

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Sylvester Chison Okafor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 8, 2023

Court of Appeals Case No.
22A-CR-1497

Appeal from the Lake Superior
Court

The Honorable Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-2104-F1-31

Memorandum Decision by Judge Robb

Judges Mathias and Foley concur.

Robb, Judge.

Case Summary and Issue

- [1] Sylvester Okafor pleaded guilty to one count of criminal confinement, a Level 3 felony, and was sentenced to twelve years in the Indiana Department of Correction (“DOC”). Okafor appeals, raising the sole issue of whether his sentence is inappropriate in light of the nature of the offense and of his character. Concluding the sentence is not inappropriate, we affirm.

Facts and Procedural History

- [2] Okafor lived in Gary with his wife, Shardae, who is disabled. Also living with them were the child they shared and Shardae’s two older children. On April 27, 2021, Shardae and the children left the family’s apartment to go to the beach. Okafor found them at the train station and offered them a ride. Shardae accepted, but Okafor began driving them back to the apartment. She asked if she could go to the beach and although Okafor said yes, he continued driving them home.
- [3] The stipulated factual basis states that when they arrived home,
- Okafor did knowingly and intentionally confine Shardae . . . without her consent. [He] attacked Shardae . . . and struck her multiple times about the face, head, and body. [He] got Shardae . . . on the ground by tripping her and then choked her with a cloth until she passed out and lost consciousness. [W]hile [he] was choking Shardae . . . , she was unable to freely move about or

leave the floor of the apartment. [A]s a result of . . . Okafor confining Shardae . . . she suffered serious bodily injury – namely unconsciousness.

Appendix of the Appellant, Volume Two at 89. A security system in the apartment captured the altercation on video.

- [4] Shardae's sister reported the incident the next day, and police went to the apartment. Shardae complained of injuries to her face, neck, body, mouth, and throat. While they were waiting for medics to arrive, Okafor returned home and was arrested. When questioned, Okafor denied touching Shardae. When confronted with video of the incident, he said he acted in self-defense.
- [5] The State charged Okafor with nine counts, including attempted murder, a Level 1 felony. He was also charged with three counts of criminal confinement, three counts of domestic battery, strangulation, and intimidation, all felonies. Shortly after the charges were filed, the trial court granted a no contact order prohibiting Okafor from having any contact with Shardae or going to any locations where he believed she could be. Okafor knew about the no contact order, but on at least four occasions he went to the apartment where Shardae and the children were still living.
- [6] In April 2022, the State and Okafor entered into a Stipulated Plea and Agreement pursuant to which Okafor would plead guilty to one count of criminal confinement, a Level 3 felony. The parties were free to argue their respective positions to the trial court regarding the sentence, but they agreed the

maximum sentence would be capped at twelve years. The State agreed to dismiss the remaining eight charges.¹

[7] Based on the stipulated factual basis submitted by the parties with the plea agreement, the trial court found a sufficient factual basis for Okafor's guilty plea, found the plea to be knowingly and voluntarily made, and took the matter under advisement.

[8] A sentencing hearing was held on May 27, 2022. At the State's request, the trial court had reviewed the security video prior to the hearing so it did not have to be played in open court. The pre-sentence investigation report showed that Okafor was born in Nigeria and came to the United States in 2017 and received permanent resident status in 2019. Okafor's criminal history during that time consists of the current case and a prior arrest in April 2020 for an altercation with Shardae that resulted in felony charges for criminal confinement with bodily injury, kidnapping with bodily injury, and two counts of domestic battery. The case was dismissed when Shardae recanted her allegations.

¹ The plea agreement also included an acknowledgement that the conviction could affect Okafor's immigration status. Okafor had permanent resident status but was not a United States citizen. At the change of plea hearing, Okafor's counsel advised the trial court that he had discussed with Okafor the possible deportation consequences of a felony conviction. Essentially, his counsel advised that by having a felony conviction, Immigration and Customs Enforcement could pick him up at any time during or after his sentence, "but because of the nature of this felony, he's definitely going back to Nigeria." Transcript, Volume 2 at 23. Although trial counsel essentially argued for a shorter sentence hoping he could spend time with his son and work to provide some financial support to the family before he is deported, *see id.* at 22-23, 26, aside from noting that he faces deportation, Okafor does not specifically argue on appeal that his immigration status warrants a revised sentence.

[9] The parties argued their respective positions regarding the sentence. The State noted that the twelve-year maximum sentence allowed by the plea agreement is “barely aggravated for a Level 3 felony and for everything that he did. The plea that he was offered, it’s not a gift for him. It’s a gift for [Shardae]. It would be too painful for her to be here during the trial.” Transcript, Volume 2 at 21. The State asked for Okafor to be sentenced to the full twelve years, fully executed in the DOC. Highlighting Okafor’s past in Nigeria, his lack of criminal history, and the fact that he would be deported at some point because of his felony conviction, Okafor asked for the minimum sentence of three years, with two years executed in DOC and one year with Community Corrections “[s]o if he’s still here at that time, he can provide some financial support to his family.” *Id.* at 26.

[10] The trial court entered judgment of conviction for criminal confinement, a Level 3 felony. As for the sentence, the trial court found as mitigating circumstances the fact that Okafor had no prior criminal history and admitted his guilt. However, the trial court gave the guilty plea no weight because eight additional charges, including a Level 1 felony, were dismissed as a result. The trial court found as aggravating circumstances the fact that the harm, injury, and loss to the victim was significant and greater than the elements necessary to prove the offense; the nature and circumstances of the crime; the circumstances of Okafor’s prior arrest; that the victim suffers from at least one disability; and that Okafor violated the no contract order. The court found the aggravating

circumstances substantially outweighed the mitigating circumstances and sentenced Okafor to twelve years in the DOC. Okafor now appeals.

