MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Curtis Lee Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

October 27, 2021

Court of Appeals Case No. 21A-CR-1182

Appeal from the Ripley Superior Court

The Honorable Jeffrey Sharp, Judge

Trial Court Case No. 69D01-2003-F6-41

Robb, Judge.

Case Summary and Issue

[1] Curtis Williams pleaded guilty to domestic battery in the presence of a child less than sixteen years of age, a Level 6 felony. The plea agreement left the sentence to the trial court's discretion. The trial court accepted Williams' guilty plea and sentenced him to 910 days with 545 days suspended to probation. Williams appeals, raising the sole issue of whether his sentence is inappropriate in light of the nature of his offense and his character. Concluding the sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] In February 2020, Williams lived with his girlfriend J., J.'s three children from another relationship (the youngest of whom was almost two years old), and Williams and J.'s two-month-old child.

[3] On February 28, J. and Williams were arguing, and Williams tried to leave the home with the two youngest children. J. followed him outside to the car and tried to take the infant's car seat from Williams. Williams put the car seat in the car and then turned back to J., reached around to the back of her head, put his hand in her hair, and pulled, knocking her to the ground. She immediately felt pain in her elbow. Although Williams drove J. to the hospital, he told her on the way that he would tell hospital personnel she had attacked him and that the children would be taken from her. J. did not stay at the hospital for treatment but instead returned home with Williams. J. had been in contact

with the father of her other children by text during this incident and he called the police. Police responding to the call found Williams standing in the driveway. One officer spoke with Williams outside while the other went inside the house to speak with J. J. related the above events, while Williams reported that J. was mad at him and had hit him in the ear and head as he put the two youngest children in the car to return a movie. He stated that she fell and hurt herself when he raised his arm to block her blows.

[4] The State charged Williams with domestic battery for knowingly or intentionally touching J., a family or household member, in a rude, insolent, or angry manner in the presence of two children less than sixteen years of age knowing the children were present and might be able to see or hear the offense. At Williams' initial hearing, the trial court issued a no contact order between Williams and J. and the two children. In January 2021, while Williams was out on bond for this offense, he was arrested for operating a vehicle after being adjudged an habitual traffic violator. That case remained pending at the time of his guilty plea in this case.

[5] In March 2021, Williams pleaded guilty. Williams testified at the sentencing hearing that he was employed with the Pipefitters Union making $34.00 per hour, J. works but he makes substantially more than her, and his income helped support the family. He acknowledged his criminal record, which consisted of four out-of-state misdemeanor convictions for drug or alcohol related offenses, the last being in 2013. He explained that he has maintained a life free of substance abuse since that time, participating in an addiction program in

Dearborn County and being drug-tested weekly. He asked that he be able to serve any sentence the trial court imposed on probation or home detention so that he could still work.

[6] J. also testified at the sentencing hearing. J. works part-time, sixteen hours per week, so Williams pays the majority of the bills for the family. She stated that all of her children look up to Williams as a father figure and she wants to maintain a relationship with him but because of the no contact order, she and her children have not seen Williams for a year. She testified an altercation like this had never happened before and she does not fear that it would happen again:

> [W]ith him this is just really a lesson learned. This has been very hard on both of us and I feel this, him being taken away from his children and us not being able to be around each other and just have that family that we had, I feel like he would never jeopardize losing that again and I just, I know that he would not want my children to make those mistakes.

[Transcript], Volume 2 at 25. She, too, asked that Williams be sentenced to probation or home detention, and she also asked that the no contact order be dropped so they could return to living together as a family.

[7] The trial court found that the offense was a "serious matter. Not only is it a crime of violence against another human being, but it is clear that in front of children, these types of cycles can perpetuate, if they are exposed to that." *Id.* at 30. The trial court identified Williams' criminal record and his pending charge as aggravating factors. In addition, the trial court found the facts that Williams

talked J. out of going to the hospital and told the probation department that the incident "got blown out of proportion" combined to show that Williams had not completely taken responsibility for his actions. *Id.* The trial court also found those statements and actions tempered any mitigating weight to be given to Williams' guilty plea. The "major mitigator" identified by the trial court was the hardship Williams' incarceration would cause to J. and her children. *Id.* at 30-31. Ultimately, the trial court determined the aggravating factors outweighed the mitigating factor and sentenced Williams to the maximum sentence of two and one-half years, with one and one-half years suspended to probation. The trial court also ordered Williams to complete a domestic violence intervention program before it would vacate the no contact order because it wanted the family to reunite "in a safe fashion." *Id.* at 31. Williams now appeals.

Discussion and Decision

I. Standard of Review

[8] Indiana Appellate Rule 7(B) permits us to revise a defendant's sentence "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." Sentencing is "principally a discretionary function" of the trial court to which we afford great deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference 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). The defendant bears the burden of persuading us that the sentence imposed by the trial court is inappropriate under the standard. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[9] On review, the question is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). We may consider any factors appearing in the record in making this determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*. Whether a defendant's sentence is inappropriate 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." *Cardwell*, 895 N.E.2d at 1224.

II. Inappropriate Sentence

[10] Williams argues his sentence is inappropriate in light of the circumstances surrounding his offense and his character, specifically highlighting his "continuing support of his family[.]" Appellant's Brief at 4.

