

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Stephen Michael Ford,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

June 20, 2023

Court of Appeals Case No.  
23A-CR-205

Appeal from the Hancock Superior  
Court

The Honorable Dan E. Marshall,  
Judge

Trial Court Cause No.  
30D02-2203-F6-345

**Memorandum Decision by Judge Brown**  
Judge Crone and Senior Judge Robb concur.

**Brown, Judge.**

[1] Stephen Michael Ford appeals his sentence for two counts of intimidation as level 6 felonies. We affirm.

***Facts and Procedural History***

[2] Ford is the son of Polly Ford, the stepson of Ronald Ford, and the brother of April Ford. In February 2022, Polly and Ronald had not seen Ford in approximately one year and believed he was in West Virginia but did not know for certain. On February 17, 2022, Ford sent a text message to his mother, Polly, which stated:

Mom April knows what going on with me and I'm telling you right now I am coming with a gun and I am going to murder you April and everyone else involved in this s--- I swear to God by the end of the week I'm going to murder her.

State's Exhibit No. 3.

[3] On February 19, 2022, Ford sent text messages to Ronald stating: "I swear to God dad I'm killing my whole family"; "As soon as I get there I'm gonna kill mom and April they both know what's going on"; "I'm seriously going to f---- murder u too if u know"; "Ya what the f--- ever . . . I'm coming there with a gun tonight and we're gonna see real f---- fast"; "I'm putting a bullet in everyone I promise"; and "U guys let April get away with this s--- so I'm gonna

drag her ass in there and blow her f----- head off right in front of u.” State’s Exhibit 1.<sup>1</sup>

[4] On March 14, 2022, the State charged Ford with: Count I, intimidation of Polly as a level 6 felony; and Count II, intimidation of Ronald as a level 6 felony. The court held a jury trial. Ford testified that, in February of 2022, he was residing in West Virginia. When asked if he reached out to Polly or Ronald starting around February 16, 2022, Ford testified “I can’t really be for sure because I was in-and-out of a mental institution at that time,” “I had to go to Canton, Ohio and . . . undergo some psychiatric help for . . . schizophrenia,” and “at the time I was on so many sedatives.” Transcript Volume II at 140. He indicated he was diagnosed with schizophrenia in January of 2021 and has had mental health issues his entire life. When asked if he sent the text messages to his mother and stepfather, he answered: “Tell you the truth, I can’t be positive, man. I may have. I may have not.” *Id.* at 143. When asked “[w]hy would you have done it,” Ford stated “I don’t know why I’d say it either,” “I can’t remember all my hallucinations,” and “I’d do anything that was tryin’ to protect ‘em.” *Id.* at 143-144. He also testified “[s]omebody was hackin’ my account.” *Id.* at 150. The jury found Ford guilty on both counts.

[5] At sentencing, Ford stated “I was obviously out-of-my-mind when this happened” and indicated he stopped consuming alcohol in 2018 and he did not

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<sup>1</sup> Ronald and Polly have different phone numbers.

have a drug addiction. *Id.* at 189. He stated “I have a mental problem,” “I might have a mental disability, but I’m not stupid,” “[t]his is not somethin’ I did to defy the law, it’s somethin’ I did out-of-my-mind,” “I was two (2) days out of a mental hospital when this happened,” “I’ve been in-and-out of mental hospitals for the last four (4) years,” and “I can’t find a medicine that works.” *Id.* at 190-194. The court stated that Ford was “uncooperative and always has been,” he was intelligent, “I don’t doubt that Mr. Ford has some mental disability,” “I’m just gonna be honest I think he’s inflating it,” “I don’t believe he hears voices,” “I don’t believe he’s schizophrenic,” “[w]hat I’ve seen out of Mr. Ford is that he[] has a very bad attitude,” “I’ve tried to - over the years - many, many times I’ve modified his sentence,” “he’s always gotta story,” and “there’s always something, but none of it really seems to have been accurate.” *Id.* at 199-200. It stated “[e]very year since he’s been eighteen (18) he’s had a criminal conviction in this court or a court except for in 2006 he was in Florida,” “we’re looking at a situation where this is . . . nine (9) felony convictions,” “[s]ixteen (16) misdemeanor convictions,” “[i]f he’s been doing time in-patient in mental facilities, I haven’t seen one (1) single document to support that [] ever,” “Mr. Ford, [] I’ve lost my patience tryin’ to [] work out cases with you,” “I’ve lost hope in that after twenty (20) something convictions outta this court in eighteen (18) years,” and “[i]t’s almost hard to get arrested that often.” *Id.* at 201-202. The court found the aggravating factors included Ford’s extensive criminal history and prior unsuccessful placement on probation and found no mitigators. The court sentenced Ford to two years on each count and ordered that the sentences be served consecutively. The court

stated that, if Ford completed a recovery program while incarcerated, it would consider a modification.

