

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Pamela Latoya Hunter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 13, 2023

Court of Appeals Case No.
22A-CR-2663

Appeal from the Lake Superior
Court

The Honorable Samuel L. Cappas,
Judge

Trial Court Cause No.
45G04-2104-F3-69

Memorandum Decision by Chief Judge Altice
Judges Riley and Pyle concur.

Altice, Chief Judge.

Case Summary

- [1] Pamela Hunter pleaded guilty to Level 5 felony battery resulting in serious bodily injury, and the trial court sentenced her to four years in the Indiana Department of Correction. She contends her sentence is inappropriate in light of the nature of the offense and her character.
- [2] We affirm.

Facts & Procedural History

- [3] Around 10:45 a.m. on April 14, 2021, Latoya Pye went to the home of her sister, Lakeysha Ambrose, located on Vermont Street in Gary, Indiana, where various family members were gathering before attending a family member's funeral. When Pye arrived, she saw Ambrose in her front yard arguing with a woman, later determined to be Hunter, who lived next door. Hunter was holding a handgun. At some point during the argument, Hunter fired the gun, striking Pye, who was seven months pregnant, in her thigh. During the altercation, Hunter also fired her gun at or in the direction of another of Pye's sisters, Talina Bates, who sustained a cut to her foot. Hunter then ran back into her residence and shut the door.
- [4] Police officers responded to the Vermont Street location on reports of a fight in progress and shots fired. Upon arrival, they encountered a loud and unruly crowd of about forty people gathered in and across the street, some throwing objects, including patio chairs, bottles, and rocks. Hunter eventually exited her residence and surrendered to officers. At the scene, Bates and Ambrose each

reported to police that someone in the crowd had discharged pepper spray while Ambrose and Hunter were arguing in the yard. Pye was transported to the hospital for treatment of the gunshot wound to her leg.

[5] The next day, the State charged Hunter with nine counts: Level 3 felony aggravated battery (Count I); Level 4 felony unlawful possession of a firearm by a serious violent felony (Count II); Level 5 felony battery by means of a deadly weapon (Counts III); Level 5 felony battery resulting in serious bodily injury (Count IV); Level 5 felony battery by means of a deadly weapon (Count V); Level 6 felony battery resulting in moderate bodily injury (Count VI); Level 6 felony criminal recklessness (Count VII); and two counts of Level 6 felony pointing a firearm (Counts VIII and IX).

[6] On July 22, 2022, the parties entered into a plea agreement in which Hunter agreed to plead guilty to Count IV, Level 5 felony battery resulting in serious bodily injury to Pye, with sentencing left to the discretion of the trial court but capped at four years. In exchange, the State agreed to dismiss the eight remaining counts. The trial court took the agreement under advisement and ordered the preparation of a presentence investigation report (PSI). On August 10, 2022, Lake County Community Corrections (LCCC) reported to the court that Hunter was not eligible for LCCC placement as she had been a prior LCCC participant on three occasions and “received multiple rule violations,” including repeat incidents of “out of bounds” and AWOL, and she owed LCCC \$2800. *Appendix at 77.*

- [7] A sentencing hearing was held on October 7, 2022. Pye gave a victim impact statement, sharing with the court that she still experienced leg pain and nightmares. In addition, Pye indicated that she could not yet return to work full time. She described the terror that she experienced on the day in question when, at seven months pregnant, she did not feel any baby movement for forty-five minutes after being shot and feared “the worst,” but noted gratitude that the baby was fine and now one year old. *Transcript* at 15. She said the incident “definitely changed [her] life.” *Id.* Pye stated that three of her children were present that day and suffered emotionally because of it.
- [8] Hunter gave a statement in allocution that she was a single mother, owned and worked a t-shirt business, and was “rehabbing” several properties to sell to support her family. *Id.* at 24. She maintained that she was “not a monster” as the media had portrayed her but, rather, a mother who was defending her children that day. *Id.* She described that “a gang of people [were] fighting with [her] children,” and, while she took accountability for her actions, she was not a violent person and was acting on “a mother’s instinct.” *Id.* at 25, 28. She apologized to Pye for her part in the altercation.
- [9] Hunter’s counsel urged that since being released on parole in 2018 following a drug conviction, Hunter had lived a law-abiding life. He argued that the incident began with drunk next-door neighbors causing problems and “accosting” Hunter and that someone sprayed her with mace, such that “there was substantial provocation that day.” *Id.* at 21. Counsel asserted that it would be a substantial hardship on Hunter’s children if she were incarcerated and

asked that she either be placed on GPS monitoring or that she serve twelve months in jail with the rest suspended to probation. The State, on the other hand, argued that, while this was a fight between neighbors, Hunter did not walk away from that fight, instead shooting a handgun several times with many other people present. The State requested the imposition of the full four years allowed under the plea agreement.

