

MEMORANDUM DECISION

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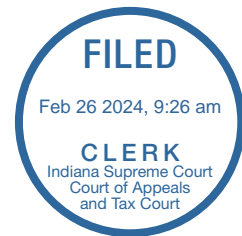


IN THE
Court of Appeals of Indiana

Wade Evan Boyer,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 26, 2024

Court of Appeals Case No.
23A-CR-1934

Appeal from the Hamilton Superior Court
The Honorable William J. Hughes, Judge

Trial Court Cause No.
29D03-2206-F6-4139

Memorandum Decision by Judge Vaidik
Judges May and Kenworthy concur.

Vaidik, Judge.

Case Summary

- [1] Wade Evan Boyer appeals his sentence for Level 6 felony intimidation, Level 6 felony residential entry, Level 6 felony domestic battery, and Class A misdemeanor interference with the reporting of a crime, arguing it is inappropriate. We disagree and affirm.

Facts and Procedural History

- [2] In June 2022, Boyer was living with his girlfriend, T.G., and her two dogs. One night, they had an argument that turned physical. Boyer grabbed T.G. by the shoulders, pushed her against a wall, and grabbed her throat. He threw her to the ground, and when she tried to get up, he hit her in the face. T.G. tried to cover her face so Boyer couldn't hit her again, but he got on top of her and pulled her arms down. At that point, one of the dogs jumped on Boyer and bit him on the arm several times. Boyer put the dog in a chokehold and repeatedly punched him in the head. When T.G. tried to get Boyer to stop punching the dog, he shoved her off him and put the dog in his crate. Later that night, Boyer and T.G. went to a bar, where they stayed for around three hours. When they returned home, T.G. went straight to bed and fell asleep.
- [3] Early the next morning, T.G. woke to Boyer hitting the dogs across their noses. T.G. cried for Boyer to stop and tried to grab her phone, but he “jumped on [her],” sat on her chest, and pinned her down. Tr. Vol. II p. 203. He repeatedly hit her in the face, and when she told him to get off and that he was hurting her,

he “squeez[ed] around [her] throat with his hands.” *Id.* at 205. One of the dogs started attacking Boyer, so Boyer kept one hand on T.G. and used the other to fight the dog off. T.G. used this as an opportunity to reach for her phone “to maybe call 911 or record something,” and Boyer bit her on the leg. *Id.* He took T.G.’s phone, and when she asked for it, he hit her in the face, causing her to fall. He dragged her by her hair into the garage, and she continued pleading with him to give her the phone or let her leave. He told her not to come near him or he’d kill her. He shoved her down, went back inside, and locked the door to the house so she couldn’t get inside.

[4] T.G. ran to a neighbor’s house and used his phone to call 911. While T.G. was on the phone, Boyer “c[a]me busting through the front door.” *Id.* at 237. He moved toward T.G., but the neighbor stepped between them, told Boyer to get out of the house, and pushed him out the door. After T.G. was interviewed by police and examined by medics, she returned home and went to sleep. Boyer came back and woke her up, telling her he’d taken her phone and had come to return it. He asked her if she was pressing charges, and when she said she was, he shoved her. T.G. ran back to the neighbor’s house and called 911 again.

[5] The State charged Boyer with Level 6 felony strangulation, Level 6 felony intimidation, Level 6 felony criminal confinement, Level 6 felony residential entry, Class A misdemeanor domestic battery, Class A misdemeanor interference with the reporting of a crime, and Class A misdemeanor cruelty to an animal. The State later filed an enhancement that elevated the Class A misdemeanor domestic battery to a Level 6 felony due to Boyer’s prior battery

convictions. The trial court issued a no-contact order prohibiting Boyer from contacting T.G.

[6] When Boyer committed these offenses, he was on probation in a separate case out of Boone County. *See* Cause No. 06D01-2008-F5-1505. After the charges were filed here, the Boone County court revoked Boyer's probation and ordered him to serve a year in the Department of Correction. He was released to parole in December 2022. In March, while still on parole and on pretrial release here, Boyer contacted T.G. in violation of the no-contact order. He was subsequently charged with Class A misdemeanor invasion of privacy, to which he pled guilty. *See* Cause No. 29D03-2303-CM-2152.

[7] A jury found Boyer guilty of Level 6 felony intimidation, Level 6 felony residential entry, Class A misdemeanor domestic battery, and Class A misdemeanor interference with the reporting of a crime. Boyer admitted to the prior battery convictions that elevated the domestic-battery conviction from a Class A misdemeanor to a Level 6 felony.

[8] After completing its presentence investigation report, the Hamilton County Probation Department made the following sentencing recommendations: concurrent terms of two years on community corrections for Level 6 felony intimidation, two years on community corrections for Level 6 felony domestic battery, and one year on community corrections for Class A misdemeanor interference with the reporting of a crime, and a consecutive term of two years suspended to probation for Level 6 felony residential entry. The State asked for

a five-year total sentence, with two years in the Department of Correction, two on community corrections, and one on probation.

