MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin S. Wade,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 14, 2022

Court of Appeals Case No. 21A-CR-2052

Appeal from the Bartholomew Superior Court

The Honorable James D. Worton, Judge

Trial Court Cause No. 03D01-1904-F6-2094

Crone, Judge.

Case Summary

[1] Justin Wade pled guilty to level 6 felony battery resulting in moderate bodily injury, and the trial court sentenced him to two years. Wade now appeals, arguing that his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

[2] On October 21, 2018, Wade's ten-year-old son came home from the park and told Wade that "a grownup had hit him." Tr. Vol. 2 at 20. Wade drove to the park with his son, who pointed at eighteen-year-old Grayson Fox and claimed that Fox had hit him. Wade approached Fox and his friend, both of whom had just arrived at the park, and asked them if they thought it was "okay to hit a minor[.]" *Id*. at 21. Fox and his friend laughed, and Wade punched Fox in the face, knocking him unconscious. Fox suffered a concussion, severe pain, and facial injuries. Later that day, the young child who had actually hit Wade's son showed up at Wade's house with his parents and admitted what he had done.

[3] In April 2019, the State charged Wade with level 6 felony battery resulting in moderate bodily injury, which is defined as "any impairment of physical condition that includes substantial pain." Ind. Code § 35-31.5-2-204.5. In July 2021, pursuant to a plea agreement, Wade agreed to plead guilty as charged, with a one-year cap on any executed time. In August 2021, the trial court accepted the plea and sentenced Wade to two years, with ten months executed and fourteen months suspended to probation. Wade now appeals.

Discussion and Decision

[4] Wade asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which 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." "Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference 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). On appellate review, our principal role is to leaven the outliers, focusing on the length of the sentence and how it is to be served. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016). Ultimately, 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." *Cardwell*, 895 N.E.2d at 1224. Wade bears the burden of persuading us that his sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[5] Regarding the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range

for a level 6 felony is six months to two and a half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). As mentioned above, Wade agreed to a one-year cap on any executed time, which should be understood as "strong and persuasive evidence" of the reasonableness of that portion of his sentence, which is two months below the cap. *See Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring) ("A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness."). Clearly, Wade exhibited no restraint or regard in confronting Fox, punching him in the face, and knocking him unconscious, based solely on his son's unfounded accusation. The brutal nature of the offense does not support a reduction of Wade's sentence.[1]

[6] The same may be said for Wade's character. Wade emphasizes that this is his first felony conviction, but we note that "[e]ven a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing." *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021). Wade, who was born in 1984, has multiple juvenile adjudications (including several thefts) and probation violations, as well as misdemeanor convictions for theft and invasion

[1] The State originally charged the offense as a class A misdemeanor, dismissed the charge, and then refiled it as a level 6 felony. Based on this, Wade claims that his offense must be "less egregious than the typical level 6 felony offense as classified by the legislature." Appellant's Br. at 12 (underlining omitted). The State's initial charging decision is irrelevant, and the record before us refutes Wade's claim.

of privacy, for which he was ordered to "comply with anger management classes" as a condition of probation. Appellant's App. Vol. 2 at 24. Evidently, Wade still has issues with controlling his anger, as he demonstrated by knocking Fox unconscious.[2] Wade states that he "expressed remorse to the victim and his parents during his sentencing hearing[,]" Appellant's Br. at 14, but the trial court "observed his demeanor firsthand throughout the proceedings and was therefore in a better position to evaluate his sincerity or lack thereof." *Barker v. State*, 994 N.E.2d 306, 312 (Ind. Ct. App. 2013), *trans. denied* (2014).[3] Wade further observes that he "is also a caretaker for his family[,]" Appellant's Br. at 15, but he fails to explain how this reflects favorably on his character. In sum, Wade has not met his burden of persuading us that his less-than-maximum sentence, with only ten months executed, is inappropriate in light of the nature of the offense and his character. Therefore, we affirm it.

[7] Affirmed.

Bradford, C.J., and Tavitas, J., concur.

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[2] Wade asserts that "[t]here is … evidence in the record that [he] had learned from this experience and did not repeat the same mistake when a separate incident arose while his case was pending." Appellant's Br. at 14. We note that the trial court was not required to find this evidence credible, and it made no such finding.

[3] The trial court did not find Wade's expression of remorse to be a mitigating circumstance, and Wade does not argue that the court abused its discretion in this regard.