

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Jason M. Grigsby,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 24, 2024

Court of Appeals Case No.
23A-CR-1574

Appeal from the Pulaski Superior Court
The Honorable Crystal A. Brucker Kocher, Judge
Trial Court Cause No.
66D01-2001-F5-2

Memorandum Decision by Judge Foley
Judges Pyle and Tavitas concur.

Foley, Judge.

[1] Jason M. Grigsby (“Grigsby”) was convicted after a jury trial of battery resulting in serious bodily injury,¹ a Level 5 felony, and was sentenced to four years with three years executed in the Indiana Department of Correction (“DOC”) and one year served on community corrections. Grigsby appeals and raises the following restated issues for our review:

- I. Whether the State presented sufficient evidence to support his conviction because he maintains that the evidence did not prove that he was the person who battered the victim; and
- II. Whether his four-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On the night of January 17, 2020, three friends—Amanda Luna (“Amanda”), Blake Luna (“Blake”), and Travis Oliver (“Oliver”)—went to the Pulaski County American Legion (“the Legion”) to hang out and play pool. Amanda had recently gone through a breakup, and the friends decided to get together to help Amanda take her mind off of the breakup. At the Legion, Oliver and Blake played pool while Amanda sat at a nearby table. After they had been

¹ Ind. Code § 35-42-2-1(c), (g)(1).

there awhile, Amanda asked Oliver to come over and take a picture with her. Oliver went to where Amanda was sitting and, at Amanda's request, sat on her lap because all the chairs at the table were full. Grigsby was seated in the chair to Amanda's right. Suddenly, while Oliver was sitting on Amanda's lap, Grigsby stood up from his seat next to Amanda and punched Oliver in the face. The force of Grigsby's blow knocked Oliver from Amanda's lap onto the ground. After Oliver fell to the ground, Grigsby kicked him in the face.

- [4] Oliver suffered multiple injuries from Grigsby's attack. As a result of the battery, Oliver suffered a broken nose, and two of his teeth were broken. Immediately after being battered, Oliver's face was bleeding profusely, and blood got "all over [Amanda] and the floor." Tr. Vol. 2 p. 27. Oliver required root canal procedures on both broken teeth, and the teeth were ultimately replaced with implants. Oliver had one surgery to repair his broken nose but would require future surgery to fully repair the damage to his septum and still had difficulty breathing through his nose.
- [5] The State charged Grigsby with Level 5 felony battery resulting in serious bodily injury. A jury trial was held on May 9, 2023, at which Amanda, Blake, and Oliver all testified to the fact that Grigsby was the one who struck and kicked Oliver. Additionally, a video of the incident taken from the Legion was admitted into evidence, and Melita McClain ("McClain"), who was the general manager of the Legion—and related to Grigsby by marriage—identified Grigsby as the attacker in the video. At the conclusion of the jury trial, the jury found Grigsby guilty as charged.

[6] Prior to sentencing, the Pulaski County Probation Department prepared a presentence investigation report (“the PSI”). The PSI reflected that, as a juvenile, Grigsby had been adjudicated delinquent for what would have been battery and theft if committed by an adult. As an adult, Grigsby had been convicted of three prior misdemeanors. He had been convicted of Class A misdemeanor operating a vehicle while intoxicated, Class A misdemeanor battery resulting in bodily injury, and Class A misdemeanor theft.² The PSI revealed that Grigsby had been placed on probation for his conviction for operating a vehicle while intoxicated and that he violated his probation with a probation violation filed against him. The PSI also revealed that Grigsby had previously been charged with Class A misdemeanor battery resulting in bodily injury in 2002, Class C felony battery resulting in serious bodily injury in 2007, two counts of Class D felony theft in 2012, and one count of Class C felony battery resulting in serious bodily injury in 2012, but that these charges had been dismissed. At the time of the sentencing hearing, Grigsby had pending charges for Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle while intoxicated, and Class B misdemeanor leaving the scene of an accident. He had also subsequently been charged with Class B misdemeanor criminal

² Although Grigsby’s theft conviction was listed as a Class D felony in the PSI, he stated at the sentencing hearing that the conviction had been entered as a Class A misdemeanor.

recklessness and had entered into a pretrial diversion program on May 22, 2023, with a review hearing six months later.

