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IN THE
COURT OF APPEALS OF INDIANA

Aaron L. Gerber,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 13, 2021

Court of Appeals Case No.
20A-CR-1771

Appeal from the Allen Superior
Court

The Honorable Wendy Davis,
Judge

Trial Court Cause No.
02D04-2001-F6-48

Pyle, Judge.

Statement of the Case

- [1] Aaron Gerber (“Gerber”) appeals the two and one-half (2½) year sentence imposed after he pleaded guilty, without a plea agreement, to Level 6 felony

domestic battery¹ and the one-hundred and eighty (180) day sentence imposed after he pleaded guilty, without a plea agreement, to indirect criminal contempt.² He specifically argues that the sentence for his Level 6 felony domestic battery conviction is inappropriate and that the trial court abused its discretion when it sentenced him for the contempt adjudication. Concluding that Gerber has failed to persuade us that the domestic battery sentence is inappropriate and that the trial court did not abuse its discretion when it sentenced him for the contempt adjudication, we affirm the trial court's judgment.

[2] We affirm.

Issues

1. Whether Gerber's sentence for his Level 6 felony domestic battery conviction is inappropriate.
2. Whether the trial court abused its discretion when it sentenced Gerber for the contempt adjudication.

Facts

[3] On January 8, 2020, Gerber and his girlfriend, B.C., became involved in a physical altercation at their home. When Gerber slapped B.C. in the face with

¹ IND. CODE § 35-42-2-1.3.

² IND. CODE § 34-47-3-1.

the back of his hand, B.C. responded by slapping Gerber. Gerber then twice punched B.C. in the head with a closed fist, held her down on the couch, and punched her four or five more times in the head with a closed fist. When Fort Wayne Police Department officers arrived at the scene, the officers noticed that B.C.'s face was red, and B.C. reported swelling and bruising to her head.

[4] Five days later, on January 13, 2020, the State charged Gerber with Level 6 felony domestic battery. That same day, the trial court released Gerber on his own recognizance with an order for monitored conditional release. The order specifically stated that Gerber was “to commit no criminal offenses” and that “any violations of the conditions of this release may subject you to revocation of your release, an order for detention and/or Contempt of Court proceedings.” (App. Vol. 2 at 18). The trial court also issued a no-contact order prohibiting Gerber from having any contact with B.C.

[5] On March 18, 2020, the State charged Gerber in a separate cause with Class A misdemeanor invasion of privacy for violating the no-contact order in this case by going to B.C.'s home. That same day, an Allen County pretrial services officer filed a notice advising the trial court that Gerber may have violated his conditional release in this case because he had been arrested for violating the no-contact order. On March 20, 2020, the trial court issued a warrant for Gerber's arrest in the present case and further ordered that Gerber should be held without bond.

- [6] Six weeks later, on May 5, 2020, Gerber was charged in a third cause with Class A misdemeanor invasion of privacy after he had returned to B.C.'s house for a second time. That same day, a Fort Wayne Police Department officer served Gerber with the arrest warrant in the present case.
- [7] On May 13, 2020, the State filed a "petition to revoke bond" in this case based upon Gerber's violation of the no-contact order. Following a hearing on the State's petition, a magistrate entered an order that revoked Gerber's release on his own recognizance.
- [8] On June 30, 2020, while Gerber was incarcerated, the State filed an information for contempt in this case. The information alleged that Gerber had violated the trial court's January 2020 no-contact order by telephoning the victim 552 times from May 7, 2020 until June 30, 2020 while he was incarcerated. The State asked the trial court to set the matter for a hearing and to issue an order to show cause as to why Gerber should not be held in contempt for violating the no-contact order.
- [9] That same day, the trial court held an initial hearing for the contempt charge. The trial court confirmed that Gerber understood the allegations in the contempt information and that the "range of punishment . . . [was] up to one-hundred and eighty (180) days." (Tr. Vol. 2 at 17). Gerber entered a not guilty plea, but he and his counsel advised the trial court that they were negotiating a plea agreement concerning both the Level 6 felony domestic battery and the contempt charges.

[10] Gerber eventually pleaded guilty to both the Level 6 felony domestic battery and the contempt charges without a plea agreement. At the guilty plea hearing, Gerber confirmed that he understood that if he pleaded guilty, he was waiving any challenge to the judgment and would only be able to challenge his sentence in a direct appeal. Gerber admitted that he had: (1) battered B.C.; and (2) telephoned her 552 times in violation of the no-contact order. The magistrate took the matter under advisement and ordered a presentence investigation report (“PSI”).

[11] The PSI, which was filed in August 2020, revealed that thirty-nine-year-old Gerber has seven prior felony convictions, including four convictions for Class C felony sexual misconduct with a minor and one conviction each for Class D felony: (1) battery resulting in bodily injury to a child less than fourteen years old; (2) domestic battery in the presence of a child less than sixteen years old; and (3) failure to register as a sex offender. Gerber also has two misdemeanor convictions for contributing to the delinquency of a minor and false informing. Additionally, he had one probation revocation and one suspended sentence revocation. Gerber’s March and May 2020 charges for invasion of privacy, which were committed during the pendency of this case, were both still pending. The PSI further revealed that Gerber has three children and three stepchildren.