### *Discussion*

[6] Ford argues that his offenses constituted a single episode of criminal conduct and thus the trial court's authority to impose consecutive sentences was limited, the court abused its discretion in not finding his mental illness to be a mitigating factor, and his sentence is inappropriate.

[7] As for the trial court's authority to impose consecutive sentences, Ind. Code § 35-50-1-2 provides:

(c) Except as provided in subsection (e) or (f) the court shall determine whether terms of imprisonment shall be served concurrently or consecutively. The court may consider the:

- (1) aggravating circumstances in IC 35-38-1-7.1(a); and
- (2) mitigating circumstances in IC 35-38-1-7.1(b);

in making a determination under this subsection. The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence,<sup>[2]</sup> the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10 (before its repeal) to which the defendant is sentenced for felony

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<sup>2</sup> Ind. Code § 35-50-1-2(a) includes a list of offenses which constitute a "crime of violence," and the offense of intimidation is not included in the list.

convictions arising out of an episode of criminal conduct shall not exceed the period described in subsection (d).

- (d) Except as provided in subsection (c), the total of the consecutive terms of imprisonment to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct may not exceed the following:
  - (1) If the most serious crime for which the defendant is sentenced is a Level 6 felony, the total of the consecutive terms of imprisonment may not exceed four (4) years.

[8] Whether certain offenses constitute a single episode of criminal conduct is a fact-intensive inquiry to be determined by the trial court. *Grimes v. State*, 84 N.E.3d 635, 643 (Ind. Ct. App. 2017), *trans. denied*. An “episode of criminal conduct” means “offenses or a connected series of offenses that are closely related in time, place, and circumstance.” Ind. Code § 35-50-1-2(b).

In determining whether multiple offenses constitute an episode of criminal conduct, the focus is on the timing of the offenses and the simultaneous and contemporaneous nature, if any, of the crimes. Additional guidance on the question can be obtained by considering whether the alleged conduct was so closely related in time, place, and circumstance that a complete account of one charge cannot be related without referring to the details of the other charge.

*Grimes*, 84 N.E.3d at 643 (citation and brackets omitted).

[9] Ford sent the text message to his mother Polly at her phone number on February 17, 2022. Then, two days later, on February 19, 2022, he sent text messages to his stepfather Ronald at his phone number. We cannot say that

Ford’s offenses constituted a single episode of criminal conduct. Even assuming the offenses constituted an episode of criminal conduct, the most serious crime for which Ford was sentenced was a level 6 felony, and the total of the consecutive terms imposed by the trial court did not exceed four years. Reversal is not warranted on this basis.<sup>3</sup>

[10] Ind. Appellate Rule 7(B) provides 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.” The burden is on the defendant to persuade the appellate

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<sup>3</sup> To the extent Ford cites Ind. Code § 35-50-2-1.3(c), that section provides: “In imposing . . . consecutive sentences for felony convictions that are not crimes of violence (as defined in IC 35-50-1-2(a)) arising out of an episode of criminal conduct, in accordance with IC 35-50-1-2 . . . a court is required to use the appropriate advisory sentence in imposing a consecutive sentence . . . .” In *Miller v. State*, this Court held:

We observe that Ind. Code § 35-50-2-1.3(c), referring to the use of “the appropriate advisory sentence,” is merely a reference to a former version of Ind. Code § 35-50-1-2(c) which capped consecutive sentences for an episode of non-violent criminal conduct at “the *advisory sentence* for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.” Ind. Code § 35-50-1-2(c) (2014) (emphasis added) (subsequently amended). In *Robertson v. State*, the Indiana Supreme Court clarified that Ind. Code § 35-50-2-1.3(c) “was not meant to impose additional restrictions on a trial court’s ability to impose consecutive sentences” beyond those outlined in Ind. Code § 35-50-1-2(c). 871 N.E.2d 280, 285-286 (Ind. 2007). Effective July 1, 2015, Ind. Code § 35-50-1-2(c) was amended and no longer refers to an “advisory sentence.” See Pub. L. No. 238-2015, § 16 (eff. July 1, 2015). Instead, Ind. Code § 35-50-1-2(c) now provides that the consecutive sentence for an episode of non-violent criminal conduct “shall not exceed the period described in subsection (d).” See *id.* Ind. Code § 35-50-1-2(d) also does not refer to advisory sentences . . . . The language of Ind. Code § 35-50-2-1.3(c) to which Miller points appears to be rendered obsolete by the current wording of Ind. Code § 35-50-1-2(c). To the extent the language of Ind. Code § 35-50-2-1.3(c) was not rendered obsolete, we note that, in light of *Robertson*, the phrase “the appropriate advisory sentence” in Ind. Code § 35-50-2-1.3(c) is a reference to Ind. Code § 35-50-1-2(c) and (d) . . . .

