MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Casey Lee McPhearson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 26, 2022

Court of Appeals Case No. 22A-CR-504

Appeal from the Tipton Circuit Court

The Honorable Thomas R. Lett, Judge

Trial Court Cause No. 80C01-1809-F3-411

Mathias, Judge.

[1] Casey McPhearson appeals his aggregate six-year sentence following a guilty plea. He claims his sentence is inappropriate in light of the nature of the offense

and the character of the offender. We disagree and affirm McPhearson's sentence.

Facts and Procedural History

[2] In April or May of 2018, McPhearson began living with his girlfriend, Sara Basey, in an apartment in Elwood. Tr. Vol. II p. 16. On September 3, 2018, at approximately 7:00 p.m., Basey returned home from a twelve-hour shift at work. *Id.* Basey showed McPhearson her work schedule because she was worried about his reaction if she did not bring some proof of when she would be working. *Id.* at 16–17.

[3] Upon being shown the schedule, McPhearson claimed that Basey had made it up herself and attacked Basey, punching and kicking her in the face and the head. *Id.* at 17. Basey began spitting blood and screaming. *Id.* at 17–18. McPhearson then choked Basey until she passed out. *Id.* at 18. When she awoke, Basey "immediately went towards the front door to leave to go to the neighbor's to get help." *Id* at 18. McPhearson responded by locking the door and deadbolt and then began hitting Basey again with a closed fist while she lay on the ground covering her head. *Id.*

[4] The following day, September 4, Basey was unable to eat or swallow food and called in sick to work because she "looked … deformed and … was embarrassed." *Id.*; Appellant's App. Vol. II p. 21. On September 6, Basey returned to work and her co-workers demanded to know why Basey had black eyes for the fourth time in two weeks. Tr. Vol. II p. 14. Basey's co-workers also

noted that she had repeatedly tried unsuccessfully to cover her black eyes with makeup, and that she frequently wore long sleeve shirts under her scrubs even during "100-degree weather with humidity levels above 90 percent." *Id.* After eventually confessing that her injuries were inflicted by McPhearson, Basey's co-workers demanded that she go to the police, which she did. *Id.*

[5] The officer who spoke with Basey reported that "she had bruising around her left eye and nose, and a laceration under the right side of her nose." Appellant's App. Vol. II p. 26. Basey informed the officer that McPhearson had been physically abusing her repeatedly over the span of the past three months, and that on three occasions he had even "held a gun to her head and threatened to kill her." *Id.*

[6] McPhearson was charged with two counts of Level 3 felony criminal confinement, Level 6 felony strangulation, Level 6 felony domestic battery, two counts of Level 6 felony intimidation, and Class A misdemeanor domestic battery. *Id.* at 19–25. Police executed a warrant for the arrest of McPhearson on September 14, 2018.

[7] On October 10, 2018, the Sherriff's Department sent a letter informing the prosecutor that McPhearson had been overheard speaking with another inmate expressing his intention to flee. *Id.* at 45. McPhearson said he "would be gone" to Tennessee and stated "I'm gonna takeoff, I'm not going away for life bro, you know what I mean." *Id*. In February 2019 the trial court released McPhearson due to an issue with scheduling a speedy trial. *Id.* at 56–59.

McPhearson failed to appear in court on May 24, 2019, and a warrant was issued for his arrest. *Id.* at 61.

[8] On January 24, 2022, McPhearson agreed to plead guilty to Level 5 felony criminal confinement and Level 6 felony domestic battery in exchange for the State dismissing the remaining charges against him. *Id.* at 130. The trial court accepted McPhearson's guilty plea and held a sentencing hearing on March 2, 2022. At sentencing, Basey informed the court that because of McPhearson's abuse she suffered from PTSD, anxiety attacks, and nightmares, and that she had attended therapy and begun taking anti-depressants. *Id.* at 17

[9] The trial court considered McPhearson's criminal history as an aggravating circumstance. Specifically, McPhearson had nine prior convictions over eight years including felony convictions for strangulation, battery resulting bodily injury, battery with bodily injury to a public safety officer, unlawful possession of a syringe, and possession of methamphetamine. His misdemeanor convictions include resisting law enforcement, possession of marijuana, carrying a handgun without a license, and battery. McPhearson had also been placed on probation four times and had violated his probation each time. Tr. Vol. II p. 21.

