MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Janet Lynn Thompson
Hoover Hull Turner LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General

Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Richard Johnson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 27, 2023

Court of Appeals Case No. 23A-CR-825

Appeal from the Miami Superior Court

The Honorable J. David Grund, Judge

Trial Court Cause No. 52D01-2206-F5-174

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] Richard Johnson appeals the five-year executed sentence imposed by the trial court following his conviction for level 5 felony battery resulting in bodily injury to a public safety official. Finding that Johnson has not met his burden to establish that his sentence is inappropriate in light of the nature of his offense and his character, we affirm.

Facts and Procedural History

[2] In 2022, Officer Ricardo Navarrete-Atrisco was employed at the Miami County Correctional Facility, where Johnson was incarcerated. One morning in March, Navarrete-Atrisco was working in the cafeteria, which contained two windows from which meals were served: a regular window (which served the standard meals) and a diet window (for specialty diet meals). Navarrete-Atrisco was positioned at a spot between the diet window and the regular window and near the head of a long line where dozens of inmates were arriving to pick up breakfast.

[3] Johnson entered the cafeteria through a separate gated area designed for those pushing someone in a wheelchair, which he was doing that morning. After placing the wheelchair with its occupant at a cafeteria table, Johnson was flagged down by an inmate in the long line who gave Johnson an item. Johnson walked to the front of the line and dropped the item at the diet window. Johnson then took two trays of regular food from the regular window. Navarrete-Atrisco attempted to retrieve one of the two trays from Johnson and

explained that each inmate could have only one meal.[1] Initially, Johnson became "a little hostile" and "a little bit aggressive." Tr. Vol. 2 at 218-19. The incident quickly escalated with "yelling and screaming." *Id.* at 233, 242. Johnson demanded to have both regular trays, flipped one of the trays, hit Navarrete-Atrisco with the tray, and then threw the tray at Navarrete-Atrisco. The tray struck Navarrete-Atrisco in the face, cut his lips in more than one place, and broke part of one tooth. Hot food from the tray landed on Navarrete-Atrisco's face and caused pain. Navarrete-Atrisco, bleeding and with hot food still on his head and jacket, restrained Johnson's arms behind his back.

[4] Officer Christopher Stark, who had been stationed at the wheelchair entrance, heard the yelling and saw Johnson throw the tray at Navarrete-Atrisco. Stark quickly assisted by handcuffing Johnson and sending Navarrete-Atrisco for medical care because Stark "saw a bunch of blood running down his shirt." *Id.* at 234. Stark and another officer escorted Johnson out of the cafeteria to the segregation unit. The incident, which was captured on video from two different angles, required the officers to focus their attention away from their assigned

---

[1] During an interview for internal records, Navarrete-Atrisco stated that he knew that Johnson was a wheelchair pusher and saw him place a diet card in the diet window, which triggered the preparation of a diet meal. This led Navarrete-Atrisco to believe that Johnson would then take one diet meal and one regular meal, which would be appropriate for Johnson plus the wheelchair occupant. Thus, when Johnson attempted to take two regular meals (and presumably would receive a diet meal as well when it was ready, for a total of three meals), Navarrete-Atrisco believed that Johnson would be taking one too many meals to feed two people. *See* Appellant's App. Vol. 2 at 27. From his vantage point, Navarrete-Atrisco might not have seen Johnson grab the diet card from a completely different inmate who was in the long line, and Navarrete-Atrisco might not have assumed that Johnson would have done so given a rule against placing another inmate's card in a meal window. Tr. Vol. 3 at 26. However, what exactly Navarrete-Atrisco knew at the moment of the altercation does not affect our reasoning or decision.

roles to restore calm. Navarrete-Atrisco sought medical attention and got cleaned up, then later went to a hospital and eventually to a dentist for treatment.

[5] In June 2022, the State charged Johnson with level 5 felony battery resulting in bodily injury to a public safety official. *See* Ind. Code § 35-42-2-1(c)(1), (g)(5)(A). In February 2023, a jury found Johnson guilty as charged, and judgment was entered. Following a March 2023 sentencing hearing, the trial court ordered a five-year executed sentence and specified that Johnson was to serve it consecutive to a sentence he is currently serving in the Indiana Department of Correction (DOC). The court found Johnson's "prior criminal history with a history of violence" to be an aggravating factor, which outweighed the nonexistent mitigating factors. Appealed Order at 1. Johnson appeals his sentence.