- [7] In discussing his substance-abuse history, Grigsby reported that he started drinking alcohol when he was sixteen years old and that he has “never had a problem with alcohol.” Appellant’s App. Vol. 2 p. 36. He also reported that he used marijuana weekly for about two years beginning when he was seventeen years old. Regarding his version of events, Grigsby told the probation department,

The video didn’t show it but [Oliver] put his hands on my son first as soon as he walked in the door and was drinking but I didn’t hit him till after he shoved him out of his seat right beside Amanda. That was the second time he put his hands on him that night. I let it go [the] first time I couldn’t the second time and about [two] weeks before this he was running his mouth outside of [the] [L]egion and I just let it go but I tried to not let it bother me but I was drinking and I wasn’t thinking straight and I hit him and I know it’s not right and I’m sorry.

Id. at 33.

- [8] On June 12, 2023, the trial court conducted a sentencing hearing. At that time, Grigsby was forty-six years old. The trial court found as aggravating factors that Grigsby had an extensive history of criminal or delinquent behavior, that the harm, injury, loss, or damage suffered by Oliver was significant and greater than the elements necessary to support the conviction, and that Grigsby was a “risk to the safety of th[e] community.” Tr. Vol. 2 p. 142. The trial court found no mitigating factors. The trial court sentenced Grigsby to an aggregate four-

year sentence with three years executed in the DOC and one year served on community corrections. Grigsby now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[9] Grigsby argues that insufficient evidence was presented to support his conviction. When there is a challenge to the sufficiency of the evidence, “[w]e neither reweigh evidence nor judge witness credibility.” *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id.* “We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence.” *Id.* Further, “[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt.” *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

[10] To convict Grigsby of Level 5 felony battery resulting in serious bodily injury, the State was required to prove that Grigsby knowingly touched Oliver in a rude, insolent, or angry manner that resulted in serious bodily injury to Oliver. Ind. Code § 35-42-2-1(c), (g)(1); Appellant’s App. Vol. 2 p. 23. Grigsby does not dispute that Oliver suffered serious bodily injury. He only contends that there was insufficient evidence to prove his identity as the person who hit or kicked Oliver.

[11] We disagree and conclude that the evidence presented was sufficient to prove that Grigsby was the person who battered Oliver. Amanda testified that she knew Grigsby and that he was the man sitting next to her at the Legion. She testified that Grigsby punched Oliver and then kicked him when he was on the ground. Blake testified that he saw “the punching,” and after the attack, he told Oliver that Grigsby was the one who punched Oliver. There was a video of the battery taken from the Legion, and, at trial, Amanda testified that Grigsby was the one sitting next to her in the video and that he was the one in the video who punched Oliver. Oliver testified that the video accurately depicted Grigsby sitting next to him and Amanda at the Legion and then punching and kicking him. The State played the video of the attack several times to the jury, and McClain, the general manager of the Legion, identified Grigsby as the attacker in the video. Therefore, we conclude that sufficient evidence was presented to prove that Grigsby was the person who battered Oliver and to support his conviction for Level 5 felony battery resulting in serious bodily injury. Grigsby’s arguments are merely a request to reweigh the evidence, which we do not do.

II. Inappropriate Sentence

[12] The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be

inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[13] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).

[14] When reviewing a sentence under Appellate Rule 7(B), we remain mindful that the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Here, Grigsby was convicted of one count of Level 5 felony battery resulting in serious bodily injury. A conviction for a Level 5 felony carries a sentencing range of one to six years, with the advisory sentence being three years. I.C. § 35-50-2-6(b). The trial court sentenced Grigsby to an aggregate term of four years executed with three years served in the DOC and one year served on community corrections.

[15] When reviewing the nature of the offense, this court considers “the details and circumstances of the commission of the offense.” *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). Grigsby asserts that “[t]he nature, extent[,] and depravity” of his offense “does not support the conclusion that more than the advisory sentence is appropriate.” Appellant’s Br. pp. 6–7. He further argues that the facts showed that he punched Oliver one time and did not continue with “any further aggression.” *Id.* at 7.

