

MEMORANDUM DECISION

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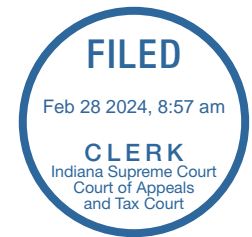


IN THE
Court of Appeals of Indiana

Zachary R. Chetwood,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 28, 2024

Court of Appeals Case No.
23A-CR-1935

Appeal from the Franklin Circuit Court

The Honorable J. Steven Cox, Judge

Trial Court Cause No.
24C01-2205-F3-316

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Zachary R. Chetwood appeals his sentence for attempted aggravated battery as a level 3 felony, intimidation as a level 5 felony, criminal recklessness as a level 5 felony, and pointing a firearm as a level 6 felony and asserts his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On May 13, 2022, Chetwood called 911, threatened suicide, and claimed to be armed with a gun.¹ Franklin County Sheriff's Deputies Adam Henson, Chris Maxie, Dakota Huntsman, and Dylan Enzinger responded to Chetwood's location in uniform and in fully marked police vehicles. When the deputies arrived, Chetwood was in the driver's seat of his vehicle that was parked on Main Street in Cedar Grove, adjacent to his home. Almost as soon as deputies arrived, Chetwood emerged from his vehicle with a cell phone in his right hand and a handgun in his left. Chetwood immediately began pointing the handgun at each of the responding deputies who had taken up different positions. The deputies repeatedly ordered him to drop his weapon, but he continued to point the gun at each deputy while repeatedly shouting at them to "[b]ack up." Appellant's Appendix Volume II at 24. After several seconds of Chetwood persisting in his deadly threats and not complying with the deputies' demands to drop his weapon, an exchange of gunfire occurred between Chetwood and

¹ On appeal, Chetwood cites to the probable cause affidavit.

the deputies which lasted five or six seconds. Both Chetwood and the deputies fired multiple rounds from their weapons. Almost immediately, Chetwood sustained a wound and fell to the ground towards the rear of his vehicle. After the gunfire ended, the deputies approached Chetwood, secured his weapon, and administered first aid.

[3] Subsequent investigation revealed that Chetwood had fired multiple shots towards the direction of the deputies' positions. Several bullets from the exchange had entered the home of Michael and Victoria Wathen which was located adjacent to Chetwood's position. The investigation further revealed that bullets had entered the dining room area of the Wathens' home while their three children were present.

[4] On May 18, 2022, Indiana State Police Detective Grant Martin interviewed Chetwood who acknowledged that he had pointed his handgun at the deputies with the intent to place them in fear and that he fired at least ten rounds. During the investigation, Detective Martin learned that Chetwood had threatened to commit "suicide by cop" several times in the recent past to multiple individuals. *Id.*

[5] On May 24, 2022, the State charged Chetwood with: Count I, attempted aggravated battery as a level 3 felony; Count II, attempted battery by means of a deadly weapon as a level 5 felony; Count III, intimidation as a level 5 felony; Count IV, criminal recklessness as a level 5 felony; and Count V, pointing a firearm as a level 6 felony.

- [6] On April 18, 2023, Chetwood filed a Motion to Set Change of Plea and Sentencing Hearing, which requested that the court “set this matter for a Change of Plea Hearing and Sentencing and Hearing, and for all other just and proper relief in the premises.” *Id.* at 70. On April 19, 2023, the court granted the request.
- [7] On May 31, 2023, the court entered an order finding that Chetwood wished to plead guilty to Counts I, III, IV, and V, observing that the State moved to dismiss Count II, granting the State’s motion, finding a sufficient factual basis, accepting the plea, and finding Chetwood guilty of Counts I, III, IV, and V.
- [8] On July 26, 2023, the court held a sentencing hearing. Detective Martin indicated that Chetwood’s four-year-old son “was present at his home during the course of this.” Transcript Volume II at 12. He testified that he determined that three other children were present at the Wathen household. When asked if he questioned Chetwood during the interview whether he knew “those children were present,” he answered: “He knew his son [] was present in his mother’s house. He knew there were individuals in the house behind him, yes.” *Id.* at 13.
- [9] The prosecutor read a victim statement from Michael Wathen in which he stated in part that he “never knew that giving a hand in help and friendship could turn into something so toxic.” Appellant’s Appendix Volume II at 96. Wathen indicated that he felt responsible for opening his home to Chetwood and the that shooting risked the lives of four children and three adults. He also

