MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kris E. Nuetzman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 1, 2023

Court of Appeals Case No. 23A-CR-1597

Appeal from the Morgan Superior Court

The Honorable Dakota VanLeeuwen, Judge

Trial Court Cause No. 55D01-2111-F5-1621

Memorandum Decision by Judge Brown
Judges Vaidik and Bradford concur.

Brown, Judge.

[1] Kris E. Nuetzman appeals his sentence for escape and disarming a law enforcement officer as level 5 felonies, domestic battery, interference with the reporting of a crime, and resisting law enforcement as class A misdemeanors, and disorderly conduct as a class B misdemeanor. We affirm.

Facts and Procedural History

[2] On November 24, 2021, Nuetzman had been drinking and became intoxicated. He and his mother had a verbal altercation, his mother began recording him, and Nuetzman was "[v]ery disrespectful" and disorderly, grabbed the cell phone from his mother's hand, and placed it underneath his arm so she could not call for help. Transcript Volume II at 16. Nuetzman walked away and "went under a bridge" where he was taken into police custody. *Id.* at 17. The police took him to the hospital. While handcuffed and being transported from the hospital to the jail, Nuetzman exited the backseat of the police car and went toward the direction of a tree line. Mooresville Police Officer Chipman "recaptured" him, and Nuetzman struggled with Officer Chipman, resisted the attempts of Officer Chipman and another officer to apprehend him and place him back in the police vehicle, and grabbed Officer Chipman's taser and tried to wrestle it from his hands. *Id.* at 18.

[3] On November 29, 2021, the State charged Nuetzman with: Count I, escape as a level 5 felony; Count II, disarming a law enforcement officer as a level 5 felony; Count III, domestic battery resulting in moderate bodily injury as a level 6 felony; Count IV, interference with the reporting of a crime as a class A misdemeanor; Count V, resisting law enforcement as a class A misdemeanor;

Count VI, resisting law enforcement as a class A misdemeanor; and Count VII, disorderly conduct as a class B misdemeanor. The State later alleged Nuetzman was an habitual offender and amended Count III to allege domestic battery as a class A misdemeanor.

[4] On May 16, 2023, the court held a hearing. The court indicated that the jury was watching the jury video and it was about to begin voir dire. Nuetzman's counsel indicated that Nuetzman was prepared to plead guilty as charged to Counts I through VII "without an agreement, other than the State of Indiana I believe is going to dismiss the habitual offender sentencing enhancement." *Id.* at 4. Nuetzman pled guilty and after some discussion, the court found that Nuetzman's plea was freely and voluntarily made and that there was a factual basis for Counts I through VII.

[5] On June 2, 2023, a probation officer filed a document titled "Morgan County Community Corrections Eligibility." Appellant's Appendix Volume II at 100 (capitalization omitted). The document indicates that Nuetzman was not eligible per local criteria as he was a violent offender. It also states that Nuetzman reported to the Morgan County Community Corrections Department on May 16, 2023, when he was directed to report back prior to May 30, 2023, for the "Morgan County Community Corrections Eligibility Application drug screen," and that, "[a]s of May 30, 2023, [he had] not completed the eligibility application drug screen." *Id.* at 101.

[6] On June 15, 2023, the court held a sentencing hearing. Nuetzman indicated he has an alcohol and drug problem, he had never had help, and he would like to attend rehab. He also stated:

> I mean, I was intoxicated the night that I got arrested. And I was upset. The fact I was going to go to jail. Me and my mom got into an argument, and they said I put my hands on my mom. I know I didn't. That's why I was upset. And everything got blown out of proportion. And I did jump out of the car. I don't remember a whole lot of it, because I was intoxicated. And I'd just like to ask for some help, if that's possible.

Transcript Volume II at 29-30. Nuetzman's mother testified that she did not think "prison is the answer for him," he needs substance abuse help, he is "a good hearted person," and she would like to see him participate in inpatient rehab and obtain mental health counseling. *Id.* at 30. Nuetzman's counsel argued in part: "I think all of the offenses should be concurrent. It's all one . . . one set of circumstances, one serious [sic] of events." *Id.* at 33.

[7] After some discussion, the court stated: "I am going to merge five and six." *Id.* at 35. It stated:

> So, this is going to be a four year sentence, total, do what the State recommended, four year sentence. It's going to be Indiana Department of Corrections sentence. I will order RWI, so that you can complete that program, because you need substance abuse treatment, sir. And then once you have completed RWI, and two full years, you can consider filing a modification at that time. I'm not saying it's going to be guaranteed, but you can consider it, based on your conduct in the Indiana Department of Corrections.

* * * * *

> You need to have completed successfully RWI or purposeful incarceration, whatever they're calling it at this time, because I did find that you had two aggravators, that you had recently violated your conditions of probation, parole, pardon, and that you have a criminal history, lengthy criminal history, or delinquent activity. I did not find mitigators in these circumstances. And you did put the public and law enforcement at risk by your actions. Not only that, you also have a victim on the case in which was your own family. So, that will be your sentence sir. We will see you back . . . use your time wisely. They have programs, they have jobs, they have things that you can do to get your life back on track, because right now we're not going in the right direction.

Id. at 37-38. Upon questioning by Nuetzman's counsel, the court indicated that "all of the other charges will be time served, except for the" level 5 felonies and "the [level 5 felonies] will still be ongoing." *Id.* at 38. It also indicated that it was sentencing Nuetzman to concurrent sentences of four years for each of the level 5 felonies. Nuetzman's counsel acknowledged that "[b]ecause [Nuetzman] had pled guilty . . . he waives the right to appeal the conviction." *Id.* at 39.

