

## MEMORANDUM DECISION

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IN THE  
**Court of Appeals of Indiana**

Damon Lamont Jones,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

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April 10, 2024

Court of Appeals Case No.  
23A-CR-2412

Appeal from the Marion Superior Court  
The Honorable Charles F. Miller, Judge

Trial Court Cause No.  
49D29-1905-F4-21419

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**Memorandum Decision by Judge Vaidik**  
Judges May and Kenworthy concur.

**Vaidik, Judge.**

## Case Summary

- [1] Damon Lamont Jones appeals his sixteen-year sentence for Level 4 felony unlawful possession of a firearm by a serious violent felon and Level 5 felony battery, arguing it is inappropriate. We affirm.

## Facts and Procedural History

- [2] One afternoon in May 2019, twenty-two-year-old Jones was arguing with his cousin, Jada Duerson, on Facebook Live. At the time, Jones was on probation and prohibited from possessing a firearm. During the argument, Jada and her siblings were at a house near Dearborn and 30th Streets in Indianapolis. Jada and several other people were standing outside the house when Jones drove by in a Chevrolet Trailblazer. Jones opened the car door, leaned out, and said, “I got you bit\*\*es now.” Tr. Vol. III p. 76. He then fired four to six shots, one of which struck Jada in the arm. Another one grazed Jada’s sister’s chest. Jada was taken to the hospital, where a bullet fragment was removed from her arm.
- [3] The State charged Jones with Level 4 felony unlawful possession of a firearm by a serious violent felon and Level 5 felony battery for shooting Jada in the arm.<sup>1</sup> A jury trial was held in July 2023, and the jury found Jones guilty.

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<sup>1</sup> Jones was also charged with and convicted of Level 5 felony criminal recklessness, but the trial court later vacated that conviction.

[4] At the sentencing hearing, evidence was presented that Jones has adult convictions for Level 6 felony battery (June 2015, bodily injury) and two counts of Level 5 felony battery (November 2015, deadly weapon) as well as two juvenile adjudications for battery. Evidence was also presented about Jones's failures on probation. He violated probation in both juvenile cases. In addition, he was on probation for the Level 6 felony battery when he committed the Level 5 felony battery and was on probation for the Level 5 felony battery when he committed these offenses. Finally, a few days before trial was set to begin and while Jones was on pretrial release in this case, he was again arrested for Level 4 felony unlawful possession of a firearm by a serious violent felon.<sup>2</sup>

[5] Jones presented evidence that he has six children and other family members whom he helps take care of; he has dyslexia and medical issues, including seizures; and he has been employed for most of his adult life. The trial court found three aggravators but no mitigators. The aggravators were: (1) Jones has a history of delinquent and criminal behavior; (2) he has a history of violating probation, including being on probation when he committed these offenses; and (3) he was arrested for a new offense when he was on pretrial release in this case. The court sentenced Jones to twelve years for unlawful possession and four years for battery, to be served consecutively, for a total of sixteen years.

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<sup>2</sup> After this trial, in November 2023, Jones pled guilty to Level 4 felony unlawful possession of a firearm by a serious violent felon. The trial court sentenced him to three years on community corrections, to be served consecutive to the sentence in this case. *See* Cause No. 49D29-2307-F4-020731.

[6] Jones now appeals his sentence.

## Discussion and Decision

[7] Jones 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).

[8] The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. I.C. § 35-50-2-6(b). The trial court sentenced Jones to the maximum sentence of twelve years for the Level 4 felony and an above-advisory sentence of four years for the Level 5 felony, to be served consecutively, for a total of sixteen years.

Jones asks us to revise his sentence to the advisory sentence for each offense and order them to run consecutively, for a total of nine years.

- [9] The nature of the offenses is troubling. Jones, who was prohibited from possessing a firearm, fired several shots during a drive-by shooting in the middle of the day while several people were standing outside. One bullet struck Jada in the arm and a second bullet grazed her sister. These offenses do not support a revision of Jones's sentence.
- [10] Neither does Jones's character. Jones has engaged in a series of escalating violent behavior including guns. Jones progressed from misdemeanor battery (as a juvenile) to Level 6 felony battery with bodily injury to Level 5 felony battery with a deadly weapon. This progression occurred while Jones was under the supervision of the criminal-justice system. That is, he was on probation for the Level 6 felony battery when he committed the Level 5 felony battery and on probation for the Level 5 felony battery when he committed these offenses. And when Jones was on pretrial release in this case, he was arrested for (and later convicted of) unlawful possession of a firearm by a serious violent felon. Jones has not learned his lesson despite all these chances.
- [11] We acknowledge that there are redeeming aspects to Jones's character: he has six children and other family members whom he helps take care of and has been employed for most of his adult life. He also has health issues, including seizures (which he takes medicine for). But these things do not warrant a

reduction in Jones's less-than-maximum sentence given his escalating violent behavior and repeated violations of probation.

[12] Jones has failed to persuade us that his sentence is inappropriate.

[13] Affirmed.

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

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