indicated that they obtained a protective order against Chetwood who received the order on a Friday, and on the following Monday, child protective services went to his home with an anonymous tip that Wathen had molested his own daughter. Wathen wrote that, “[a]lthough we have no evidence of this being retaliatory from [Chetwood], this was a clear interpretation on our end considering the context.” *Id.* at 97.

[10] Chetwood presented the testimony of several witnesses. Katherine Shaw Jones, a licensed professional mental health counselor and a substance abuse counselor, testified that she began working with Chetwood in November 2022 after the offense. She indicated that Chetwood had reached out to his therapist through the VA but the therapist failed to return his calls. She testified that she observed symptoms of post-traumatic stress disorder in Chetwood including disassociation, “[e]xaggerated negative beliefs about self,” “self-hatred,” and “rage towards himself.” Transcript Volume II at 29, 31. She stated that Chetwood was a combat veteran and the memories he shared with her were normal to cause disassociation.

[11] Alicia Patterson, a licensed independent chemical dependency counselor and the executive director of the Joseph House, a rehabilitation center that provides therapeutic interventions for mental health and substance abuse for veterans, testified that she did not work directly as Chetwood’s therapist but was part of the weekly clinical meetings. She stated that Chetwood voluntarily arrived at Joseph House in August 2022, was engaged, did what was required of him, and would be eligible to return. When asked if any adjustments would be made to

his program of treatment and rehabilitation if he were to return, she answered: “[W]e work with the court – we work with veteran treatment courts, and I understand that he’s not eligible from what I understand today, but we do work with other courts as well, so that would be based upon what the court requirements are” *Id.* at 54. At one point, Patterson stated: “From my understanding, with a . . . violent crime, that often will disqualify them from being in the veterans treatment court, and I’m assuming that that is one of the reasons why [Chetwood] is not being – [.]” *Id.* at 56. The court replied: “That’s exactly their reason.” *Id.*

[12] Chetwood stated that he took “full responsibility.” *Id.* at 60. When asked what he would say to “the family that some of the rounds went into their home,” he answered in part: “I’m sorry I put them through that. I – especially the kids, you know.” *Id.* at 61. He testified he served in the United States Navy as a hospital corpsman and combat medic and traveled overseas with a platoon to “Mazar, Afghanistan June 2011, December 2011.” *Id.* at 63. He stated he was medically retired from the Navy in January 2015 and then worked numerous jobs including delivering appliances, working at an armored truck company, becoming a corrections officer, working in utility locating, and then working as security at a casino. He testified that he developed a problem with alcohol after he returned home and was drinking on the night of the offense. When asked about his experience with Jones, he answered “[n]othing but good” and stated:

I was supposed to have an appointment with the VA the day of my incident. Two months prior to that, I called them, requesting

a new provider. I was assured I would get one. I called them a month after that. I talked to the director of the mental health clinic asking for a new provider. Again, I was assured I would get one. That never came. I never got one. So my outlook on the VA was pretty much everybody else's outlook on the VA. They suck. Flat out. When I met with Ms. Shaw Jones, it wasn't like that. There was no judgment. There was no, your story isn't as bad as this person's story. There was no comparison. It was relieving that I could actually get things off of my chest that had been bothering me for so long and somebody actually cared. I haven't had that. With her, I have.

Id. at 68. When asked about Jones's testimony regarding his progress and ongoing problems with suicidal ideology, he answered: "When you think about it when you wake up, of ways you can kill yourself on a day-to-day basis, going down the timeline to where maybe it's once every couple months to a year, I – I'd say that's progress. It's not going to go away completely right away." *Id.* at 69. When asked if he called DCS on his neighbor, he answered: "That was not – I know who did. It was not me." *Id.* When asked if he had "anything to do with it," he answered: "I relayed some information." *Id.* at 70.

