MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Spenser G. Benge
Anderson, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Marquise Venters,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 18, 2022

Court of Appeals Case No. 21A-CR-2730

Appeal from the Madison Circuit Court

The Honorable David A. Happe, Judge

Trial Court Cause No. 48C04-2103-F4-859

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Marquise Venters (Venters), appeals his sentence following his guilty plea to burglary, a Level 4 felony, Ind. Code § 35-43-2-1(1); domestic battery, a Level 6 felony, I.C. §§ 35-42-2-1.3(a)(1), (b)(2); and leaving the scene of an accident, a Class B misdemeanor, I.C. §§ 9-26-1-1.1(a)(1), (b).

[2] We affirm.

ISSUES

[3] Venters presents this court with three issues, which we restate as:

(1) Whether the trial court abused its discretion when it weighed the mitigating and aggravating circumstances;

(2) Whether his sentence is inappropriate given the nature of his offenses and his character; and

(3) Whether his sentence is unconstitutionally disproportionate to the nature of his offenses.

FACTS AND PROCEDURAL HISTORY

[4] Venters is the putative biological father of two children, born in 2017 and 2018, with T.L. In March of 2021, Venters and T.L. were not in a relationship, and Venters was not welcome at T.L.'s home. On March 26, 2021, without an invitation, Venters drove to T.L.'s home where she was present with her two children by Venters and an additional minor child. Venters banged on the locked

front door, but T.L. would not let him in. Venters kicked in the front door, which was ripped off its frame, entered T.L.'s home, and hit T.L. in the head with a closed fist while the three children were present and able to see and/or hear his actions. After battering T.L., Venters intentionally backed his car into T.L.'s car in the driveway, causing significant damage to T.L.'s vehicle. Venters drove away without reporting that he had hit T.L.'s vehicle. Officers who responded to T.L.'s call for assistance observed that she had a red mark on the right side of her face and a red mark on her knee which she had sustained when she had fallen during the offenses.

[5] On March 29, 2021, the State filed an Information, charging Venters with Level 4 felony burglary, Level 6 felony domestic battery, and Class B misdemeanor leaving the scene of an accident. The State also filed a notice of its intent to seek to have Venters sentenced as an habitual offender. On August 9, 2021, the parties informed the trial court that they had reached a plea agreement pursuant to which Venters would plead guilty as charged and the State would refrain from amending the burglary charge to a Level 3 felony. The State further agreed to request a cap of six years on the executed portion of Venters' sentence. The State did not file an habitual offender Information.

[6] On September 10, 2021, the Madison County Probation Department filed its presentence investigation report. In 2011, Venters was adjudicated as a juvenile for attempted burglary and resisting law enforcement, for which he received supervised probation, community service, and placement into the Prime for Life program. The State filed three notices of probation violation in that matter, and

Venters was eventually placed on thirty days of GPS monitoring before completing his probation. Venters' adult criminal history began in 2013 with his guilty plea to Class D felony criminal recklessness and Class A misdemeanor carrying a handgun without a license, for which he received one year executed in the Indiana Department of Correction (DOC), one year in Madison County's Continuum of Sanctions Program, and six months of formal probation. Venters twice violated his probation, resulting in his probation being revoked and his return to the DOC. In 2015, Venters pleaded guilty to possession of marijuana and false informing and received one year executed and one year of probation. Venters violated his probation in that matter twice, resulting in his probation being revoked and his serving ninety days in the Madison County Detention Center. In 2016, Venters pleaded guilty to Level 6 felony residential entry and Class B misdemeanor criminal mischief and was sentenced to eighteen months in Madison County's Continuum of Sanctions Program. After a first violation, he was returned to the program, but after a second violation, his placement in the program was revoked to the Madison County Detention Center. Also in 2016, Venters pleaded guilty to Class A misdemeanor domestic battery. Venters' one-year suspended sentence in that matter was also revoked. In 2017, Venters pleaded guilty to Level 6 felony failure to return to lawful detention and received one year, executed. Also in 2017, Venters pleaded guilty to Class A misdemeanor criminal mischief, for which he received 180 days of probation. Venters had a pending hearing on a notice of probation violation in that matter. In 2018, Venters was sentenced to 910 days in the DOC for Level 5 felony prisoner possessing a dangerous device and Class B misdemeanor criminal mischief. While serving that sentence, Venters accrued

eleven separate write-ups related to his behavior. Venters was released from the DOC on October 15, 2020. In addition to his record of convictions, Venters has been arrested for possession of marijuana (twice), false informing, residential entry, and criminal mischief. Venters also had four pending criminal cases for two separate charges of Class A misdemeanor battery resulting in bodily injury and for two separate charges of Class A misdemeanor driving while suspended.