[16] In looking at the nature and circumstances of Grigsby’s offense, the evidence reveals that Grigsby attacked Oliver unprovoked as Oliver sat on his friend’s lap looking at her phone. The force of Grigsby’s punch knocked Oliver off of Amanda’s lap and to the ground, and while Oliver was on the ground, Grigsby kicked him in the face, which is contrary to Grigsby’s argument that he only punched Oliver one time and did not continue with any further aggression. As a result of this attack, Oliver suffered a broken nose and two broken teeth, which required nasal surgery, as well as oral surgery and tooth implants. Oliver testified that Grigsby’s attack left him with breathing difficulties and that he would need additional surgery. The trial court recognized this harm that Grigsby inflicted and concluded that “the harm, injury, loss, or damage suffered by the victim in this case was significant and greater than the elements necessary to prove the commission of the offense.” Tr. Vol. 2 p. 142. Grigsby has failed to portray the nature of the offenses in a positive light “such as accompanied by restraint, regard, and lack of brutality” to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[17] The character of the offender is found in what we learn from the offender's life and conduct. *Merriweather*, 151 N.E.3d at 1286. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Id.*

[18] In looking at Grigsby's character, he had an extensive history of criminal and delinquent behavior. As a juvenile, Grigsby was adjudicated delinquent for what would have been battery/theft if committed by an adult. As an adult, Grigsby had three prior misdemeanor convictions. Specifically, Grigsby had been convicted of Class A misdemeanor operating a vehicle while intoxicated, Class A misdemeanor battery resulting in bodily injury, and Class A misdemeanor theft. He had violated his probation on his theft conviction. At the time of sentencing, he also had pending charges for Class A misdemeanor operating a vehicle while intoxicated endangering a person, Class C misdemeanor operating a vehicle while intoxicated, and Class B misdemeanor leaving the scene of an accident, and subsequent to the instant crime, he had been charged with Class B misdemeanor criminal recklessness and had entered into a six-month pretrial diversion program. Grigsby's criminal history also revealed that he had previously been charged with Class A misdemeanor battery resulting in bodily injury, two counts of theft, and two counts of Class C

felony battery resulting in serious bodily injury, but that the charges had been dismissed.

[19] Indiana’s appellate courts have repeatedly recognized that a record of arrests and criminal charges—even without a corresponding conviction—is relevant to sentencing because those circumstances reveal that “subsequent antisocial behavior on the part of the defendant has not been deterred even after having been subject to the police authority of the State and made aware of its oversight of the activities of its citizens.” *Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991); *see also Pickens v. State*, 767 N.E.2d 530, 534 (Ind. 2002); *Monegan v. State*, 756 N.E.2d 499, 503 (Ind. 2001); *Zavala v. State*, 138 N.E.3d 291, 301 (Ind. Ct. App. 2019), *trans. denied*. Grigsby’s criminal history reveals that he is a repeat offender who often resorts to violence and battery. As the trial court stated, Grigsby is “a risk to the safety of [the] community.” Tr. Vol. 2 p. 142. And his prior contacts with the criminal justice system have not deterred him from committing further offenses or causing harm to others.

[20] Additionally, Grigsby’s statement to the probation department for his PSI demonstrated that he had not taken responsibility for his actions. Although he acknowledged that he had hit Oliver and that it was not right and he was sorry, Grigsby attempted to blame Oliver for Grigsby’s own actions. Specifically, Grigsby claimed that he attacked Oliver because Oliver had “put his hands on” Grigsby’s son earlier in the evening, had pushed his son out of a chair, and had been “running his mouth” outside the Legion two weeks prior. Appellant’s App. Vol. 2 p. 33. Grigsby, therefore, attempted to shift the blame away from

himself and undermine his own responsibility for his crime, which reflects poorly on his character. *See Higginson v. State*, 209 N.E.3d 15, 30 (Ind. Ct. App. 2023) (citing *Boling v. State*, 982 N.E.2d 1055, 1061–62 (Ind. Ct. App. 2013)) (defendant placing blame on victim showed poor character). Consequently, Grigsby has failed to identify “substantial virtuous traits or persistent examples of good character” to support revising his sentence. *Stephenson*, 29 N.E.3d at 122.

[21] Based on the facts in the record, Grigsby has not shown that his four-year aggregate sentence is inappropriate in light of the nature of the offense and his character.

Conclusion

[22] Grigsby’s conviction for Level 5 felony battery resulting in serious bodily injury was supported by sufficient evidence, and his sentence is not inappropriate.

[23] Affirmed.

Pyle, J., and Tavitas, J., concur.

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