MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Master Alexander Porter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 8, 2023

Court of Appeals Case No. 22A-CR-2976

Appeal from the LaPorte Superior Court

The Honorable Jaime M. Oss, Judge

Trial Court Cause No. 46D01-2203-F5-378

Memorandum Decision by Judge Riley
Judges Bradford and Weissmann concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Master Alexander Porter (Porter), appeals his sentence for escape, a Level 5 felony, Ind. Code § 35-44.1-3-4(a), following a plea agreement.

[2] We affirm.

ISSUE

[3] Porter presents this court with one issue on appeal, which we restate as: Whether Porter's three-year sentence is inappropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] On March 27, 2022, an employee at a Gallops gas station reported observing a male, later identified as Porter, "seated in the passenger seat of a red Chevrolet striking the female driver in the head." (Appellant's App. Vol. II, pp. 44-45). The female, identified as K.Y., attempted to get out of the car twice but was pulled back into the vehicle by her hair by Porter each time. The employee noticed Porter exit the car and walk towards U.S. Highway 20. The employee called 911 and reported what she had observed.

[5] Officers from the LaPorte County Sheriff's Office were dispatched to the scene. Officer Abraham located a vehicle matching the description of the Chevrolet and initiated a stop. K.Y. was the only person in the vehicle. She denied having been battered, but she did appear to be "emotionally distraught" and

had several marks on her face. (Appellant's App. Vol. II, p. 44). Meanwhile, Officer Adam Brinkman advised that he observed a male matching Porter's description walking in the vicinity. When the officers approached Porter, he fled but, after a chase, was eventually detained in a nearby garage.

[6] An officer gathered Porter's identification and learned that he had outstanding warrants for his arrest. While the officer was walking Porter to his patrol vehicle, Porter made an unsuccessful attempt to flee. Eventually, he was placed in the LaPorte County Sheriff's Office's "paddy wagon" for transport to the LaPorte County jail. (Appellant's App. Vol. II, p. 44). While he was being transported, Porter repeatedly kicked the paddy wagon's door until it broke open. Porter escaped out of the back of the wagon and was located several hours later.

[7] On March 28, 2022, the State filed an Information, charging Porter with Level 5 felony escape, Level 6 felony domestic battery, and Class B misdemeanor criminal mischief. On September 21, 2022, Porter entered into a plea agreement with the State in which he agreed to plead guilty to escape in exchange for the State agreeing to dismiss the remaining charges and to limit the executed portion of Porter's sentence to three years. On September 22, 2022, Porter pleaded guilty. On October 20, 2022, the trial court accepted his guilty plea and ordered Porter to serve three years in the Department of Correction.

[8] Porter now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[9] Porter now contends that the trial court's imposition of a three-year executed sentence is inappropriate in light of the nature of the crime and his character. Sentencing is primarily "a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Nevertheless, although a trial court may have acted within its lawful discretion in fashioning a sentence, our court may revise the sentence "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 offender." Ind. Appellate Rule 7(B). "The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." *Cardwell*, 895 N.E.2d at 1225. Ultimately, "whether we regard a sentence as appropriate 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. We focus on "the length of the aggregate sentence and how it is to be served." Id. Our court does "not look to see whether the defendant's sentence is appropriate or if another sentence might be *more* appropriate; rather, the test is whether the sentence is 'inappropriate.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied.*

[10] The advisory sentence is the starting point selected by the General Assembly as a reasonable sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, the trial court sentenced Porter to three years for Level 5 felony escape, which carried a fixed term between one year and six years, with an advisory sentence of three years. *See* I.C. § 35-50-2-6(b). Because the trial court imposed the advisory sentence—also the maximum sentence allowed under the plea agreement—a defendant faces a "particularly heavy burden" in persuading this court that the sentence is inappropriate. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*. The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 111-12 (Ind. 2015).

[11] With respect to the nature of the crime, we observe that Porter battered K.Y., fled from the police, resisted arrest, and destroyed the secure cage door on the LaPorte County Sheriff's Officer's paddy wagon, and then escaped again. In support of a sentence reduction, Porter argues that he did not cause physical damage or take hostages, and seemingly claims that it was fortunate that Porter was placed in the paddy wagon because "the officers discovered the security of their paddy wagon was defective and susceptible to escape by merely repetitive kicking." (Appellant's Br. p. 8). However, not committing any additional crimes but causing property damage does nothing to paint Porter's offense in a positive light. *See Neale v. State*, 826 N.E.2d 635, 638 (Ind. 2005) ("the absence

of physical harm is not an automatic mitigating circumstance such that it would require a lesser sentence than would otherwise be imposed.").

[12] Turning to Porter's character, we note that "[a] defendant's criminal history is relevant in assessing his character." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Although Porter informed the trial court that his "record [wa]s not extensive," we disagree. (Transcript Vol. II, p. 17). Porter's criminal history is violent and repetitive. As an adult, Porter had been convicted of two prior misdemeanors and one prior felony. Specifically, Porter had convictions for Level 6 felony domestic battery, Class A misdemeanor invasion of privacy, and Class A misdemeanor residential entry. As a result, Porter had been sentenced to executed sentences in the LaPorte County Jail and to suspended sentences on probation. During his time on probation, Porter violated the terms and conditions of his probationary sentence on nine separate occasions. He was on probation at the time of the instant offense and had four probation violations pending at the time of sentencing. Porter also had four new cases pending against him at the time of sentencing in which he had been charged with sixteen Counts of Level 6 felony invasion of privacy, four Counts of Level 6 felony domestic battery, two Counts of Level 6 felony residential entry, two Counts of Class A misdemeanor criminal mischief, Class A misdemeanor invasion of privacy, and Class A misdemeanor interference with the reporting of a crime. Overall, Porter's criminal history supports the inference that he has not been deterred from criminal conduct even after having been subject to the authority of the State. *See Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005).

[13] Porter reported to the Probation Department that he first used alcohol when he was sixteen years old but denied being a "regular user." (Appellant's App. Vol. II, p. 34). He reported that his first marijuana use was at the age of fifteen and he became a regular user by the age of seventeen. Until 2019, he used at least two grams of marijuana daily, but denied having a substance abuse problem. Porter now claims that "at the time of the present offense he was extremely stressed with the burden of supporting a family," as "[a]t the age of 22 he is the primary support of his girlfriend and two-year-old" child. (Appellant's Br. p. 8). However, stress cannot be invoked as a justification for numerous and repeated instances of domestic violence, invasion of privacy, and destruction of property.

[14] In light of the evidence before us, Porter has failed to persuade us that the nature of the offense and his character as an offender support a further reduction of his sentence.

CONCLUSION

[15] Based on the foregoing, we hold that Porter's three-year sentence is not inappropriate in light of the offense and his character.

[16] Affirmed.

[17] Bradford, J. and Weissmann, J. concur