[7] Concerning his mental health, Venters reported to the presentence investigator that in 2018, while serving his sentence with the DOC, he had been diagnosed with schizophrenia and was prescribed Haloperidol. When asked about the instant offenses, Venters told the presentence investigator that T.L. was lying. In her victim impact statement, T.L. reported that, as a result of the offenses, she experienced fear of being alone, nightmares, and anxiety. One of T.L.'s children has autism and was deeply frightened by the yelling and loud noises that occurred during the offenses. T.L. had to replace her vehicle at a cost of $3,000 which was not covered by her insurance, and she planned to move from her present home before Venters was released from serving his sentence in this matter, as she feared for her safety and that of her children.

[8] On September 17, 2021, the trial court convened Venters' combined guilty plea and sentencing hearing at which Venters failed to establish a factual basis for his plea because he would not admit to the facts pertaining to the offenses. On November 9, 2021, the trial court held a second hearing at which Venters successfully established the factual basis for his guilty plea to the charges as alleged in the Information. The trial court accepted Venters' plea and found that Venters had a

mental health condition which was "a significant mitigator." (Transcript p. 60). The trial court also found Venters' guilty plea and acceptance of responsibility to be mitigating. The trial court found Venters' criminal history and the fact that he was being sentenced in this case for multiple crimes as aggravating circumstances. The trial court found that the aggravating circumstances outweighed the mitigators and sentenced Venters to nine years for the burglary and to two years for the domestic battery, to be served concurrently, with five years suspended to probation. The trial court imposed a $10 fine for Venters' leaving the scene of an accident conviction.

[9] Venters now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Aggravators and Mitigators*

[10] Venters' first challenge to his sentence is that the trial court abused its discretion by failing to accord adequate mitigating weight to his mental health and to properly weigh the mitigators against the aggravators. So long as a sentence imposed by a trial court is within the statutory range for the offense, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of the trial court's sentencing discretion occurs if its decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id*. A trial court abuses its discretion when it fails to enter a sentencing statement at all, its stated reasons for imposing

sentence are not supported by the record, its sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or its reasons for imposing sentence are improper as a matter of law. *Id*. at 490-91.

[11] In *Anglemyer*, our supreme court observed that, following the revision of Indiana's criminal code in 2005 in response to the Sixth Amendment problem posed by *Blakely v. Washington*, 542 U.S. 296, 124 S.Ct. 2531, 159 L.E.2d 403 (2004), a trial court "no longer has any obligation to 'weigh' aggravating and mitigating factors against each other when imposing a sentence[.]" *Anglemyer*, 868 N.E.2d at 491. As such, the *Anglemyer* court held that, unlike the pre-*Blakely* sentencing regime, a trial court may no longer "be said to have abused its discretion in failing to 'properly weigh'" mitigating and aggravating circumstances. *Id*. Accordingly, when presented with such claims as applied to defendants who committed crimes after 2005, we have held those claims to be non-cognizable. *See Allen v. State*, 875 N.E.2d 783, 788 (Ind. Ct. App. 2007) ("*Anglemyer* makes clear that we cannot review the trial court's weighing of aggravating or mitigating circumstances for an abuse of discretion"); *Nash v. State,* 881 N.E.2d 1060, 1064 (Ind. Ct. App. 2008) (holding that Allen's claim that the trial court accorded too little weight to his mental illness was "not available for appellate review"), *trans. denied*; *Sandleben v. State*, 29 N.E.3d 126, 135 (Ind. Ct. App. 2015) (holding that defendant's claim that the trial court awarded too little weight to the mitigating factors and too much weight to the aggravating factor was "not subject to our review"), *trans. denied*; *Snyder v. State*, 176 N.E.3d 995, 999 (Ind. Ct. App. 2021) (rejecting Snyder's claim

that the trial court improperly weighed the value of his guilty plea as not subject to review for an abuse of discretion).

[12] Here, Venters, who committed his offenses in 2021, was sentenced under the post-*Blakely* sentencing scheme. The trial court found that Venters' mental health condition was "a significant mitigator." (Tr. p. 60). It weighed Venters' mental health and his guilty plea against his criminal record and the number of the instant offenses and found that the mitigators were outweighed by the aggravators. Contrary to Venters' appellate argument, the relative weight ascribed by the trial court to the mitigating circumstances and the balancing of the mitigators and aggravators are not subject to our review. *Anglemyer*, 868 N.E.2d at 491. Therefore, we find no abuse of the trial court's discretion.