[11] The advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. The sentencing range for domestic battery as a Level 6 felony is between six months and two and one-half years, with an advisory sentence of one year. Ind.

Code § 35-50-2-7(b). Finding the aggravating factors in this case outweighed the mitigating factor, the trial court sentenced Williams to the maximum sentence of two and one-half years. Although Williams received a maximum sentence for his first felony conviction, we consider not only the aggregate length of the sentence but "also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge." *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Here, Williams was ordered to execute one year of his total sentence, with the remaining one and one-half years suspended to probation.

[12] The nature of the offense is found in the details and circumstances surrounding the offense and the defendant's participation therein. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When evaluating a defendant's sentence that 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. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*. Domestic battery is committed when a person knowingly or intentionally touches a family or household member in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1.3(a)(1). The offense is a Level 6 felony if it is committed in the physical presence of a child less than sixteen years of age when the person knows that the child was present and might be able to see or hear the offense. Ind. Code § 35-42-2-1.3(b)(2); *see Boyd v. State*, 889 N.E.2d 321, 325 (Ind. Ct. App. 2008) (noting that "might" is generally defined as a

possibility or probability that is weaker than "may"), *trans. denied*. Williams argues that although his actions met the statutory elements of the offense, they did not exceed them. We disagree. Williams' conduct did exceed the statutory elements, albeit incrementally. Not only did Williams know the children were present and they *might* be able to see or hear, he *knew* they would be able to see and hear because they were in the immediate vicinity. Further, Williams' conduct injured J.[1]

[13] The "character of the offender" portion of the Rule 7(B) standard refers to general sentencing considerations and relevant aggravating and mitigating factors, *Williams v. State*, 782 N.E.2d 1039, 1051 (Ind. Ct. App. 2003), *trans. denied*, and permits a broader consideration of the defendant's character, *Anderson v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. "A defendant's life and conduct are illustrative of his or her character." *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*.

[14] A typical factor to be considered in examining a defendant's character is his or her criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). The significance of a person's criminal history varies based on the "gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Williams'

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[1] Until 2016, domestic battery required bodily injury as an element of the base offense. *See* Ind. Code § 35-42-2-1.3(a) (2014) ("A person who knowing or intentionally touches an individual [with a certain relationship to the person] in a rude, insolent, or angry manner that results in bodily injury to [the victim] commits domestic battery, a Class A misdemeanor.") (amended by P.L. 65-2016, sec. 34). It no longer does.

criminal history consists of four previous misdemeanor convictions for drug or alcohol related offenses from 2008 to 2013. Williams' criminal history is remote in time and different in nature from the instant offense, as neither alcohol nor drugs appear to have played a part in this offense. But even a minor criminal history is a poor reflection on a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*.

[15] Additionally, although a record of arrests alone is not evidence of a defendant's criminal history, "it is appropriate to consider such a record as a poor reflection on the defendant's character, because it may reveal that he or she has not been deterred even after having been subjected to the police authority of the State." *Rutherford*, 866 N.E.2d at 874. Williams has two arrests that did not result in a conviction, the most recent of which was in 2018, and he was charged with a new offense while out on bond for this offense. This last arrest in particular is a poor reflection on Williams' character, as it shows he was not deterred from driving even while knowing his license was suspended and demonstrates a general lack of respect for our laws.

[16] It is also a poor reflection on Williams' character that despite knowing that J. was injured by his actions, he kept her from seeking medical treatment by threatening to lie about what happened and scaring her into thinking her children might be taken away if his version of the story were believed. And indeed, he told police officers when they responded to the call that J. had initiated the physical altercation. Further, the trial court did not believe Williams "completely grasps the seriousness of [the offense]" or has "complete

remorse" and gave little weight to his guilty plea for those reasons. Tr., Vol. 2 at 30.

[17] We note, however, that it is to Williams' credit that after his four convictions in five years, he acknowledged he had a problem with alcohol and drugs and took steps to address his addiction, participating regularly in a substance abuse program and remaining sober for a number of years. Williams also has a well-paying job and has been the primary contributor to the family expenses despite not being able to actively participate in the family because of the no contact order.

[18] Williams asks us to revise his sentence to "a more appropriate sentence in light of the nature of the offense and the character of the offender." Appellant's Br. at 13. There is some evidence portraying Williams' character in a good light, but we cannot say Williams has offered "compelling evidence" portraying either his offense or his character in such a way that would overcome the deference we offer to a trial court's sentencing decisions, *see Stephenson*, 29 N.E.3d at 122, or cause us to substitute our judgment for that of the trial court. As stated above, the question is not whether another sentence would be *more* appropriate, but whether the sentence imposed is *inappropriate. See Fonner*, 876 N.E.2d at 344. Considering the nature of Williams' offense and the nature of his character, we cannot say his two- and one-half-year sentence with one and one-half years suspended to probation is inappropriate.

Conclusion

[19] Williams has not met his burden of persuading us his sentence is inappropriate. Accordingly, the judgment of the trial court is affirmed.

[20] Affirmed.

Bradford, C.J., and Altice, J., concur.