

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Corey D. Nagel,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



May 8, 2024

Court of Appeals Case No.
24A-CR-34

Appeal from the Allen Superior Court
The Honorable Frances C. Gull, Judge

Trial Court Cause No.
02D05-2301-F6-39

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Cody Nagel appeals his sentence for Invasion of Privacy, as a Level 6 felony.¹ He presents the issue of whether his sentence is inappropriate in light of the offense and his character. We affirm.

Facts and Procedural History

- [2] In January of 2023, Nagel was subject to two no-contact orders prohibiting him from having contact with P.A., the mother of Nagel's three children. On January 9, police officers went to P.A.'s residence to investigate a matter and observed that Nagel was standing inside the residence, shirtless. He was placed under arrest and charged with Invasion of Privacy.
- [3] On April 22, officers were called to assist P.A. in obtaining medical assistance for Nagel. P.A. had returned to the residence where she lived with her grandmother to find Nagel inside. He had consumed twenty to twenty-five sleeping pills in an apparent suicide attempt. Officers summoned an ambulance and placed Nagel under arrest. He did not face an additional invasion of privacy charge in connection with those events; however, his bond was

¹ Ind. Code § 35-46-1-15.1. Nagel's offense was elevated to a Level 6 felony because of a prior unrelated conviction for Invasion of Privacy.

revoked. On May 10, at a status hearing, the State alleged that Nagel had been contacting P.A. from the Allen County Jail.

[4] On May 30, Nagel pled guilty to one count of Invasion of Privacy, waived his right to be sentenced within thirty days, and signed a participation agreement for Allen County Drug Court. On July 10, he failed to appear for a drug court hearing and a warrant was issued for his arrest. On September 11, the trial court found that Nagel had violated a term of his placement and ordered that he perform community service. On September 18, the trial court found that Nagel had again violated a term of his placement and ordered as a sanction that he be incarcerated in the Allen County Jail for a period of days.

[5] On September 25, Nagel's drug court case manager filed a petition to terminate Nagel's participation in the drug court program. Allegedly, Nagel violated the terms of his participation by: failing to attend a scheduled case management appointment; failing to get permission to travel to Lake County; failing to report a July 4 arrest in Lake County; and violating the protective order for the benefit of P.A., also on July 4. At the compliance hearing, Nagel admitted to each of the alleged violations. Nagel's case manager advised the trial court that he was still willing to work with Nagel, and there was a bed available for Nagel at Freedom House. The trial court took the matter under advisement.

[6] On October 2, the trial court conducted a compliance hearing. Nagel's case manager filed an amended petition for revocation from the drug court program, alleging that Nagel had maintained contact with P.A. from September 19

through September 25. Nagel admitted his violations and his participation in the drug court program was revoked. Nagel attempted to flee the courtroom and was tackled and subdued by officers. In the scuffle, the courtroom door was damaged.

- [7] On December 7, Nagel was sentenced for Invasion of Privacy. In mitigation, the trial court found that Nagel had pled guilty and accepted responsibility and that he was remorseful. As aggravators, the trial court found that Nagel had pending charges in Allen County and in the State of Kentucky, that he had a criminal history, and that numerous rehabilitative attempts had failed. Nagel now appeals his two and one-half-year sentence.

Discussion and Decision

- [8] Nagel contends that his sentence is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[9] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to “leaven the outliers.” *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day 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.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court “prevail[s] 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] The sentencing range for Nagel’s Level 6 felony conviction is between six months and two and one-half years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7(b). Accordingly, his two and one-half years sentence is the maximum sentence within the statutory range.

[11] When considering the nature of the offense, we look at the defendant’s actions in comparison to the elements of the offense. *Cannon v. State*, 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. Nagel’s offense of invasion of privacy was unremarkable if considered in isolation; however, this offense was one of a

sustained pattern. At the time he was charged in this case, Nagel had a prior conviction for invasion of privacy and a prior conviction for domestic battery against P.A. He was on parole and subject to two no-contact orders. There are in the record before us no compelling positive facts about the nature of the offense.

[12] Nor does Nagel's character warrant a sentence reduction. He had nine juvenile adjudications, having committed acts that would be theft, burglary, and battery with bodily injury if committed by an adult. His adult criminal history includes eight felonies and four misdemeanors. This history reflects poorly on his character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted) (observing that even a minor criminal history reflects poorly on a defendant's character). Past attempts at leniency have been unavailing. Nagel failed out of the drug court program, even after being given a second chance. In the past, Nagel has had probation and home detention revoked; he was on parole at the time of the instant offense. By the time of his sentencing, he was also facing pending charges in Allen County and in the State of Kentucky. Moreover, Nagel attempted to run from the courtroom during one of his drug court compliance hearings, requiring that officers chase and subdue him, and eventually resulting in damage to courtroom property. The evidentiary record does not suggest that Nagel has "substantial virtuous traits or persistent examples of good character." *Stephenson*, 29 N.E.3d at 122. He has failed to demonstrate that his sentence is inappropriate in light of his character.

Conclusion

[13] Nagel's sentence is not inappropriate in light of the nature of his offense and his character.

[14] Affirmed.

Crone, J., and Pyle, J., concur.

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