[9] At the sentencing hearing, the trial court found several aggravating factors: Boyer has a criminal history (between 2017 and 2020, a conviction for Level 6 felony battery resulting in moderate bodily injury, a misdemeanor conviction in Texas for interference with an emergency call, two convictions for Class A misdemeanor battery resulting in bodily injury, and a conviction for Class A misdemeanor resisting law enforcement); his criminal history is “heavily engaged” with “violent activity”; he has violated probation, parole, and community corrections; and he violated rules of incarceration while in the Hamilton County Jail and Department of Correction. Tr. Vol. III p. 120. The court found one mitigating factor: Boyer admitted to the prior battery convictions that elevated his domestic-battery conviction from a Class A misdemeanor to a Level 6 felony. Finding the aggravating factors outweigh the mitigating factor, the court sentenced Boyer to concurrent terms of two-and-a-half years for Level 6 felony intimidation, two-and-a-half years for Level 6 felony domestic battery (the court merged the conviction for Class A misdemeanor domestic battery into the Level 6 felony), and one year for Class A misdemeanor interference with the reporting of a crime, to be served in the Department of Correction, and a consecutive term of two years for Level 6 felony residential entry, suspended to probation.

[10] Boyer now appeals.

Discussion and Decision

- [11] Boyer asks us to reduce his sentence under Indiana Appellate Rule 7(B), which provides that an appellate 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.” The appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).
- [12] The sentencing range for a Level 6 felony is six months to two-and-a-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). The sentence for a Class A misdemeanor may be up to one year. I.C. § 35-50-3-2. The trial court imposed the maximum of two-and-a-half years for both Level 6 felony intimidation and Level 6 felony domestic battery and the maximum of one year for Class A misdemeanor interference with the reporting of a crime, to run concurrently, and two years for Level 6 felony residential entry, to be served consecutively, suspended to probation. Boyer asks us to impose a sentence

“consonant with the Hamilton County Probation Department’s recommendations,” which was an aggregate term of two years on community corrections and two years on probation. Appellant’s Br. p. 12.

[13] Boyer contends the trial court “overstepped its bounds when it imposed the maximum allowable executed sentence.” *Id.* But Boyer’s sentence wasn’t the maximum allowed. A trial court generally has discretion to decide whether terms of imprisonment will be served concurrently or consecutively. *See* I.C. § 35-50-1-2(c). When the court imposes consecutive terms for felony convictions “arising out of an episode of criminal conduct,” if the most serious conviction is a Level 6 felony, the total of the consecutive terms may be up to four years. *Id.* at (d)(1). The trial court found that Level 6 felony intimidation, Level 6 felony domestic battery, and Class A misdemeanor interference with the reporting of a crime were a single episode of criminal conduct (which neither party challenges). The court imposed concurrent terms for these offenses for an aggregate term of two-and-a-half years. But the court could’ve ordered the terms to run consecutively for a total of up to four years. I.C. § 35-50-1-2(d). Additionally, for the separate crime of Level 6 felony residential entry, the court sentenced Boyer to two years suspended to probation when it could’ve sentenced him to up to two-and-a-half years executed. I.C. § 35-50-2-7(b). Therefore, Boyer could’ve received a total term of imprisonment of as much as six-and-a-half years. The trial court did not impose the maximum possible sentence, and Boyer’s arguments to the contrary lack merit.

[14] In arguing that his sentence is inappropriate, Boyer says nothing about the nature of his offenses.¹ This was a violent attack that spanned the course of two days. Boyer pushed T.G. against a wall, grabbed her throat, threw her to the floor, and hit her in the face. The next morning, he pinned her down, hit her in the face multiple times, choked her, bit her leg, dragged her by her hair, and shoved her. Boyer used force to keep T.G. from getting her phone to call 911, and when he took her phone and she asked for it back, he threatened to kill her. He followed her to the neighbor's house, "bust[ed] through" the front door, and tried to get to her as she was calling 911. Nothing about the nature of Boyer's offenses makes his sentence inappropriate.

[15] Boyer focuses his entire argument on his character. He emphasizes his successful completion of community corrections and probation in other cases, claiming that, overall, he "performs well under supervision." *Id.* But Boyer was on probation when he committed the offenses in this case. He also violated his parole in Boone County and his pretrial release in this case by ignoring the no-contact order, which resulted in yet another criminal charge. While incarcerated for these violations, Boyer had multiple disciplinary issues. Boyer also claims many of his prior convictions "stem from substance abuse,

¹ The State contends Boyer has waived his Rule 7(B) argument because he only addressed the character prong, not the nature-of-the-offense prong. The State cites several cases where this Court has held as much, but "our jurisprudence on this issue is far from settled." *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017); *see also Scott v. State*, 162 N.E.3d 578, 584 n.2 (Ind. Ct. App. 2021) ("Some panels of this Court have found that defendants who fail to argue both the 'character' and 'nature of offense' prongs have waived their Rule 7(B) claims . . . Others have disagreed."). Because we prefer to decide cases on the merits, we review Boyer's sentence without finding that his failure to address the nature-of-the-offense prong resulted in waiver.

exacerbated by mental health problems.” *Id.* at 11 (quotation omitted). But Boyer doesn’t establish a link between these problems and his criminal history. Several of his prior convictions are similar in nature to the offenses here, and as the trial court noted, Boyer’s criminal history is “heavily engaged” with “violent activity.”

[16] Boyer has failed to persuade us that his sentence is inappropriate.

[17] Affirmed.

May, J., and Kenworthy, J., concur.

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