[10] The trial court sentenced Hunter to four years executed. The court's order identified two mitigators, that incarceration would result in hardship on Hunter's four minor children and that she admitted guilt thereby saving the court and taxpayers the time and expense of a trial. However, the court found each to have little weight, as her behavior on the day in question exhibited disregard for the welfare of her children and her decision to plead guilty reflected a practical solution given that she had eight charges dismissed. The court identified seven aggravators, including her criminal history, which showed a pattern of not complying with the rules and norms of society. The court found substantially aggravating that, when Hunter possessed and discharged a gun, she was a convicted felon in possession of a firearm, indicating to the court that prior lenient treatment had failed to have any deterrent effect.

[11] Hunter now appeals. Additional facts will be provided below as needed.

Discussion & Decision

[12] We may revise a sentence if it 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 App. R. 7(B) review is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Whether a sentence is inappropriate turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case. *Cardwell*, 895 N.E.2d at 1224. The defendant has the burden of persuading us that her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Deference to the trial court prevails unless overcome by “compelling evidence portraying in a positive light the nature of the offense[s] (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] The advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). The sentencing range for a Level 5 felony is one to six years with the advisory being three years. Ind. Code § 35-50-2-6. Here, the trial court sentenced Hunter to four years of incarceration. Hunter argues that

“the imposition of the maximum sentence permissible under the terms of the plea was inappropriate” and asks us to reduce her sentence “to a split term, crediting her for the time served and suspending the remaining time to be served to probation.” *Appellant’s Brief* at 8.

[14] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Hunter argues that, although her willful participation in the initial confrontation with Ambrose prevented her ability to raise a valid claim of self-defense, the circumstances show that “there were valid reasons for her to [] have had a reasonable fear for her safety” such that her “enhanced” sentence of four years was inappropriate. *Appellant’s Brief* at 7. In particular, she suggests that she was provoked because an unidentified person sprayed pepper spray in her direction as she and Ambrose were fighting. Further, Hunter emphasizes that it was only after she was outnumbered by Ambrose’s family and people began throwing items that she fired the gun. We are not persuaded by Hunter’s claims.

[15] Hunter chose to remain in the argument and fired a handgun, shooting at least twice while a crowd of around forty people, including children, was assembled nearby. We agree with the trial court that Hunter’s actions were both “irresponsible and reckless.” *Transcript* at 29. Hunter shot a then-pregnant Pye, who was not even part of the fight, in the leg, and, as of the sentencing hearing, had not been able to return to full time work, which had been “rough” on the family. *Id.* at 14. A second person was also hurt, sustaining an injury to her

foot. Three of Pye's children were present during the incident and still struggled emotionally. The nature of the offense does not warrant revision of Hunter's four-year sentence.

[16] As to Hunter's character, we have described that character is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant's character by engaging in a broad consideration of their qualities. *Madden*, 162 N.E.3d at 564. One relevant factor is the offender's criminal history. *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*. Hunter suggests that she had been "living a law-abiding life for several years before this incident" and that the circumstances of this altercation are unlikely to recur. *Appellant's Brief* at 8. Therefore, she argues, "it follows that [she] will continue to live a law-abiding life moving forward." *Id.*

[17] Hunter's adult criminal history includes misdemeanor carrying a handgun without a license in 2000 and several felony convictions, namely attempted domestic battery in 2005, Class B felony dealing in cocaine in 2015, and Level 6 felony failure to return to lawful detention in 2016. While previously placed in LCCC, Hunter received multiple rule violations that included "repeated incidents out of bounds [and] AWOL." *Appendix* at 77. We also observe Hunter's four additional encounters with the criminal justice system that did not result in convictions. *See Vermillion v. State*, 978 N.E.2d 459, 468 (Ind. Ct. App. 2012) (while arrest record is not evidence of criminal history, it may be "relevant to the trial court's assessment of the defendant's character" in terms of

risk to reoffend). The PSI assessment placed Hunter at a moderate risk category to reoffend. The record before us does not indicate that Hunter's character warrants sentence revision. In sum, Hunter has failed to establish that her four-year sentence is inappropriate.

[18] Judgment affirmed.

Riley, J. and Pyle, J., concur.