

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Paul Lester Carmouche,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 22, 2022

Court of Appeals Case No.
21A-CR-1715

Appeal from the Marion Superior
Court

The Honorable Mark D. Stoner,
Judge
The Honorable Jeffrey L. Marchal,
Magistrate

Trial Court Cause No.
49D32-1611-F5-44308

Baker, Senior Judge.

- [1] Paul Lester Carmouche appeals the sentence imposed by the trial court after he was found guilty by a jury of criminal confinement resulting in bodily injury, a

level 5 felony,¹ arguing that his sentence is inappropriate in light of the nature of the offense and his character. Finding that the sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] Carmouche, a truck driver, and D.C., the victim in this case, were dating. D.C. lived in Houston, Texas where she owned a business. D.C. described Carmouche as “very jealous” and explained that Carmouche did not like the fact that she owned a business because he wanted her to ride with him in his truck. Tr. Vol. 3, p. 57.

[3] In November 2016, D.C. flew to Indiana to visit Carmouche. During the visit, D.C. had an emergency with her business, in regard to which she received numerous phone calls. Carmouche became angry about all the calls and kicked, punched, and tased D.C. Later, Carmouche drove the truck, with D.C. in it, to a gas station where he met someone. After the meeting, Carmouche got back in the truck and used methamphetamine. Once he had ingested the drug, Carmouche drove the truck behind a building, took D.C.’s phone and purse and began beating her once more. Carmouche then forced D.C. to engage in fellatio and sexual intercourse.

¹ Ind. Code § 35-42-3-3 (2014).

- [4] Carmouche began driving again and eventually parked the truck near a store. Carmouche left the truck and returned with alcohol, which he began drinking. Twice D.C. asked to use the restroom. The second time, Carmouche allowed her to go into the store but warned her that if she failed to return, he would kill her. Upon entering the store, D.C. showed her injuries to an employee who called the police. Carmouche was arrested.
- [5] The State charged Carmouche with criminal confinement as a Level 5 felony and battery resulting in moderate bodily injury as a Level 6 felony.² After posting bond, Carmouche failed to appear for a pretrial conference in January 2017, and, in January 2019, he notified the trial court he was in prison in Texas. He was returned to Indiana in November 2019 for disposition of these charges. In September 2020, the State added a charge of rape, as a Level 3 felony,³ against Carmouche. A jury subsequently found Carmouche guilty of criminal confinement and battery, and the trial court entered judgment of conviction only as to the confinement. The court sentenced Carmouche to five years. Carmouche now appeals that sentence.

Discussion and Decision

- [6] 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 determine

² Ind. Code § 35-42-2-1 (2016).

³ Ind. Code § 35-42-4-1 (2014).

that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). This Court gives the trial court's judgment considerable deference, which 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). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

- [7] The maximum sentence for a Level 5 felony is six years, and the minimum sentence is one year. Ind. Code § 35-50-2-6(b) (2014). The advisory sentence is three years. *Id.* Here, the trial court imposed a sentence of five years.
- [8] As to the nature of the offense, Carmouche confined his girlfriend in his truck where he violently beat and tased her, causing multiple fractures to her nasal bones, facial swelling, and bruising on multiple parts of her body.
- [9] When considering character, even a minor criminal history reflects poorly on a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*. Carmouche's criminal record is anything but minor—he has convictions for felony possession of cocaine, possession of marijuana, battery, second degree battery, resisting law enforcement, domestic battery, disturbing the peace by intoxication, felony forgery, and third degree assault. In addition,

he has violated probation and had his probation revoked, and, between trial and sentencing of this case, he was convicted of committing battery with bodily injury while in the Marion County Jail.

[10] Further, although a record of arrests by itself is not evidence of a defendant's criminal history, it is appropriate to consider such a record as a poor reflection on the defendant's character because it may reveal that he has not been deterred even after having been subjected to the police authority of the State. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Here, while the record is not clear on the disposition of the charges, it reflects that Carmouche has been charged with such crimes as cruelty to juveniles, possession of marijuana, forcible rape, numerous counts of domestic battery, resisting, and operating while intoxicated.

[11] At sentencing, the trial court acknowledged Carmouche's extensive record and noted that D.C. was also the victim of Carmouche's prior third degree assault conviction. The court found Carmouche's jail battery especially troubling.

[12] In sum, Carmouche's actions and record demonstrate neither restraint or lack of brutality, nor persistent examples of good character.

Conclusion

[13] Upon due consideration of Carmouche's sentence in light of his offense and character, we conclude his sentence is not inappropriate and decline his request to reduce his sentence to the advisory term of three years.

[14] Affirmed.

Bradford, C.J., and Molter, J., concur.