station. While they were at the station, Preston arrived on his moped. He made inappropriate comments to the girls in the group. The boys took offense and exchanged words with Preston.
- [3] The kids continued on their way, but Preston followed them and brandished a knife. He said, “You wanna fight? Let’s go, come on,” and “I’m gonna kill you mother f***ers.” Tr. Vol. I pp. 148, 163. Preston followed the kids for several blocks. The kids were eventually assisted by two hotel employees. One employee comforted the girls inside the hotel, and the other called police. Sergeant Shannon Hughes of the Fort Wayne Police Department was the first to arrive. She saw Preston had a knife and ordered him to drop it, which he did.

The kids were upset, crying, sweaty, and tired from running. The girls were hugging, and one was sick to her stomach.

[4] The State charged Preston with Level 5 felony intimidation with a deadly weapon, Level 6 felony intimidation, and Level 6 felony criminal recklessness and alleged that he is a habitual offender. A jury found him guilty of Level 5 felony intimidation and that he is a habitual offender. The trial court sentenced Preston to six years plus a habitual-offender enhancement of five years, for a total sentence of eleven years in the Department of Correction.

[5] Preston now appeals.

Discussion and Decision

[6] Preston contends his sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate 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.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “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) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)).

Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[7] The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). At the time of Preston’s offense, the range for a habitual-offender enhancement for a Level 5 or Level 6 felony was two to six years. I.C. § 35-50-2-8(i) (2022).¹ The trial court imposed the maximum sentence of six years for the Level 5 felony plus a habitual-offender enhancement of five years, for a total of eleven years.

[8] Preston’s argument is cursory. To address the nature of the offense, he simply sets forth the text of the statute under which he was convicted without addressing any of the evidence presented at trial. Appellant’s Br. p. 9. And his character argument is one sentence: “The Presentence Investigation Report reveals, more than anything else, that Corey is in need of additional rehabilitative services outside of the confines of a prison cell.” *Id.* He doesn’t say a word about his extensive criminal history, which consists of ten felony convictions and seventeen misdemeanor convictions stretching from 1988 to 2016. This includes felony intimidation convictions in 2002 and 2012 and drug convictions that resulted in a fifteen-year sentence in 2006. Preston has not carried his burden of persuading us that his sentence is inappropriate.

¹ Effective July 1, 2023, the range was changed to three to six years. See P.L. 37-2023 § 2.

[9] Affirmed.

Bradford, J., and Brown, J., concur.