MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Kyle Travis Chandler,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 14, 2022

Court of Appeals Case No. 21A-CR-2049

Appeal from the Wells Superior Court

The Honorable Kenton W. Kiracofe, Judge

Trial Court Cause No. 90D01-2012-F6-186

May, Judge.

[1] Kyle Travis Chandler appeals following his conviction of Level 6 felony intimidation,[1] his admission to being a habitual offender,[2] and the imposition of a six-year sentence. He asserts the State presented insufficient evidence to support his conviction and his sentence is inappropriate for his offense and his character. We affirm.

Facts and Procedural History

[2] In November 2020, Jarius Daggett was working as a confinement officer at the Wells County Sheriff's Department. As part of his duties, he helped "ensure the safety and health of all inmates" at the jail. (Tr. Vol. 2 at 154.) On November 23, 2020, he was working a shift with fellow officer Rachel Hartman. Around 11:30 in the morning, as Officer Hartman and Officer Daggett were delivering laundry to inmates in the block where Chandler was housed, Chandler asked Officer Hartman to give a book to an inmate in another cell. When Officer Hartman took the book from Chandler, she noticed there was a gap in the book, so she opened it and found the book had two yellow pills inside it. Officer Daggett then searched the rest of the pages in the book for additional contraband but did not find anything else. Officer Hartman

[1] Ind. Code § 35-45-2-1(a)(2) & (b)(1)(A) (2019) (subsequently amended by Ind. P.L. 5-2022, which becomes effective July 1, 2022).

[2] Ind. Code § 35-50-2-8.

delivered the pills to the jail nurse, and Officer Daggett finished delivering the laundry.

[3] About fifteen minutes later, Officer Daggett and Officer Hartman consulted with their commanding officer and a decision was made to search Chandler's cell for additional contraband. Officers Daggett and Hartman returned to Chandler's cell, had Chandler exit the cell, and Officer Daggett searched the cell. Officer Daggett removed a few items of contraband, including a spork, extra clothing, and an altered radio. The officers placed Chandler back in his cell, and as they were leaving the area Chandler began banging on his cell door and screaming: "Where the fuck's my radio?" (*Id.* at 179.) Officer Daggett could tell that Chandler was angry.

[4] Fifteen minutes later, Officer Daggett and Officer Hartman returned to Chandler's cell block to deliver lunch. Chandler was still very angry about the radio, so Officer Daggett explained to Chandler why he could not have the radio, and Chandler yelled that he was "gonna knock [Officer Daggett's] lights out." (*Id.* at 163.) Officer Daggett understood that to be a threat to punch him until he was unconscious. Officer Hartman delivered lunch to Chandler, and then, as the officers were leaving the cell block, they heard Chandler throw his plastic storage tote against the door of his cell, so Officer Daggett returned to Chandler's cell to take the tote. Chandler would not comply with Officer Daggett's commands to put his hands on the wall. Instead he was saying, "Fuck you. I'm not puttin' my hands on the wall." (*Id.* at 165.) Chandler was at the back of his cell, so Officer Daggett opened the cell, reached in, and took

the tote, as Chandler continued to berate him. As Officer Daggett walked away, Chandler said, "If I ever see you out on the streets, I'm gonna fuckin' murder you, bitch." (*Id.* at 166.) Officer Daggett took Chandler's threat very seriously because it was not the kind of comment normally made by a jail inmate to a correctional officer.

[5] The State charged Chandler with six counts of Level 6 felony intimidation of Officer Daggett and one count of Level 6 felony attempted sale of legend drugs, and the State alleged Chandler was a habitual offender. On the morning of trial, the State dismissed two charges: the final allegation of intimidation and the allegation of attempted sale of legend drugs. A jury found Chandler guilty of five counts of intimidation as charged. Chandler pled guilty to being a habitual offender.

[6] Following preparation of the pre-sentence investigation report, the court held a sentencing hearing. The court merged the five guilty findings and entered one conviction of Level 6 felony intimidation. The court found aggravators in Chandler's "lengthy criminal history and a history of violating any . . . community supervision, which have [sic] been given to him, including pretrial release and probation[.]" (Tr. Vol. 3 at 57.) The court imposed a sentence of two years, which the court enhanced by four years for Chandler being a habitual offender, for an aggregate sentence of six years.

Discussion and Decision

I. Sufficiency of Evidence

[7] Chandler first asserts his conviction is not supported by sufficient evidence. Claims of insufficient evidence

> warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather, we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[8] Chandler was convicted of Level 6 felony intimidation. Pursuant to Indiana Code section 35-45-2-1(a)(2), Class A misdemeanor intimidation occurs if a person "communicates a threat with the intent . . . that another person be placed in fear of retaliation for a prior lawful act[.]" That communication becomes a Level 6 felony if "the threat is to commit a forcible felony." Ind. Code § 35-45-2-1(b)(1)(A).

[9] Chandler acknowledges he was upset that Officer Daggett seized his radio and he uttered the alleged threat, but he asserts he had no "*intent* to place Officer Daggett in fear." (Br. of Appellant at 15) (emphasis in original). According to Chandler, "the 'threats' were only *braggadocio* and were made in the normal course of jailhouse interactions between jail officers and inmates and were made solely to maintain his 'street cred' while being incarcerated." (*Id.* at 15-16) (emphasis in original). We are unconvinced by Chandler's assertions.