II. *Appropriateness of Sentence*

[13] Venters also argues that his sentence is inappropriately severe and requests that we revise it. "Appellate Rule 7(B) enables this [c]ourt to 'revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.'" *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "In assessing whether a sentence is inappropriate, appellate courts may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge." *McFall v. State*, 71 N.E.3d 383, 390 (Ind. Ct. App. 2017). The defendant bears the burden to persuade the reviewing

court that the sentence imposed is inappropriate. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018).

[14] When assessing the nature of offenses, the advisory sentence is the starting point that the legislature selected as an appropriate sentence for the particular crimes committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Venters pleaded guilty to a Level 4 felony, a Level 6 felony, and a Class B misdemeanor.[1] A Level 4 felony carries a sentencing range of between two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. A Level 6 felony carries a sentencing range of between six months and two and one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). A Class B misdemeanor carries a maximum sentence of 180 days. I.C. § 35-50-3-3. Therefore, without a plea agreement, Venters faced a potential maximum sentence of fifteen years. Venters' plea agreement capped his executed sentence at six years, and the trial court sentenced Venters to an aggregate nine-year sentence, with four years executed, and the remainder suspended to probation.

[15] As part of our review, we also consider the "the details and circumstances of the offenses and the defendant's participation therein." *Madden*, 162 N.E.3d at 564. In conducting our review, we determine whether there is "anything more or less egregious about the offense as committed by the defendant that distinguishes it

[1] Venters does not argue that the fine imposed by the trial court for his Class B misdemeanor was inappropriate.

from the typical offense accounted for by our legislature when it set the advisory sentence." *Id*.

[16] Regarding the nature of his offenses, Venters contends that the "damage done by [him] was not particularly severe." (Appellant's Br. p. 13). However, this was a violent and unprovoked attack. Venters went uninvited to T.L.'s home, kicked in her front door, and punched T.L. with a closed fist, causing her to fall and resulting in injury to her face and knee. As a result of the offenses, T.L. no longer feels safe in her own home and believes that she must move before Venters is released in order to protect herself and her children. Venters battered T.L. in front of three small children, two of whom are ostensibly his own, and one of whom has special needs and was deeply affected by the yelling and loud noises involved in the offenses. Venters' assault on T.L.'s front door rendered it unusable, and the damage he inflicted to her car required T.L. to purchase a new vehicle at an out-of-pocket cost of $3,000. These harms are beyond those necessary to prove the offenses, and, accordingly, we find nothing about the nature of Venters' offenses which renders his aggregate sentence, most of which is to be served on probation, to be an outlier in need of our revision.

[17] Upon reviewing a sentence for inappropriateness in terms of the defendant's character, we look to his life and his conduct. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. Venters has an extensive criminal record including a juvenile adjudication for burglary, four felonies for offenses including residential entry and criminal recklessness, and seven misdemeanors for offenses including criminal mischief, carrying a handgun without a license, and domestic

battery. Apart from the sheer number of these previous convictions, we find it significant that Venters has prior convictions for offenses similar to his instant offenses in that they involved illegal entry into a home and violence. Venters has not been deterred by more lenient treatment, as he has received placement in programs, probation, jail terms, and shorter sentences in the DOC. Venters violated his probation repeatedly, and his behavior was poor even when he was placed with the DOC.

[18] We also observe that, despite pleading guilty to the offenses, Venters has not demonstrated a great deal of remorse or concern about his offenses and the effect they had on T.L. Venters told the presentence investigator that T.L. was not being truthful about her version of the events, and Venters' first guilty plea hearing was cut short when he would not admit to the facts necessary to establish the factual basis for his plea. Venters did not express remorse about what he had done to T.L. and the children; rather, he characterized himself as someone who "just made some bad decisions." (Appellant's App. Vol. II, p. 60). We find that this attitude also reflects poorly on Venters' character.

[19] Venters' primary argument regarding the inappropriateness of his sentence is that his schizophrenia diagnosis merits a revision. We do not find this argument to be persuasive for at least two reasons, the first of which is there is scant evidence in the record concerning Venters' diagnosis, and he does not direct our attention to any evidence establishing a connection between his mental health and the offenses. *See Taylor v. State*, 943 N.E.2d 414, 421 (Ind. Ct. App. 2011) (declining to revise Taylor's sentence for burglary and other offenses where he had failed to establish

any nexus between his mental illness and the commission of the offenses), *trans. denied*. In addition, the trial court already considered Venters' mental health condition to be significant in fashioning an aggregate sentence which was less than the maximum sentence for the most serious offense and did not even represent the maximum executed sentence authorized by Venters' plea agreement.

