MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lamont Trumane Bell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 9, 2022

Court of Appeals Case No. 21A-CR-1972

Appeal from the Lake Superior Court

The Honorable Diane Ross Boswell, Judge and the Honorable Kathleen A. Sullivan, Magistrate

Trial Court Cause No. 45G03-1911-F3-203

Tavitas, Judge.

Case Summary

[1] Lamont Bell appeals his sentence for convictions of intimidation, a Level 5 felony, and domestic battery, a Class A misdemeanor. Bell pleaded guilty pursuant to a plea agreement, and the trial court sentenced Bell to an aggregate sentence of eight years and two months, with five years and two months to be served in the Department of Corrections ("DOC") and three years to be served in Lake County Community Corrections. Bell contends that this sentence is inappropriate in light of the nature of his offenses and his character. We disagree and, accordingly, affirm the trial court.

Issue

[2] Bell raises one issue for our review: whether his sentence is inappropriate in light of the nature of his offenses and of his character.

Facts

[3] On November 27, 2019, Bell "grabbed" and "shook" Bernice McCaskill, with whom he resided. Appellant's App. Vol. II p. 65. The disagreement concerned money. The altercation escalated; Bell stated: "I'm going to kill you, b****[,]" while holding a knife in his hand. At some point during the altercation, Bell struck McCaskill with an open hand.

[4] On November 27, 2019, the State charged Bell with Count I, criminal confinement, a Level 3 felony; Count II, intimidation, a Level 5 felony; Count III, strangulation, a Level 6 felony; Count IV, domestic battery, a Level 6 felony; and Count V, domestic battery, a Class A misdemeanor.

[5] The State filed a request for a no contact order on December 6, 2019, which the trial court issued. The State then charged Bell with invasion of privacy, a Class A misdemeanor, on August 19, 2020, under cause number 45G03-2008-CM-3622, for violating the no contact order. The State also alleged that Bell violated his probation under cause number 45G03-1901-CM-3.[1]

[6] On February 10, 2021, Bell entered into a plea agreement wherein he pleaded guilty to Count II, intimidation, a Level 5 felony; Count V, invasion of privacy, a Class A misdemeanor; and the probation violation. The State dismissed the remaining charges. Bell agreed to a sixty-day sentence for the probation violation.

[7] The trial court sentenced Bell as follows: six years for intimidation, with four to be executed in the DOC and two suspended to community corrections; one year in community corrections for domestic battery; one year in the DOC for invasion of privacy; and sixty days executed in the DOC for the probation violation.[2] All the sentences were ordered to be served consecutively. Accordingly, the aggregate sentence was eight years and sixty days, with three years to be served in community corrections. Bell now appeals that sentence.

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[1] Bell was on probation for operating a vehicle while intoxicated, a Class C misdemeanor.

[2] Though the appealed sentencing order does not reference the invasion of privacy charge or the probation violation, the parties treat them as part of the aggregate sentence being appealed. Accordingly, with one exception that we explain below, so do we.

Analysis

[8] Bell argues that his sentence was inappropriate in light of the nature of his offenses and his character. The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[9] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "Whether a sentence should be deemed 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.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[10] We first note that Bell asks us to review the imposition of his previously suspended sixty-day sentence as a result of his probation revocation in his Rule 7(B) analysis. Sentences as a result of probation revocations are not subject to a Rule 7(B) analysis. *Castillo v. State*, 67 N.E.3d 661, 664 (Ind. Ct. App. 2017) (citing *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007), *trans. denied*; *Sanders v. State*, 825 N.E.2d 952, 956 (Ind. Ct. App. 2005), *trans. denied*). Rather, such probation revocation sentences are reviewed for an abuse of discretion. Bell makes no abuse of discretion argument. Moreover, in his plea agreement, Bell agreed to a sixty-day sentence for the probation revocation. Accordingly, we will not review his probation revocation sentence further.

[11] As for the remaining sentences, when determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Bell was sentenced with respect to a Level 5 felony: "A person who commits a Level 5 felony (for a crime committed after June 30, 2014) shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." Ind. Code § 35-50-2-6. Bell was also convicted of two Class A misdemeanors: "A person who commits a Class A misdemeanor shall be imprisoned for a fixed

term of not more than one (1) year . . . ." I.C. § 35-50-3-2.[3] Thus, the trial court sentenced Bell to the maximum aggregate sentence of eight years, albeit with three of those years ordered to be served in community corrections.

[12] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Here, during an argument, Bell became angry, grabbed the victim, and threatened to kill her. Bell had a knife in his hand. He also physically struck the victim. Later, he violated a no-contact order by trying to contact the victim. Though the trial court did not consider it an aggravating factor, we also note that the victim's impact statement expressed considerable emotional trauma.

[13] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). We note that "[t]he significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor

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[3] The misdemeanor statutes do not include advisory sentences. *See, e.g., Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016).

reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[14] Bell's criminal history began in 1992, when he was convicted of a series of felonies in Cook County, Illinois, which included theft and burglary. In 1994 Bell's probation was revoked and he was convicted of burglary and felony possession of a controlled substance. On October 27, 1997, Bell pleaded guilty to the manufacture or delivery of a controlled substance, a Class 2 felony, and his probation was subsequently terminated unsatisfactorily (App. Vol. II 89–90). In 2001, Bell pleaded guilty to theft of labor or services, a Class A misdemeanor, and receiving illegal goods, a Class A misdemeanor. In 2003, Bell pleaded guilty to armed robbery, a felony, and the manufacture or delivery of heroin, another felony. In 2009, Bell pleaded guilty to disorderly conduct, a Class C misdemeanor. Bell continued to be charged with misdemeanors over the course of the following decade, culminating in the charges filed in the instant matter. All told, the presentence investigation report ("PSI") reveals that, over the last thirty years, Bell has been convicted of at least nine misdemeanors and eight felonies, ranging from armed robbery to manufacture of heroin. The PSI also reflects many charges for which the ultimate disposition is unclear, and at least three instances where Bell's probation ended unsatisfactorily.

[15] Though Bell did receive the maximum sentence, we do not find that the aggregate sentence was inappropriate. Bell's criminal history is significant and

lengthy, and his violent crime had a substantial negative impact on the victim. We affirm the trial court.

Conclusion

[16] The sentence was not inappropriate in light of the nature of the offenses and Bell's character. We affirm.

[17] Affirmed.

Bradford, C.J., and Crone, J., concur.