[12] The trial court judge presided over Gerber’s August 2020 sentencing hearing. Both Gerber and his counsel confirmed that Gerber had pleaded guilty to both the Level 6 felony domestic battery and the contempt charges. The State told

the trial court that, since June 2020, Gerber had: (1) called B.C. more than ten additional times in violation of the no-contact order; (2) messaged B.C. on his tablet 138 times; and (3) video-chatted with B.C. two times.

[13] The trial court reviewed the PSI with Gerber. When the trial court asked him whether his children had been the victims in any of his four prior convictions for sexual misconduct with a minor, Gerber told the trial court to “[g]et [its] sick mind out of the gutter.” (Tr. Vol. 2 at 43). The trial court questioned what Gerber had said, and Gerber again told the trial court “to [g]et [its] sick mind out of the gutter.” (Tr. Vol. 2 at 43).

[14] Thereafter, the trial court found the following aggravating factors: (1) Gerber’s prior felony convictions; (2) Gerber had been charged with two misdemeanors during the pendency of this case; (3) Gerber’s prior attempts at rehabilitation had failed; (4) Gerber had “[c]alled [B.C.] over five hundred (500) times in complete disregard and disdain to the [trial] [c]ourt’s orders which show[ed] [the trial court] that [Gerber] c[ould not] follow any orders while [he was] out on any kind of community supervision[;]” (5) the facts and circumstances of the case; and (6) Gerber’s comments to the trial court [that] day. (Tr. Vol. 2 at 44).

[15] The trial court sentenced Gerber to two and one-half (2½) years for the domestic battery conviction and one hundred and eighty days for the contempt adjudication. The trial court further ordered the two and one-half (2½) year sentence to run consecutively to the one-hundred and eighty (180) day sentence, for a three (3) year aggregate sentence.

[16] Gerber now appeals.

Decision

[17] Gerber argues that the two and one-half (2½) year sentence imposed for his Level 6 felony domestic battery conviction is inappropriate and that the trial court abused its discretion when it sentenced him to one-hundred and eighty (180) days for the contempt adjudication. We address each of his contentions in turn.³

1. Inappropriate Sentence

[18] Gerber first argues that the two and one-half-year (2½) sentence imposed for his Level 6 felony domestic battery conviction is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the

³ Gerber also argues that “it was improper for the [trial] [c]ourt to revoke [his] bond without a petition from any party that was in front of the [trial] [c]ourt.” (Gerber’s Br. 5). First, Gerber had not been released on bond. Rather, he had been released on his own recognizance. Second, after the trial court had learned that Gerber had violated the conditions of his pre-trial release by violating the no-contact order issued in the case, the trial court issued a warrant for Gerber’s arrest and ordered that he be held without bond. After Gerber had been arrested on that warrant, the State filed a petition to revoke Gerber’s release on his personal recognizance pursuant to INDIANA CODE § 35-33-8-5, which governs the revocation of bail and release on personal recognizance. The trial court held a hearing on the State’s petition. Following the hearing, the trial court issued an order that revoked Gerber’s release on his own recognizance. We find no error here.

In addition, Gerber challenges the contempt information and adjudication. However, as the State points out, an adjudication based on a guilty plea may not be challenged on direct appeal. *See Robey v. State*, 7 N.E.3d 371, 383 (Ind. Ct. App. 2014).

offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

[19] The Indiana Supreme Court has further explained that “[s]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Id.* at 1222. “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).

[20] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, Gerber was convicted of a Level 6 felony. The sentencing range for a Level 6 felony is between six (6) months and two and one-half (2½) years, and the advisory sentence is one (1) year. IND. CODE § 35-50-2-7. Here, the trial court sentenced Gerber to two and one-half (2½) years, which is the maximum sentence.

[21] Regarding the nature of the offense, Gerber slapped B.C., twice punched her in the head with a closed fist, held her down on the couch, and punched her four or five more times in the head with a closed fist. Regarding Gerber's character, Gerber has seven prior felony convictions and two prior misdemeanor convictions. During the pendency of this case, Gerber was twice charged with invasion of privacy for violating the no-contact order in this case by going to B.C.'s home. The State further filed a contempt information because Gerber had telephoned B.C. more than 500 times while he was incarcerated. Even after the State had filed the contempt charge, Gerber continued to telephone B.C. in violation of the protective order. He also contacted her more than 100 times by tablet. Gerber has failed to persuade this Court that his two-and-one-half-year sentence is inappropriate.

2. Abuse of Discretion

[22] Gerber also argues that the trial court abused its discretion when it sentenced him to one-hundred and eighty days after he pleaded guilty to the contempt charge. Gerber specifically argues that "it was an abuse of discretion for the [trial] court to impose the maximum sentence for the contempt." (Gerber's Br. 5).

[23] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Grogg v. State*, 156 N.E.3d 744, 750-51 (Ind. Ct. App. 2020), *trans. denied*. An abuse of discretion occurs if the trial court's 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. *Id.* at 751.