[13] On cross-examination, Chetwood indicated that he pointed his loaded gun at police officers and pulled the trigger. He also acknowledged that "[a] lot more other people could have gotten hurt." *Id.* at 74. He stated that he had previously mentioned suicide by cop to his mother and his ex-wife. He also acknowledged that he talked about suicide by cop to someone who worked at the Dearborn County Sheriff's Department in December 2020 and his weapons

were taken away at that time. The court asked Chetwood if he was entitled to some VA benefits while incarcerated, and Chetwood answered:

As far as the pay scale goes down to ten. I don't know for services, I don't know if the VA is allowed to, I'm not sure. The pay – the pay scale, I get paid 80 percent disability now. That drops down to ten percent. That's the only part that I know. I don't know if services are available.

Id. at 82.

[14] The court found Chetwood's progress as a mitigating factor and the presence of minors and other members of the public at the scene as an aggravating circumstance. The court sentenced him to concurrent sentences of: eleven years with two years suspended to probation for Count I, attempted aggravated battery as a level 3 felony; four years with one year suspended to probation for Count III, intimidation as a level 5 felony; four years with one year suspended to probation for Count IV, criminal recklessness as a level 5 felony; and eighteen months for Count V, pointing a firearm as a level 6 felony. The court commented:

[D]espite the Court's questioning today, it is not before the Court, and I don't know that it will ever be before the Court, but if it is ever before the Court to consider doing something different with the sentence that the Court has just indicated, it would be beneficial to the Court to know, what, if any services are available to Mr. Chetwood while incarcerated and when not incarcerated.

I just don't know what the universe of services and sentencing offer here or whether those persons through corporation [sic]

with the Veterans Administration could possibly collaborate with our regional Veterans Court to provide this court with assistance in sentencing also. So deficient those things and absent those things, the Court orders of sentencing, which it has just announced, will be the order of the Court until it is either served or modified.

Id. at 86.

[15] Chetwood's counsel asked the court to clarify, and the court stated in part:

What I really am wanting to know today and it's not before me is whether the Veterans Administration has the ability to continue his services out – that he had as an outpatient while he's in. And if not, is there a way for them to coordinate those services and to ensure, what we call our Veterans Court, a game plan for that Court to assume jurisdiction in a different way.

The sentence today overlooks – no, it doesn't overlook. It took into account that with no more information that I have today, that's the sentence that I'm – that I think is just and fair under our law. But Defense and the State have raised several issues that are unique to criminal sentencing in this adjudication, and he doesn't qualify for what I've been told in our Veterans Court jurisdiction.

But if they're – if there is a request in the future to consider something that was not fully examined today, the Court would need to know those things, is what I'm trying to say.

Id. at 87.

Discussion

[16] Chetwood argues that, while his attempt to commit suicide by police “placed officers in incredible danger,” he did not intend to hurt the officers. Appellant’s Brief at 8. He asserts that he was a correctional officer at the Dearborn County Jail for three years and expressed considerable regret and remorse. He argues that he has no criminal history, served as a hospital corpsman and combat medic with the United States Navy, and suffered from post-traumatic stress disorder. He contends that his military service caused “symptoms of disassociation, survivor’s guilt, self-hatred and rage that was present when this offense was committed.” *Id.* at 9. He asserts that he worked hard to rehabilitate himself prior to the offenses.

[17] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). “[W]hether we regard a sentence as appropriate at the end of the day 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 v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “[A]ppellate review should focus 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.” *Id.* “[S]entencing

is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015) (quoting *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).” *Id.* “[W]hen reviewing a sentence, our principal role is to ‘leaven the outliers’ rather than necessarily achieve what is perceived as the ‘correct’ result.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (quoting *Cardwell*, 895 N.E.2d at 1225), *reh’g denied*.

[18] Ind. Code § 35-50-2-5 provides that a person who commits a level 3 felony shall be imprisoned for a fixed term of between three and sixteen years with the advisory sentence being nine years. Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years. Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year.

[19] Our review of the nature of the offenses reveals that Chetwood called 911, threatened suicide, and claimed to be armed with a gun. After deputies arrived, Chetwood immediately began pointing the handgun at each of them. He refused repeated commands to drop his weapon and shouted at the deputies.