138 N.E.3d 314, 316-317 (Ind. Ct. App. 2019) (footnote omitted), *trans. denied*. Ind. Code § 35-50-2-1.3(c) does not require reversal.

court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Ind. Code § 35-50-2-7 provides a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year.

[11] Our review of the nature of the offense reveals that Ford sent a text message to his mother Polly threatening to kill her, April, and “everyone else involved in this s---,” State’s Exhibit 3, and that, two days later, he sent text messages to his stepfather Ronald threatening to kill him, Polly, April, and his “whole family” and to “drag [April’s] ass in there and blow her f----- head off right in front of u.” State’s Exhibit 1.

[12] Our review of the character of the offender reveals that the presentence investigation report (“PSI”) provides, with respect to his mental health, that Ford reported seeking mental health services through numerous providers including Aspire in Noblesville, Indiana, and an inpatient program in Columbus, Ohio, he recalled being diagnosed with depression in 2007 and around the same time he was diagnosed with schizophrenia, and he was prescribed Paxil which he continued to take in jail and Seroquel which he was not taking in jail. It states Ford was unable to give many details regarding his prior mental health services. It further states that a previous presentence investigation report completed in March 2019 provided that Ford did not have any concerns for his mental health and denied ever seeing a psychiatrist, psychologist, or therapist. The PSI indicates that Ford reported he first consumed alcohol around age twelve and last consumed alcohol in 2018, he



first used marijuana around age fourteen and denied ever using marijuana regularly, and he “endorsed using meth a total of 3 times” in 2020. Appellant’s Appendix Volume II at 83. Ford reported he completed an intensive outpatient program through Aspire in Noblesville which addressed his substance use and mental health issues and successfully completed that program in 2018. The PSI also stated that, according to the 2019 presentence investigation report, Ford reported snorting heroin one time.

[13] The PSI reveals that Ford, who was born in January 1985, was convicted of operating a vehicle while intoxicated in 2004; minor in possession of alcohol in 2005; public intoxication and resisting law enforcement in 2007; public intoxication in 2008; intimidation as a class D felony and criminal mischief in 2009; public intoxication in 2010; resisting law enforcement in 2011; operating a vehicle while intoxicated and driving while suspended in 2012; possession of paraphernalia, public intoxication, and disorderly conduct in 2013; two counts of operating a vehicle while intoxicated and possession of paraphernalia in 2014; operating a vehicle while intoxicated, operating a vehicle after being an habitual traffic offender, possession of paraphernalia, and possession of marijuana in 2015; battery by bodily waste on a public safety officer as a level 6 felony in 2017; disorderly conduct, operating a vehicle while intoxicated, and auto theft as a level 6 felony in 2018; invasion of privacy in 2019; and possession of a controlled substance in 2021. The PSI further states Ford has been “placed on formal probation 12 times” and “failed said supervision 9 times.” *Id.* at 79. It states Ford was on active probation with a pending

violation and warrant in Hamilton County, Indiana, when he committed the instant offenses. It states he “has been written up while in the Hancock County Jail pending the outcome of this case.” *Id.* at 84. The PSI stated “his Father, one identified victim, felt [Ford] needed help, not just time.” *Id.* In addition, the PSI provides that Ford’s overall risk assessment score using the Indiana Risk Assessment System places him in the very high risk to reoffend category.

[14] After due consideration, we conclude that Ford has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.<sup>4</sup>

[15] For the foregoing reasons, we affirm Ford’s sentence.

[16] Affirmed.

Crone, J., and Robb, Sr.J., concur.

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<sup>4</sup> To the extent Ford asserts the trial court abused its discretion in sentencing him because it failed to identify mental illness as a mitigating circumstance, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant’s guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh’g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, “even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate”), *trans. denied*), *trans. denied*. Even if we were to address Ford’s abuse of discretion argument, we would not find it persuasive in light of the record.