[24] As a preliminary matter, we note that Gerber has waived appellate review of his challenge to the contempt sentence because his one-paragraph argument is supported neither by citation to authority nor cogent argument. *See Smith v. State*, 822 N.E.2d 193, 202-03 (Ind. Ct. App. 2005) (“Generally, a party waives any issue raised on appeal where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.”), *trans. denied.*

[25] Waiver notwithstanding, we find no abuse of the trial court’s discretion. This Court has previously explained as follows:

Contempt is a “*sui generis* proceeding neither civil nor criminal in nature, although both of those labels are used to describe certain categories of contempt.” Contempt proceedings may be generally categorized as civil or criminal, according to the nature and purpose of the sanction imposed. A civil contempt is a violation of a court order resulting in a proceeding for the benefit of the aggrieved party. As such, any type of penalty in a civil contempt proceeding must be coercive or remedial in nature. By contrast, a criminal contempt is an act directed against the dignity and authority of the court that obstructs the administration of justice and tends to bring the court into disrepute. Accordingly, a criminal contempt sanction is punitive in nature because its purpose is to vindicate the authority of the court, and it benefits the State rather than the aggrieved party.

Contempt may also be direct or indirect. Direct contempt involves action in the presence of the court, such that the court

has personal knowledge of it. Indirect contempt undermines the orders or activities of the court but involves action outside the trial court's personal knowledge.

Wilson v. State, 988 N.E.2d 1211, 1218 (Ind. Ct. App. 2013) (citations and footnotes omitted).

[26] Here, although Gerber does not specify the nature of the contempt in this case, the above factors make it clear that the trial court entered the sentence at issue because Gerber had committed indirect criminal contempt. Specifically, Gerber's violation of the no-contact order was an act directed against the dignity and authority of the trial court. In addition, Gerber's violation of the no-contact order obstructed the administration of justice and brought the court into disrepute. We further note that the contempt in this case was indirect because Gerber's violation of the no-contact order took place away from the courtroom and outside the personal knowledge of the trial court.

[27] Having determined that Gerber committed indirect criminal contempt, we turn to Gerber's argument that the trial court abused its discretion when it sentenced him to one-hundred and eighty days. "Contempt of court involves disobedience which undermines the court's authority, justice and dignity. The trial court has inherent power to maintain its dignity, secure obedience to its process and rules, rebuke interference with the conduct of its business, and punish unseemly behavior." *Wilson*, 988 N.E.2d at 1218-19. Punishment for contempt is a matter reserved to the sound discretion of the trial court. *Hopping v. State*, 637 N.E.2d 1294, 1298 (Ind. 1994), *cert. denied*, 513 U.S. 1017 (1994).

The trial court's power to punish contempt is limited only by reasonableness. *Jones v. State*, 847 N.E.2d 190, 202 (Ind. Ct. App. 2006), *trans. denied*. However, a trial court may impose a maximum sentence of six months "for criminal contempt [] without guilt or innocence being determined by a jury." *Holly v. State*, 681 N.E.2d 1176, 1177 (Ind. Ct. App. 1997).

[28] Here, Gerber received the maximum sentence permitted for contempt in the absence of a jury trial. As previously stated, a criminal contempt sanction is punitive in nature because its purpose is to vindicate the authority of the court. *See id.* In addition, a punishment for criminal contempt is meant "to act as a deterrent for [the defendant] and all others who might harbor the thought of defying an order of [the court]." *In re Perrello*, 291 N.E.2d 698, 700 (Ind. 1973). We conclude that Gerber's sentence effectuates both of these purposes. Specifically, Gerber demonstrated his total disregard for the authority of the trial court when he flagrantly violated the trial court's no-contact order and telephoned B.C. 552 times in fifty-four days. It would undermine the authority of trial courts and render no-contact orders meaningless if a defendant subject to a no-contact order could flagrantly violate it without fear of reprisal. Indeed, "[o]pen defiance of a [trial court's order] will not be countenanced." *Id.* We conclude that Gerber's one-hundred-and-eighty-day sentence is reasonable in

light of the given circumstances, and the trial court did not abuse its discretion in imposing it.⁴

[29] Affirmed.

Najam, J., and Tavitas, J., concur.

⁴ Gerber’s sentence also “passes muster” under the inappropriateness test. *See Jones*, 847 N.E.2d at 202. In addition, we further note that Gerber’s argument that he “should have been given the opportunity to purge himself of contempt in this matter . . . before he was given the maximum sentence for contempt available[,]” also fails. (Gerber’s Br. 20). “Where . . . a [trial] court exercises its inherent *civil* contempt power and fashions a coercive contempt sanction, we have typically required that there be an opportunity for the contemnor to purge himself or herself of contempt.” *Indy Diamond, LLC v. City of Indianapolis*, 132 N.E.3d 417, 425 (Ind. Ct. App. 2019) (Emphasis added). *See also* IND. CODE § 34-47-3-5 (providing that the “court shall, on proper showing . . . give the defendant a reasonable and just opportunity to be purged of the contempt”). Here, however, Gerber committed *criminal* contempt. Moreover, he would have been unable to purge himself of the more than 500 telephone calls that he made to B.C.