[8] In its order and abstract of judgment, the court sentenced Nuetzman to concurrent sentences of four years for Count I, escape as a level 5 felony, four years for Count II, disarming a law enforcement officer as a level 5 felony, 365 days for Counts III, IV, and V, and 180 days for Count VII.

Discussion

[9] The issue is whether Nuetzman's sentence is inappropriate in light of the nature of the offenses and the character of the offender. Nuetzman argues that he was diagnosed with diabetes after he was incarcerated, he was intoxicated at the time of the offense, and his diabetes "likely aggravated his condition." Appellant's Brief at 8. He asserts he pled guilty and accepted responsibility for his actions. He points out that his mother requested that he not be given prison time and that he needed rehab and counseling. He contends that he obtained his GED and training as a barber, had prior work history, and suffered from mental health issues, substance abuse, and a difficult upbringing.

[10] Ind. 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 offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). "[W]hether 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." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008).

[11] Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years. Ind. Code § 35-50-3-2 provides that a person who

commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-3 provides that a person who commits a class B misdemeanor shall be imprisoned for a fixed term of not more than 180 days.

[12] Our review of the nature of the offense reveals that Nuetzman became intoxicated, had an argument with his mother, was disrespectful and disorderly, grabbed the cell phone from his mother's hand, and placed it underneath his arm so she could not call for help. While handcuffed, he exited the backseat of a police car and went toward the direction of a tree line. He resisted the attempts of Officer Chipman and another officer to apprehend him, grabbed Officer Chipman's taser, and tried to wrestle it from his hands.

[13] Our review of the character of the offender reveals that Nuetzman pled guilty to Counts I through VII and the State agreed to dismiss the habitual offender enhancement. The presentence investigation report ("PSI") indicates Nuetzman reported that his parents divorced when he was three years old, his childhood was "good," he suffered physical abuse by his father when he would visit, and he suffered sexual abuse from his brother "a couple of times." Appellant's Appendix Volume II at 111. It states that Nuetzman obtained his GED in 2009 while incarcerated, graduated from Fuqua Institute of Beauty Culture as a barber in 2019, and worked at certain times as a barber including in March 2023 while an employee was on vacation, for nine months from 2020-2021 "but quit due to his alcohol use," and for one year from 2019 to 2020 "but quit due to having 'conflict with the owner.'" *Id.* at 112.

[14] The PSI indicates that he described his mental health as "fair" and suffers from depression, nervousness, anxiety, and bipolar disorder. *Id.* He reported having been involved in parenting classes, an anger control class, and mental health treatment in the past. With respect to substance abuse, Nuetzman reported drinking alcohol everyday for the prior ten years including drinking approximately one gallon of vodka per night. He reported his drugs of choice include alcohol, marijuana, and methamphetamine. He reported successfully completing "IOP at Advantage Counseling in 2004 and 2015 through probation," which "didn't help long term but maybe short term." *Id.* at 113.

[15] The PSI indicates that Nuetzman's criminal history includes "six (6) prior misdemeanor convictions (Possession of Marijuana 1995, Residential Entry AMS 2004, Criminal Conversion 2011, Driving While Suspended 2015, 2016, 2018) and three (3) prior felony convictions (Theft 2008, Possession of a Controlled Substance 2010, Dealing in a Scheduled Controlled Substance 2011)." *Id.* at 110. It also indicates that he has been afforded probation three times, he has successfully completed probation one time, and his probation was revoked twice due to "illegal drug use and obtaining two DWS cases." *Id.* at 111. It also reveals that Nuetzman has been afforded home detention one time which he violated due to illegal drug use. It indicates that Nuetzman was "out on pre-trial supervision when he committed the instant offense." *Id.* at 114. The PSI further provides that Nuetzman's overall risk assessment score using the Indiana Risk Assessment System places him in the high risk to reoffend category. After due consideration, we conclude that Nuetzman has not

sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.[1]

[16] For the foregoing reasons, we affirm Nuetzman's sentence.

[17] Affirmed.

Vaidik, J., and Bradford, J., concur.

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[1] To the extent Nuetzman argues the trial court erred in entering convictions for domestic battery and disorderly conduct and his conviction for disorderly conduct should be vacated to cure a double jeopardy violation, the Indiana Supreme Court has held that a conviction based upon a guilty plea may not be challenged by direct appeal and that the proper avenue for challenging one's conviction pursuant to a guilty plea is through filing a petition for post-conviction relief. *See Hayes v. State*, 906 N.E.2d 819, 821 n.1 (Ind. 2009) (citing *Tumulty v. State*, 666 N.E.2d 394, 395-396 (Ind. 1996)). In addition, the Indiana Supreme Court has also held that "[d]efendants who plead guilty to achieve favorable outcomes give up a plethora of substantive claims and procedural rights, such as challenges to convictions that would otherwise constitute double jeopardy." *Lee v. State*, 816 N.E.2d 35, 40 (Ind. 2004) (quoting *Davis v. State*, 771 N.E.2d 647, 649 n.4 (Ind. 2002) (citation and quotation omitted)). Nuetzman cites no authority and does not develop an argument that he did not receive a benefit from the dismissal of the habitual offender allegation.