He fired at least ten rounds during the exchange of gunfire with deputies. Several bullets from the exchange entered a home adjacent to Chetwood's location where a family was present. In a victim impact statement, Michael Wathen stated:

This last year has been the most challenging year my family and I have ever experienced. I never knew that giving a hand in help and friendship could turn into something so toxic, [m]iserable, and dangerous for my family. I will forever feel responsible for opening my home [a]nd heart to someone in the name of being grateful for service of our nation that [Chetwood] has [v]olunteered to do. I will always be grateful for that. Regardless of [Chetwood's] actions that risked 4 children 3 adults in my home the night of the shooting, [m]y wife and I went and visited him in the hospital. Throughout this last year I've tried forgiving and helping him considering the side effects his actions caused. That was really [d]ifficult. A couple months ago he told my wife and I that he was wanting to kill himself in the same area and in the same vehicle. This instantly put us in the same state of panic the last tragedy induced, inflaming the [f]ear we had for our family and with new developing incidents following involving my 16 year old daughter and [Chetwood] dragging her into things she isn't mentally mature enough to process, we decided to have a protection order against [him]. On a Friday he received the protection order. That Monday we had Child protective services come to our house with an anonymous tip that I was molesting my daughter. Although we have no evidence of this being retaliatory from [Chetwood], this was a clear interpretation on our end considering the context.

I bring this up because of this. I bent over backwards to help [Chetwood]. The reciprocity has just been

My kids are struggling with PTSD and depression, affecting their performance in school and home. My wife having [sic]

nightmares about the shooting and jumping with anxiety on the 4th of July when we celebrate her birthday. We all seek counseling now.

I don't want to demonize [Chetwood]. I would've done it immediately after the shooting when everyone encouraged it. He definitely needs help, but I don't think it's the only variable in this equation. This is coming from someone who has spent a lot of time with him and been a friend [e]ven after given pain and fear for my entire family.

Appellant's Appendix Volume II at 96-97.

[20] Our review of the character of the offender reveals that Chetwood pled guilty to Counts I, III, IV, and V, and the State agreed to dismiss Count II, attempted battery by means of a deadly weapon as a level 5 felony. The presentence investigation report ("PSI") states that Chetwood has no juvenile adjudications or prior criminal history. Chetwood was married in 2016 for four years which resulted in the birth of a child in May 2018.

[21] The PSI indicates that Chetwood enlisted in the United States Navy after graduating high school and served over five and one-half years with a majority of the time spent as a Field Medical Service Technician. While serving, he received a First Good Conduct Medal, a National Defense Service Medal, an Afghanistan Campaign Medal, a Global War on Terrorism Service Medal, a Sea Service Deployment Ribbon, a NATO International Security Assistance Force Medal, and a Pistol Marksmanship Ribbon. Chetwood reported that his mental health diagnosis by the Navy in 2015 led to his medical retirement. He stated that he was referred to the Veterans Affairs "psych ward on multiple

occasions and diagnosed with bipolar, post-traumatic stress disorder, alcohol use disorder, anxiety and depression.” *Id.* at 98. The PSI indicates that Chetwood became a resident at the Joseph House in Ohio, in August 2022, and that his clinical counselor reported he had remarkable growth in his sobriety, became a mentor within the Joseph House community, and had taken on leadership roles.

[22] After being honorably discharged in 2015, Chetwood worked as a delivery person, a driver guard, an armed security guard, a jail officer at the Dearborn County Sheriff’s Department, and a security officer at a casino. The PSI further provides that Chetwood’s overall risk assessment score using the Indiana Risk Assessment System places him in the low risk to reoffend category.

[23] We are sympathetic to Chetwood’s struggles with his mental health after his discharge from the military. After due consideration and particularly in light of the offenses which included firing ten shots in an exchange of gunfire with multiple law enforcement officers, we conclude that Chetwood has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[24] For the foregoing reasons, we affirm Chetwood’s sentence.

[25] Affirmed.

Riley, J., and Foley, J., concur.

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