

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Frank Chester Oliver,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 5, 2021

Court of Appeals Case No.
21A-CR-493

Appeal from the Lake County
Superior Court

The Honorable Natalie Bokota,
Judge

Trial Court Cause No.
45G02-2002-F3-00033

May, Judge.

[1] Frank Chester Oliver appeals the five-year cumulative sentence imposed after he pled guilty to Level 5 felony battery resulting in serious bodily injury¹ and Level 6 felony strangulation.² He argues his sentence is inappropriate in light of the nature of his offense and his character. We affirm.

Facts and Procedural History

[2] On February 2, 2020, Oliver and his twenty-year domestic companion P.B. were in their apartment. For reasons not disclosed in the record, Oliver became angry, put his hands around P.B.'s neck, and impeded her ability to breathe until she nearly passed out. P.B. was able to extricate herself and escape the apartment. She fled to the nearby apartment of her adult son, T.F. Soon thereafter, T.F. knocked on the door of the apartment leased to Oliver and P.B. When Oliver opened the door, he threw a pot of boiling liquid onto T.F, which resulted in T.F. having second degree burns on his face, neck, chest, left arm, and hands. T.F. experienced pain, needed skin grafts, and has permanent scarring.

¹ Ind. Code § 35-42-2-1(c)(1).

² Ind. Code § 35-42-2-9(c).

[3] The State charged Oliver with six crimes: Level 3 felony aggravated battery,³ Level 4 felony arson,⁴ Level 5 felony battery by means of a deadly weapon,⁵ Level 5 felony battery resulting in serious bodily injury, Level 6 felony strangulation, and Level 6 felony domestic battery resulting in moderate bodily injury.⁶ Oliver and the State reached a plea agreement whereby Oliver would plead guilty to Level 5 felony battery resulting in serious bodily injury and Level 6 felony strangulation, the State would dismiss the remaining charges, the sentence would be open to argument, and the two sentences would be served concurrently. The trial court accepted the plea agreement and ordered a pre-sentence investigation.

[4] After the sentencing hearing, the court entered a sentencing order that stated the following regarding aggravators and mitigators:

Aggravating Circumstances:

1. The Defendant has a history of misdemeanor convictions and felony convictions: 2 misdemeanor and 5 felony convictions.

³ Ind. Code § 35-42-2-1.5(1).

⁴ Ind. Code § 35-43-1-1(a)(1).

⁵ Ind. Code § 35-42-2-1(c)(1).

⁶ Ind. Code § 35-42-2-1.3(a)(1).

2. The Defendant has violated the conditions of probation, parole, pardon, community corrections placement, or pretrial release granted to the defendant by:

a) The Defendant was on bond at the time of this crime in Cause 45H02-1908-CM-000585.

b) The Defendant has been given the benefit of probation five (5) times and has violated the terms of probation at least two (2) times.

Mitigating Circumstances:

The Defendant asks the Court to find the following mitigation circumstances: The victim of the crime induced or facilitated the offense; and there are substantial grounds tending to excuse or justify the crime, though failing to establish a defense. The Court has considered but rejects the argument that the facts before the court support the proffered mitigators.

The Court does find in mitigation that the Defendant’s mental condition has been a significant contributing factor in the Defendant’s criminal conduct.

(Appellant’s App. Vol. 2 at 64-5) (formatting altered). The trial court found the aggravators outweighed the mitigator, and it imposed a five-year sentence for Level 5 felony battery and a concurrent one-year sentence for Level 6 felony strangulation. The court found Oliver had been “in custody from March 13, 2020 through February 23, 2021, plus good time credit as permitted by law.” (*Id.* at 65.) The court directed the Community Transition Court Coordinator to evaluate Oliver for his appropriateness of placement.

Discussion and Decision

[5] We modify a sentence only when we find “the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Appellate Rule 7(B). Our aim when conducting this review is to “leaven the outliers.” *Wilson v. State*, 157 N.E.3d 1163, 1181 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)), *reh’g denied*. We are not concerned with reaching the “correct sentence” in a particular case. *Id.* (quoting *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014)). Whether a sentence will be declared inappropriate is based 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. We consider the aggravators and mitigators found by the trial court and also any other factors appearing in the record. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. We focus our review on the aggregate sentence. *Cardwell*, 895 N.E.2d at 1225. The appellant has the burden of demonstrating his sentence is inappropriate. *Baumholser*, 62 N.E.3d at 418.