Discussion and Decision

[6] Johnson asks us to revise his sentence pursuant to Indiana Appellate Rule 7(B), which states, "The Court 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." Johnson has the burden of showing that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence

inappropriate. *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[7] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "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). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). Ultimately, whether a sentence should be deemed 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. Moreover, when conducting an appropriateness review, the appellate court may consider all penal consequences of the sentence imposed including the manner in which the sentence is ordered served. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[8] Turning first to the nature of the offense, we observe that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. Johnson was sentenced to five years in the DOC and thus received a sentence below the maximum allowable executed sentence for battery resulting in bodily injury to a public safety official. In urging us to reduce his sentence to four years, Johnson seems to blame Navarrete-Atrisco for not de-escalating the interaction he had with Johnson. The evidence at trial is unclear as to whether Navarrete-Atrisco attempted to de-escalate the situation, which deteriorated quickly, and the video footage has no audio. However, it is abundantly clear that in a crowded prison cafeteria Johnson was told by a correctional officer not to take an extra tray, and he responded by screaming, becoming hostile and aggressive, flipping a tray, hitting the correctional officer with a tray, and throwing a tray at the officer. It is equally clear that Johnson's extreme response injured an on-duty correctional officer, by breaking a tooth, cutting his lips, and causing bleeding and pain,

which required him to seek treatment. Regardless of whether Navarrete-Atrisco tried using methods of de-escalation, Johnson's violent reaction constituted the crime of battery resulting in bodily injury to a public safety official who was simply trying to do his job. The altercation required other officers to leave their posts and assist in controlling the situation, which fortunately did not cascade into widespread chaos. Johnson does not present us with compelling evidence portraying his offense in a positive light. Nothing about the nature of his offense convinces us that his sentence merits a reduction.

[9] For the first time on appeal,[2] Johnson speculates that he "potentially had unaddressed mental health issues" or "may have some undiagnosed mental illness that could have affected his judgment and how he reacted." Appellant's Br. at 6, 8. For support, he cites several of his own outbursts that he made at trial. A careful reading of the record reveals that Johnson indeed made several inappropriate outbursts during jury selection and opening statements, which consumed the first day of trial. The very next day, before the jury returned, the trial court, the prosecutor, and defense counsel discussed Johnson's behavior from the prior day, noted potential options for curbing future misbehavior, and developed a plan to use if Johnson was disruptive on the second day of trial. Defense counsel conferred with Johnson, and the judge advised him at length

[2] An argument for waiver exists. *See Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004) (noting general rule that party may not present issue on appeal unless party raised it before the trial court). However, the State did not raise a waiver argument, and Johnson filed no reply brief that might have argued otherwise. We opt to briefly address Johnson's issue.

regarding proper communication and behavior in court as well as possible consequences if he failed to comply. Interestingly, Johnson was on good behavior thereafter from the presentation of evidence through closing arguments and the conclusion of the trial.[3] Johnson's ability to control his reactions in an exemplary manner during the bulk of trial cuts against his belated speculation, without more, that he "may" have some undiagnosed mental illness that "could have" affected how he reacted. Here, we are guided by our supreme court: "We cannot foreclose the possibility that the role of a defendant's mental illness in the commission of a crime may, in exceptional and extraordinary circumstances, be considered in a Rule 7(B) appellate sentence review in evaluating the nature of the offense." *Helsley v. State*, 43 N.E.3d 225, 229 (Ind. 2015). However, the present case "does not warrant such consideration." *Id.*

[10] As for Johnson's character, we observe that an offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019) (citation omitted). We assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A typical factor we consider when examining a defendant's character is criminal history, with its significance varying based on the gravity,

[3] The following month, at his sentencing hearing, Johnson was again disruptive.

nature, and number of prior offenses. *See McFarland v. State*, 153 N.E.3d 369, 374 (Ind. Ct. App. 2020), *trans. denied* (2021).

[11] Although still in his twenties, Johnson is not a stranger to the criminal justice system. As a juvenile, Johnson was adjudicated delinquent "for the offense Battery Against Public Safety Official." Appellant's App. Vol. 2 at 22. An admission to a second cause was taken under advisement and later dismissed following the completion of certain conditions. Johnson received home-based counseling as a juvenile and was ordered to complete anger management. As an adult, Johnson accumulated four convictions, two of which were felonies. His offenses included theft, attempted battery, and two causes of aggravated battery. The aggravated battery convictions were the result of a plea that Johnson took after shooting both the pregnant mother of his second child and her mother multiple times in a horribly violent attack.[4] Johnson committed the current crime while serving the sentence resulting from the aggravated battery convictions. Johnson's criminal history demonstrates violence, an obvious and continuing disregard for the rule of law, and a failure to take advantage of opportunities for rehabilitation and leniency, all of which reflect negatively on his character.

[12] In sum, Johnson has not met his burden to establish that his five-year sentence for level 5 felony battery resulting in bodily injury to a public safety official is

---

[4] *See Johnson v. State*, No. 21A-CR-1745, 2021 WL 6131174, at *3 (Ind. Ct. App. Dec. 29, 2021) (holding that thirty-year sentence was not inappropriate).

inappropriate in light of the nature of his offense and his demonstrated poor character. Therefore, we affirm.

[13] Affirmed.

Riley, J., and Mathias, J., concur.