[10] Unless a defendant makes an admission, the determination of what a person intended to do is "a matter of circumstantial proof." *Brewington v. State*, 7 N.E.3d 946, 964 (Ind. 2014) (quoting *Hampton v. State*, 961 N.E.2d 480, 487 (Ind. 2012)), *reh'g denied*, *cert. denied*, *reh'g denied*. Accordingly, whether one person intended to place another in fear has to be "gleaned from 'all the contextual factors.'" *Id.* (quoting *Virginia v. Black*, 538 U.S. 343, 367, 123 S. Ct. 1536 (2003)). Whether a speaker knew statements would be perceived as threatening "will often depend on whether a reasonable person would recognize the statements' threatening potential." *Id.* at 965.

[11] Chandler, who was housed in lockdown because of misbehavior and who was angry because Officer Daggett seized his altered radio, told Officer Daggett: "If I ever see you out on the streets, I'm gonna fuckin' murder you, bitch." (Tr. Vol. 2 at 166.) Officer Daggett testified he took Chandler's threat "very seriously", (*id.* at 167), and threats of murder are not "normal" even in the context of tense situations at the jail. (*Id.* at 166-67.) Detective Farrell D. Swindell testified that being berated, yelled at, made fun of, and called names are normal aspects of being law enforcement officers and that officers have to learn how to deal with those experiences; however, being told that someone is going to murder you "is something that we don't hear very often, quite frankly" and "I don't know why you wouldn't take that serious." (*Id.* at 190.) Officer Hartman testified she and Officer Daggett were both placed in fear by Chandler's threat. Contrary to Chandler's argument, the evidence was sufficient to infer he intended to place Officer Daggett in fear for his prior

lawful act of seizing the altered radio. *See*, *e.g.*, *Merriweather v. State*, 128 N.E.3d 503, 516 (Ind. Ct. App. 2019) (circumstances permitted jury to infer defendant's threat to kill victim was intended to place victim in fear for prior lawful act of refusing to work on their marriage), *trans. denied*.

II. Inappropriateness of Sentence

[12] Chandler also asserts his six-year sentence is inappropriate. Our standard of review regarding claims of inappropriate sentence is well-settled:

> Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. We consider both the total number of years of a sentence and the way the sentence is to be served in assessing its appropriateness. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[13] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed

by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-7(b) provides that a Level 6 felony is punishable by imprisonment "for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year." Pursuant to the habitual offender statute, the court could enhance Chandler's sentence by a fixed term between two and six years. Ind. Code § 35-50-2-8(i). The court imposed two years for the felony and enhanced it by four years based on Chandler being a habitual offender.

[14] Chandler asserts his sentence is inappropriate for his crime because he did not cause any physical harm to Officer Daggett. However, our analysis of whether a sentence is inappropriate does not involve consideration of whether some hypothetically "more egregious" form of the crime could be imagined. *See*, *e.g.*, *Harris v. State*, 897 N.E.2d 927, 929-30 (Ind. 2008) ("Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario."). Chandler is a habitual offender who threatened to murder Officer Daggett because Officer Daggett was doing his job. We see nothing inappropriate about a six-year sentence.

[15] "When considering the character of the offender, one relevant fact is the defendant's criminal history. The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018) (internal citation omitted). The trial court found an aggravator in Chandler's "lengthy

criminal history"[3] and his history of violating "any community supervision, which have [sic] been given to him, including pretrial release and probation[.]"[4] (Tr. Vol. 3 at 57.) When imposing Chandler's sentence, the trial court noted:

> [I]t's sad that we have to institutionalize someone, but if you look at [Chandler's] Indiana Risk Assessment and his conduct, he – he's placed in a – the most secure facility we can place him in, and he continues to commit crime. And – and I think his intention is to just be as difficult and – um . . . resistant to anything that they want him to do . . .

(*Id*. at 58.) While we appreciate Chandler's earning a GED, having medical issues, and admitting he is a habitual offender, none of those factors are sufficiently significant to suggest a six-year sentence is inappropriate for someone with Chandler's criminal history and recalcitrant inability to follow the rules provided by society, courts, and correctional facilities. *See*, *e.g.*, *Eisert v. State*, 102 N.E.3d 330, 335 (Ind. Ct. App. 2018) (declining to hold six-year sentence inappropriate for Level 5 felony stalking and Class A misdemeanor

[3] In 2000, Chandler was adjudicated a delinquent for criminal mischief, and he was adjudicated a delinquent for acts that would be burglary and four thefts in 2001. In 2003, he was waived to adult court, where he was convicted of operating without a license, auto theft, and three counts of burglary. In 2008, Chandler was convicted of six counts of burglary. In 2015, he was convicted of misdemeanor conversion, and he was convicted of felony strangulation in 2017. In 2018, Chandler was convicted of criminal trespass. In 2020, he was convicted of felony intimidation. After being sentenced for the crimes at issue herein, Chandler was also charged with resisting law enforcement, intimidation, and battery by bodily waste.

[4] By our count, a court has found Chandler violated probation on eight separate occasions and parole on three separate occasions.

invasion of privacy given nature of offenses and character of offender), *trans. denied*.

Conclusion

[16] The State presented sufficient evidence to demonstrate Chandler committed Level 6 felony intimidation, and Chandler has not demonstrated his six-year sentence is inappropriate for his offense and character. Accordingly, we affirm.

[17] Affirmed.

Brown, J., and Pyle, J., concur.