[20] In sum, our supreme court has directed us that our 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). Venters has failed to present us with overwhelmingly positive evidence of the nature of his offenses and his character. As such, we decline to revise his already lenient sentence. *See id*.

III. *Proportionality of Sentence*

[21] Venters' last challenge to his sentence is that it is unconstitutionally disproportionate to the nature of his offenses under the Indiana Constitution. Article 1, Section 16 of the Indiana Constitution provides that "[a]ll penalties shall be proportioned to the nature of the offense." Our supreme court has held that, while the sweep of Article I, Section 16 is somewhat broader than that of the Eighth Amendment to the United States Constitution, the protections of our state proportionality clause "are still narrow[,]" and are only violated where a criminal

penalty "is not graduated and proportioned to the nature of the offense[.]" *Knapp v. State*, 9 N.E.3d 1274, 1289 (Ind. 2014). Our state proportionality clause mandates that we review whether a sentence is not only within statutory parameters, but also whether it is constitutional as applied to a particular defendant. *Shoun v. State,* 67 N.E.3d 635, 641 (Ind. 2017). When a penalty is not based on prior offenses, we undertake an inquiry into whether the penalty is graduated and proportioned to the nature of the offense. *Id*. We may not set aside a penalty for a criminal offense merely because it seems too severe. *Knapp*, 9 N.E.3d at 1290. Rather, "a legislatively determined penalty will be deemed unconstitutional by reason of its length only if it is so severe and entirely out of proportion to the gravity of the offense committed as to shock public sentiment and violate the judgment of reasonable people." *Foreman v. State*, 865 N.E.2d 652, 655 (Ind. Ct. App. 2007) (internal citation omitted), *trans. denied*.

[22] We first address the State's contention that Venters waived his argument by entering into his plea agreement. Our supreme court has held that a facial proportionality challenge to a criminal statute is waived if raised for the first time on appeal. *Layman v. State*, 42 N.E.3d 972, 976 (Ind. 2015). However, Venters does not raise a facial challenge; rather, he argues that the penalty imposed in this case is disproportionate as applied to him. The State presents us with no Indiana supreme court case or authority from this court holding that an as-applied proportionality challenge is waived by entering into a plea agreement. In the absence of such authority, we decline to resolve Venter's claim on the basis of waiver.

[23] Venters' chief argument on this issue is that his sentence is disproportionate due to his "severe mental illness which was left untreated" and because "the record suggests he was having a schizophrenic episode at the time he committed the offenses." (Appellant's Br. p. 14). However, our inquiry is directed at the nature of the offenses involved, not to qualities pertaining to the individual defendant. *See Knapp*, 9 N.E.3d at 1289-90; *see also Shoun,* 67 N.E.3d at 641 (finding no disproportionality despite Shoun's alleged intellectual disability and analyzing only the nature of the offenses). In addition, Venters' only support for his proposition that he was having a schizophrenic episode at the time of the offenses is that T.L. remarked to responding officers that it appeared to her that Venters was high on drugs when he attacked her in her home, evidence which we conclude is insufficient to establish the fact of a schizophrenic episode.

[24] Venters' remaining argument is that the harm done by him "was not particularly egregious given the nature of the charges." (Appellant's Br. p. 14). However, Venters received a nine-year sentence for the Level 4 felony burglary and a two-year sentence for the Level 6 felony domestic battery. Both of those sentences were within the parameters of the sentencing statutes. *See* I.C. §§ 35-50-2-5.5, -7. As noted above, Venters perpetrated a violent and unprovoked attack on T.L. in her home in the presence of three children and left physical injury and significant property destruction in his wake. An aggregate nine-year sentence for these offenses, with only four years executed, which does not represent the maximum sentence permitted by statute for the Level 4 felony or even the maximum executed time permitted pursuant to Venters' plea agreement, does not "shock public

sentiment" or "violate the judgment of reasonable people." *Foreman*, 865 N.E.2d at 655. Under the circumstances presented by the record before us, Venters' sentence is not disproportionate.

CONCLUSION

[25] Based on the foregoing, we conclude that the trial court did not abuse its discretion in sentencing Venters, his sentence is not inappropriate given the nature of his offenses and his character, and his nine-year aggregate sentence is not unconstitutionally disproportionate to the nature of his offenses.

[26] Affirmed.

[27] May, J. and Tavitas, J. concur