[10] The trial court also considered as an aggravating circumstance that the injury suffered by the victim was greater than the elements of the crime. *Id.* at 23. The trial court found no mitigating factors. *Id*. The trial court sentenced McPhearson to an aggregate sentence of six years, imposing concurrent terms

of six years for Level 5 felony criminal confinement and two years for the Level 6 felony domestic battery.[1] *Id*. McPhearson now appeals.

Standard of Review

[11] Even if a trial court acted within its statutory discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court. *Trainor v. State*, 950 N.E.2d 352, 355–56 (Ind. Ct. App. 2011), *trans. denied* (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007)). This authority is implemented via Indiana Appellate Rule 7(B), which provides that the court on appeal "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Id.

[12] However, Rule 7(B) still requires us to give due consideration to that decision because of the unique perspective a trial court brings to its sentencing decisions. *Id*. Although we have the power to review and revise sentences, the principal role of our review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve what we perceive to be a "correct" result

[1] During the guilty plea hearing, the trial court failed to establish factual basis for the Level 6 felony domestic battery charge. This fact was not raised in either side's brief. However, the proper venue for challenging the conviction on this basis would be a petition for post-conviction relief, not direct appeal. *Hayes v. State*, 906 N.E.2d 819, 821 n.1 (Ind. 2009).

in each case. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied* (citing *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)).

[13] When considering the appropriateness of imposing a maximum sentence, our supreme court has said the following:

> We have also observed that the maximum possible sentences are generally most appropriate for the worst offenders. This is not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario. Although maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment. But such class encompasses a considerable variety of offenses and offenders.

Buchanan v. State, 767 N.E.2d 967, 973 (Ind. 2002) (internal quotation marks and citations omitted).

[14] The appropriate question is not whether another sentence is more appropriate; instead, the question is whether the sentence imposed is inappropriate. *Fonner v. State*, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). It is the defendant's burden on appeal to persuade us that the sentence imposed by the trial court is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Discussion and Decision

[15] McPhearson argues that the sentence imposed by the trial court is inappropriate in light of the nature of the offense and character of the offender. McPhearson

received a maximum six-year sentence for his Level 5 felony conviction. *See* I.C. § 35-50-2-6 (establishing the sentencing range for a Level 5 felony as one to six years, with an advisory sentence of three years). McPhearson was also convicted of Level 6 felony domestic battery. The sentencing range for a level 6 felony is between six months and two and a half years, with an advisory sentence of one year. I.C. § 35-50-2-7. The trial court ordered the sentences to be served concurrent to each other for an aggregate six-year sentence.

[16] In examining the nature of the offense, the Court should only compare McPhearson's actions with the elements required to sustain a conviction under the charge. *C.A. v. State*, 989 N.E.2d 823, 827 (Ind. Ct. App. 2013), *trans. denied*. McPhearson argues that simply locking the apartment door is not an example of the most heinous criminal confinement meriting a maximum sentence. However, Level 5 criminal confinement includes as one of its elements that the act "results in bodily injury to a person other than the confining person." I.C. § 35-42-3-3. Moreover, McPhearson ignores the facts surrounding his battery conviction. McPhearson choked Basey until she lost consciousness and struck her severely and repeatedly, leaving bruises and lacerations which lasted days.

[17] Turning to the character of the offender, McPhearson's only argument is that the trial court failed to properly weigh his entry of a plea of guilty as a mitigating factor. However, entering into a plea agreement is far more likely to have been motivated by self-interest rather than actual remorse, and the trial court was free to consider it as such. In exchange for McPhearson's guilty plea the State dismissed five of the seven claims against him, so McPhearson clearly

gained the benefit of his bargain in agreeing to the plea deal. McPhearson is essentially asking us to reweigh the aggravating and mitigating factors here, something which we will not do. *See Anglemyer v. State*, 868 N.E.2d 482, 493-94 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

[18] McPhearson's extensive criminal history, including prior strangulation and battery convictions, history of violence, repeated failures to abide by the terms of his multiple probations, and the injuries caused to the victim reflect poorly on his character and demonstrate his inability to lead a law-abiding life. McPhearson's character and the nature of his offense supports the appropriateness of the sentence imposed.

[19] For all of these reasons, we conclude that the McPhearson's six-year sentence is not inappropriate.

[20] Affirmed.

Riley, J., and Robb, J., concur.