MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeramie Wayne Lowe,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 28, 2022

Court of Appeals Case No. 21A-CR-2294

Appeal from the Jefferson Superior Court

The Honorable Blaine S. Goode, Judge

Trial Court Cause No. 39D01-2010-F5-1226

Molter, Judge.

[1] Jeramie Wayne Lowe pleaded guilty to Level 5 felony operating a vehicle after a lifetime suspension, Level 6 felony strangulation, and Class A misdemeanor domestic battery. The trial court sentenced Lowe to an aggregate term of seven years in the Indiana Department of Correction ("IDOC") and ordered that the sentences for the two felonies be served consecutively. Lowe appeals his sentence, arguing that the trial court abused its discretion in imposing the consecutive sentences and that his sentence is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

Facts and Procedural History

[2] In the afternoon on October 28, 2020, Lowe began accusing his wife, S.L., of infidelity. He became violent as the afternoon progressed, throwing and burning S.L.'s personal belongings and pushing her. When S.L. forced her way into the bedroom where Lowe was burning her belongings, he struck her in the face with his hand and began strangling her. He told S.L. that "he wanted her to die," and S.L. urinated on herself. Appellant's Vol. 2 at 19.

[3] After Lowe stopped choking S.L., she went to the bathroom to clean herself. However, Lowe entered the bathroom and continued with his accusations. He also began strangling S.L. for the second time while she was in the shower, again stating that "he wanted her to die." *Id.* As this second incident continued, S.L. tried to get dressed so that she could leave their home. But Lowe told S.L. that he would kill her if she left. Then when S.L. attempted to walk out of the residence, Lowe grabbed her by her hair and pulled her back through the home. He threw her on the floor, sat on her, and choked her for

the third time. He then left and drove away from the area in S.L.'s car, at which point S.L. called for help.

[4] Officer Curtis J. Shelpman from the Jefferson County Sheriff's Office subsequently arrived at the scene. He noticed that S.L. was badly injured and had urine in the crotch of her sweatpants. He also saw torn photos on the floor and a hole in the door. Lowe was later arrested, and the State charged him with Count I, operating a vehicle after a lifetime suspension as a Level 5 felony; Count II, criminal confinement as a Level 5 felony; Count III, strangulation as a Level 6 felony; and Count IV, domestic battery as a Class A misdemeanor.

[5] In 2021, Lowe entered into a plea agreement with the State. He pleaded guilty to Counts I, III, and IV, and the State dismissed Count II in exchange. The trial court accepted Lowe's guilty plea and entered a sentencing order. For Count I, it sentenced Lowe to four and one-half years in the IDOC. For Counts III and IV, it sentenced Lowe to serve two and one-half years and one year respectively in the IDOC. The trial court ordered Count III to be served consecutively to Count I and Count IV to be served concurrently with Counts I and III. Further, the trial court concluded that Lowe's guilty plea was a mitigating factor, but aggravating factors were his criminal history and delinquent behavior, recent parole violation, and threats of harm to the victim. Lowe now appeals.

Discussion and Decision

[6] Lowe contends the trial court abused its discretion by ordering him to serve his sentences for operating a vehicle after a lifetime suspension and strangulation consecutively and that his sentence is inappropriate based on the nature of his offenses and his character. Both arguments fail.

I. Consecutive Sentences

[7] "[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 163 (Ind. 2002)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007); *Phipps v. State*, 90 N.E.3d 1190, 1197 (Ind. 2018). "An abuse of discretion occurs only 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." *Schuler v. State*, 132 N.E.3d 903, 904 (Ind. 2019) (citing *Rice v. State*, 6 N.E.3d 940, 943 (Ind. 2014)).

[8] A trial court abuses its discretion by:

> (1) "failing to enter a sentencing statement at all"; (2) entering a sentencing statement in which the aggravating and mitigating factors are not supported by the record; (3) entering a sentencing statement that does not include reasons that are clearly supported by the record and advanced for consideration; or (4) entering a sentencing statement in which the reasons provided in the statement are "improper as a matter of law."