[6] When considering the nature of the offense, the advisory sentence is the starting point for determining the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Oliver was convicted of a Level 5 felony and a Level 6 felony. The possible sentence for a Level 5 felony is “a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” Ind. Code § 35-50-2-6(b). The possible sentence for a Level 6 felony is “a fixed term of between six

(6) months and two and one-half (2 ½) years, with the advisory sentence being (1) one year.” Ind. Code § 35-50-2-7(b). The trial court imposed a five-year sentence for Oliver’s Level 5 felony, which is two years above the advisory, and a one-year sentence for his Level 6 felony, which is the advisory. In accordance with the plea agreement, the court ordered those sentences served concurrently.

[7] To suggest the nature of his offenses does not justify a five-year sentence, Oliver notes the history of animosity and physical altercations between himself and T.F., and he asserts their tumultuous relationship history “tends to explain [Oliver’s] behavior.” (Appellant’s Br. at 13.) We disagree. Regardless how many physical altercations may have occurred in the past between Oliver and T.F. or how Oliver and T.F. may have felt about one another, Oliver chose to batter T.F. with scalding liquid at a time when violence was unnecessary. T.F. may have been knocking on Oliver’s apartment door, but Oliver was not required to open that door. He could have remained behind the closed door, wherefrom he could have neither battered T.F. nor been battered himself. We find nothing inappropriate about a five-year sentence for Oliver’s crimes, which involved strangulation of his domestic partner of more than twenty years and battery by scalding liquid that caused scarring that T.F. will have to live with for the rest of his life. *See Weedman v. State*, 21 N.E.3d 873, 895 (Ind. Ct. App. 2014) (declining to find inappropriate a twenty-year sentence for aggravated battery, despite defendant’s mental illnesses, because of injuries to victim and defendant’s criminal history), *trans. denied*.

[8] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Oliver acknowledges his criminal history, which includes five felony convictions and two misdemeanor convictions, but he asserts those crimes were all "quite a number of years ago." (Appellant's Br. at 11.) In so asserting, however, Oliver fails to recognize that he was out on bond when these crimes occurred. (Appellant's App. Vol. 2 at 64.) Oliver also asserts his criminal history should not reflect negatively on his character because these were the first crimes that "involved any type of battery or physical altercation." (Appellant's Br. at 11.) However, any possible benefit to Oliver's character based on his commission of different kinds of crimes is heavily outweighed by the fact that Oliver progressed from committing drug possession and property crimes to committing physical violence against two people he had known for decades. As the trial court noted, these crimes were "disturbing." (Tr. Vol. II at 35.)

[9] Oliver also asserts his sentence is inappropriate for his character because he "has been suffering from depression and bipolar disorder for a significant period of time." (Appellant's Br. at 8.) To assess the mitigating force of mental health issues to criminal behavior, we consider: "the extent of the inability to control behavior, the overall limit on function, the duration of the illness, and the nexus between the illness and the crime." *Covington v. State*, 842 N.E.2d 345, 349

(Ind. 2006). Oliver notes that a court recognized his psychological condition as early as 1993, that he was released to a treatment facility in 2008, and that he was receiving outpatient treatment prior to his arrest. Oliver also acknowledges the trial court found his mental illness as a mitigator in this sentencing because it had been “a significant contributing factor in the Defendant’s criminal conduct.” (Appellant’s App. at 65.) However, as the State notes, Oliver has not explained the nexus between his mental illness and these crimes in a way that would suggest this factor makes his five-year sentence inappropriate for his crimes.

[10] Finally, Oliver argues his sentence is inappropriate based on his character because of his “medical issues which makes [sic] prolonged incarceration inappropriate.” (Appellant’s Br. at 10.) According to Oliver, he has hepatitis, HIV, scoliosis, and at least one blocked artery that required a stint in 2020. Because of these conditions, he takes several medications. However, Oliver has not suggested that his medical conditions cannot be properly treated while he is imprisoned; nor has he explained why the existence of most of these medical conditions prior to these criminal acts did not dissuade him from committing more crimes.

[11] In summary – considering Oliver’s mental illness, medical issues, criminal history, guilty plea, and crime – we cannot say Oliver’s five-year sentence is inappropriate for his crimes or character. *See Weedman*, 21 N.E.3d at 895 (declining to find inappropriate a twenty-year sentence for aggravated battery,

despite defendant's mental illnesses, because of injuries to victim and defendant's criminal history).

Conclusion

[12] Because Oliver has not demonstrated his five-year cumulative sentence is inappropriate for his convictions of Level 5 felony battery resulting in serious bodily injury and Level 6 felony strangulation, we affirm.

[13] Affirmed.

Kirsch, Sr. J., and Vaidik, J., concur.