

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David W. Helvey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 9, 2023

Court of Appeals Case No.
23A-CR-299

Appeal from the Vanderburgh
Circuit Court

The Honorable Kelli E. Fink,
Magistrate

Trial Court Cause No.
82C01-2209-F6-5618

Memorandum Decision by Judge Mathias

Judges Vaidik and Pyle concur.

Mathias, Judge.

[1] After David Helvey pleaded guilty to Level 6 felony intimidation and four counts of Class A misdemeanor intimidation, the trial court ordered him to serve an aggregate twenty-month sentence in the Department of Correction (“DOC”). Helvey appeals his sentence, arguing that his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] On September 18, 2022, Helvey intimidated two children playing in their yard while he was passing by in a red floral dress and carrying a beer. Appellant’s App. Vol. 2, p. 14. Helvey told the children that they were “hot chicks” and asked them to come to him. *Id.* When they refused, Helvey lifted his dress, displayed his chest, and threatened that if they “did not go to him, he would get them.” *Id.* Helvey began to walk toward the children, and they ran into the house. *Id.* The children were too scared to play outside after the incident. *Id.* at 66-67; Tr. pp. 23-24.

[4] The children reported Helvey’s conduct to their Father, and he called 911 and chased after Helvey. Eventually, he and another neighbor caught up to Helvey and were able to subdue him until the police arrived. Officers then arrested Helvey. Appellant’s App. Vol. 2, p. 14. At the county jail, Helvey twice threatened the officer processing him. *Id.*

[5] On September 20, the State charged Helvey with three counts of Level 6 felony intimidation and four counts of Class A misdemeanor intimidation. Helvey

pleaded guilty to one Level 6 felony and the four misdemeanors counts. The State dismissed the remaining two felony counts.

[6] At the ensuing sentencing hearing, the victims' mother described her children's fear of playing outside and the impact Helvey's offenses has had on the victims. Tr. pp. 23-24. In sentencing Helvey, the trial court noted as aggravating circumstances Helvey's extensive criminal history and that he was at risk of reoffending. *Id.* at 32-33. The court also noted that Helvey has not benefited from probation and mental health programs in the past. In mitigation, the court found that Helvey suffers from mental illness and was enrolled in a local health care program that provides the required psychotropic medication. *Id.* at 32. The court also considered Helvey's guilty plea and remorse as mitigating circumstances.

[7] The trial court sentenced Helvey to twenty months for his Level 6 felony intimidation conviction and nine months for each Class A misdemeanor conviction, to be served concurrently in the DOC. The trial court also recommended substance abuse and mental health treatment. Helvey now appeals.

Discussion and Decision

[8] Helvey argues that his twenty-month aggregate sentence is inappropriate in light of the nature of the offenses and his character. For Helvey's Level 6 felony intimidation conviction, the trial court was allowed to sentence Helvey to a fixed term between six months and two and one-half years. [Ind. Code § 35-50-](#)

2-7(b). Helvey’s twenty-month sentence is eight months more than the advisory one-year sentence for a Level 6 felony. *Id.* The trial court imposed less-than-maximum nine-month concurrent terms for Helvey’s four Class A misdemeanor intimidation convictions. *See I.C. § 35-50-3-2.*

[9] Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (*per curiam*).

[10] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

- [11] Here, with regard to the nature of the offenses, Helvey argues that his sentence was inappropriate because his victims, while frightened, were not injured. But the children have suffered lasting harm as a result of Helvey's conduct. Since the incident, Helvey's young victims are "terrified to go outside." Tr. p. 24. Helvey also threatened to physically and sexually assault a police officer.
- [12] Concerning the character of the offender, Helvey cites to this author's opinion that our criminal justice system often fails criminal defendants who suffer from mental health issues. See *Wampler v. State*, 57 N.E.3d 884, 890 (Ind. Ct. App. 2016) (describing the "clear failure, yet again, of our criminal justice system to adequately and properly respond to and treat those with mental health issues") (Mathias, J., dissenting), vacated by 67 N.E.3d 633, 634 (Ind. 2017). The parties agree that Helvey suffers from mental illness, but the State also argues that Helvey's voluntary intoxication significantly contributed to his commission of these offenses.
- [13] The trial court considered his mental illness as a mitigating circumstance, but weighed that factor, as well as his guilty plea and expression of remorse, against his extensive and significant criminal history. See Tr. p. 32. He has amassed three prior felony convictions and over twenty prior misdemeanor convictions in his adult life. Appellant's App. Vol. 2, pp. 44-59. He has also violated the terms of his probation five times and disobeyed court orders. *Id.*
- [14] Helvey's mental illness certainly contributed to the commission of these offenses. But our review here is highly deferential, and, although the trial court

could have fashioned a sentence to provide additional mental health treatment for Helvey, it was not required as a matter of law to do so under these circumstances, particularly considering Helvey's criminal history and repeated violations of probation. Thus, we cannot say the trial court's decision to impose a twenty-month aggregate sentence is inappropriate in light of the nature of the offenses and the character of the offender, and we affirm the trial court's judgment.

[15] Affirmed.

Vaidik, J., and Pyle, J., concur.