Ackerman v. State, 51 N.E.3d 171, 193 (Ind. 2016) (quoting *Anglemyer*, 868 N.E.2d at 490–91), *cert. denied*, 137 S. Ct. 475 (2016). "When an abuse of discretion occurs, this [c]ourt will remand for resentencing only if 'we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.'" *Id.* at 194 (quoting *Anglemyer*, 868 N.E.2d at 491). 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. *Anglemyer*, 868 N.E.2d at 491. The decision to impose consecutive sentences lies within the discretion of the trial court. *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citing *Gilliam v. State*, 901 N.E.2d 72, 74 (Ind. Ct. App. 2009)), *trans. denied*. A trial court must state its reasons for imposing consecutive sentences or enhanced terms. *Id.* A single aggravating circumstance may be sufficient to support imposing consecutive sentences. *Id.*

[9] Lowe argues that the trial court abused its discretion by imposing consecutive sentences, rather than concurrent sentences, for his felony convictions. But he does not explain *how* the trial court abused its discretion. Instead, he merely describes his offenses and states, in conclusory fashion, that "the sentences on each [felony] count should have run concurrently." Appellant's Br. at 9. Therefore, Lowe has waived this issue. *See Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004) (concluding the appellant waived a claim by failing to present a cogent argument).

[10] Waiver notwithstanding, the trial court found, along with other aggravating circumstances, that Lowe's criminal history was an aggravator. It is well-established that a defendant's criminal history is an aggravating circumstance, Ind. Code § 35-38-1-7.1(a)(2), and Lowe does not challenge the validity of any of the aggravators. As previously noted, a single aggravating circumstance may be sufficient to support the imposition of consecutive sentences. *Gross*, 22 N.E.3d at 869. We therefore find that Lowe's criminal history alone—which includes three prior felony convictions and at least fourteen misdemeanor convictions—was sufficient to justify his consecutive sentences. *See id.*; *Anglemyer*, 868 N.E.2d at 491.

II. Inappropriate Sentence

[11] The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). "That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court's decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[12] Our role is only to "leaven the outliers," which means we exercise our authority only in "exceptional cases." *Id.* at 160. Thus, we generally defer to the trial court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate.

Conley v. State, 972 N.E.2d 864, 876 (Ind. 2012). "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).

[13] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 5 felony is a fixed term of imprisonment between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. The advisory sentence for a Level 6 felony is one year, while its sentencing range is a fixed term of imprisonment between six months and two and one-half years. Ind. Code § 35-50-2-7. A person convicted of a Class A misdemeanor may be imprisoned for only up to one year. Ind. Code § 35-50-3-2.

[14] Here, Lowe's sentence for operating a vehicle after a lifetime suspension, a Level 5 felony, was only one and one-half years over the advisory sentence. Similarly, his sentence for strangulation, a Level 6 felony, was one and one-half years over the advisory sentence. Last, his sentence for domestic battery, a Class A misdemeanor, was a full year as allowed by Indiana Code section 35-50-3-2.

[15] We do not find that Lowe's aggregate sentence is inappropriate. While he seemingly concedes that his sentences for strangulation and domestic battery were not inappropriate, he argues his sentence for operating a vehicle after a lifetime suspension was inappropriate in light of the nature of the offense. Appellant's Br. at 12. In particular, he argues that his sentence should have been lower because his driving offense was nonviolent. Lowe asserts that he left his residence to avoid further conflict with S.L. and was arrested without incident, emphasizing that the driving offense did not involve an accident or additional criminal charges. *Id.*

[16] All of those considerations are consistent with Lowe's sentence for operating a vehicle after a lifetime suspension, which was one and one-half years over the advisory sentence. Moreover, our review under Appellate Rule 7(B) focuses on "the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Here, Lowe beat S.L. and strangled her three times. He first struck and choked S.L., causing her to urinate on herself, after he began burning her personal belongings. Then, while S.L. was in the shower, he entered the bathroom and choked her again. Further, when S.L. tried to leave their home, Lowe pulled S.L. back through the home, threw her onto the floor, and choked her for the third time. Thus, the nature of Lowe's offense does not make his sentence inappropriate.

[17] As to his character, Lowe simply argues that his sentence should have been lower because he accepted responsibility for his misconduct by pleading guilty.

We disagree. The law is well-established that it is proper to consider a defendant's criminal history in looking at his character for an inappropriateness analysis. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Lowe was thirty-nine years old at sentencing, and his criminal history goes back to at least when he was fourteen. Omitting the offense at issue, his criminal history includes three prior felony convictions and at least fourteen misdemeanor convictions for driving-related offenses and other criminal offenses. Also, Lowe's criminal history includes at least one petition to revoke his probation, and we note that he was on parole when he committed the instant offenses. Further, Lowe has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

[18] We cannot say that Lowe has shown "substantial virtuous traits or persistent examples of good character" such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Thus, Lowe has not shown that his sentence is inappropriate in light of the nature of his offenses and character.

[19] Affirmed.

Riley, J., and Robb, J., concur.