Discussion and Decision

I. Standard of Review

[11] Indiana Appellate Rule 7(B) permits us to independently review and revise a sentence “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 defendant carries the burden of persuading us the sentence imposed by the trial court is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may consider any factors appearing in the record in making such a determination, *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017). Whether a defendant’s sentence is inappropriate 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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). “The principal role of appellate review should be to attempt to leaven the outliers, . . . not to achieve a perceived ‘correct’ result in each case.” *Id.* at 1225.

II. Inappropriate Sentence

[12] Okafor argues his sentence is inappropriate because he was a first-time offender who took responsibility for his actions by pleading guilty and expressed remorse for the damage he caused to his family.

1. Nature of the Offense

[13] Our analysis of the “nature of the offense” portion of the review begins with the advisory sentence which is the starting point selected by the legislature as an appropriate sentence for the crime committed. *Clara v. State*, 899 N.E.2d 733, 736 (Ind. Ct. App. 2009). Criminal confinement is a Level 3 felony if a person knowingly or intentionally confines another person without that person’s consent and it results in serious bodily injury. Ind. Code § 35-42-3-3(a), (b)(3)(B). The sentence for a Level 3 felony is a fixed term of between three and sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). The trial court sentenced Okafor to twelve years, a sentence between the advisory and the maximum fixed term, and the maximum allowed by the plea agreement.

[14] Okafor acknowledges that the offense was violent, and that Shardae was seriously injured. He argues, however, that Shardae’s injuries are accounted for in the elevation of the offense to a Level 3 felony and do not warrant an above-advisory sentence. “Serious bodily injury” is defined to include bodily injury that creates a substantial risk of death or that causes unconsciousness or extreme pain. Ind. Code § 35-31.5-2-292. Okafor’s assault of Shardae lasted over thirty minutes and because of his actions, she suffered a period of unconsciousness, bleeding in her ears, petechia in both eyes, and blisters in her throat, as well as the pain, swelling, and bruising that followed. The trial court described Okafor’s actions as “basically torture,” Tr., Vol. 2 at 29, and the State noted that the injuries were not as bad as it thought they would be from

watching the video: “she could have been dead[,]” *id.* at 19. Shardae suffered, essentially, *multiple* substantial bodily injuries: unconsciousness as alleged in the charge, plus a substantial risk of death *and* extreme pain. We cannot say the legislature accounted for that level of injury with the advisory sentence.

[15] When considering a sentence that deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*. So as not to belabor the horrific nature of this crime, we simply quote the trial court’s sentencing order summarizing Okafor’s actions:

The video showed that the victim suffered and sustained injuries for thirty-six (36) minutes. The defendant repeatedly beat the victim by kicking her; stomping on her; standing on her head; standing on her neck; punched her; slapped her; and choked [sic] her until she passed out. The defendant poured boiling hot water down the victim’s throat to the point where it caused blisters in her throat.

Appealed Order at 3. And we note that the parties’ children were present in the apartment the entire time. This offense is much more egregious than the typical Level 3 criminal confinement offense, and therefore we cannot say Okafor’s sentence is inappropriate considering the nature of his offense.

2. Character of the Offender

- [16] The “character of the offender” portion of the Rule 7(B) standard refers to general sentencing considerations and relevant aggravating and mitigating factors. *Williams v. State*, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), *trans. denied*. A defendant’s life and conduct are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.
- [17] A typical factor to be considered in examining a defendant’s character is his or her criminal history. *McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied*. Okafor has no prior convictions, and he argues this “indicates that a lesser sentence is warranted.” Brief of the Appellant at 8. However, “[e]ven a minor criminal record reflects poorly on a defendant’s character,” *Reis*, 88 N.E.3d at 1105, as does a history of arrests, *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Okafor has a prior arrest for a similar incident as a result of which he was charged with criminal confinement and domestic battery. His bond was revoked because he knowingly violated a no contact order multiple times. That he has no prior convictions does not necessarily indicate that Okafor had been living a completely law-abiding life.
- [18] Moreover, the fact that Okafor pleaded guilty and expressed remorse does not warrant a lesser sentence. In exchange for his guilty plea, the State agreed not to prosecute him for eight additional counts, including a Level 1 felony. Although it is true that by pleading guilty Okafor spared Shardae the embarrassment and stress of testifying at trial, he received the substantial benefit

that resulted from the State's agreement not to pursue the additional charges despite the significant evidence against him. *Cf. Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (stating that a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one), *trans. denied*.

[19] Finally, we note that Okafor highlights aspects of his character that he argues show the “current offense is an aberration [that] does not reflect [his] normal disposition.” Br. of the Appellant at 8. We quote again from the trial court’s sentencing order:

[D]uring [the 36 minute beating], the defendant paused, while the victim laid unconscious, to look at his phone and eat a banana. When the victim awoke, he continued to beat her[.]

Appealed Order at 3. At the sentencing hearing, the trial court described Okafor’s disposition during the incident as “plain cold-hearted.” Tr., Vol. 2 at 30. “During the beating, you showed no sympathy or remorse to her.” *Id*. This does not paint Okafor’s character in a good light.

[20] In sum, Okafor has not demonstrated “substantial virtuous traits or persistent examples of good character” so as to meet his burden of proving his character merits revision of his sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

Conclusion

[21] Okafor has failed to persuade us that the nature of his offense or his character renders the twelve-year sentence imposed by the trial court inappropriate. We therefore affirm the sentence.

[22] Affirmed.

Mathias, J., and Foley, J., concur.