

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Christina A. Simone,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



May 9, 2024

Court of Appeals Case No.
23A-CR-2622

Appeal from the Allen Superior Court
The Honorable Frances C. Gull, Judge

Trial Court Cause No.
02D05-2210-F5-374

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] The Allen Superior Court entered a judgment of conviction against Christina Simone for two counts of Level 5 felony stalking and imposed consecutive sentences of four years, with three years executed and one year suspended for each conviction. Simone appeals, arguing that her sentence is inappropriate in light of the nature of the offenses and her character.

[2] We affirm.

Facts and Procedural History

[3] Simone's ex-husband, Richard Simone, is married to Erin Whittle. Erin has children from a prior marriage. Richard and Simone also have children together. Richard and Erin live in a blended household with their children from their prior marriages.

[4] Simone suffers from mental illness, and, after learning that Richard had married Erin, she sent tens of thousands of emails to Richard, Erin, and the pastors of their church. In those emails, Simone expressed a delusional belief that she and Richard were still married. She discussed scripture in her emails and accused pastors of plagiarizing her emails by using them in sermons. Simone sent thousands of emails to Richard and Erin calling Erin foul names and threatening her with physical harm and death. For example, Simone wrote "I will murder you with one hand you wicked evil murdering bitch." Ex. Vol. p. 12. Simone believed that she and Richard were still married and would reconcile, and Erin was to blame for destroying their marriage and family.

- [5] Richard obtained a protective order against Simone in December 2021. From November 18, 2021, to May 31, 2022, Simone sent Richard and Erin approximately 11,000 emails and often carbon copied church personnel where Richard and Erin attended church on those emails. Simone continued to threaten Erin with physical violence and death. And in at least one email, Simone stated that she had been driving past Richard and Erin’s house. Tr. p. 30. Richard and Erin determined that, for their safety, it was necessary to install an alarm and camera system at their house.
- [6] Simone also sent more than 100 letters to Richard and Erin’s church blaming the church personnel for condoning Richard and Erin’s allegedly sinful behavior. Simone suggested that Erin should be stoned because she broke up hers and Richard’s family. As a result, the church obtained a workplace restraining order against Simone.
- [7] In October, the State charged Simone with two counts of Level 5 felony stalking. In Count One, the State alleged that she had stalked Richard by violating the protective order. Appellant’s App. p. 22. In Count Two, the State alleged that Simone stalked Erin by making “an explicit or an implicit threat with the intent to place said Erin Whittle in reasonable fear of sexual battery, serious bodily injury, or death” *Id.* at 24.
- [8] After the charges were filed, Simone requested a competency evaluation and filed a notice of insanity defense. Both psychologists found her competent to stand trial because Simone was able to appreciate the wrongfulness of her

actions. *Id.* at 69, 84. Dr. Stephen Ross concluded that Simone’s symptoms were consistent with delusional disorder. Dr. Kevin Wieland also concluded that Simone’s behavior was consistent with delusional disorder. He also believed that Simone’s “sanity was compromised on the day of the alleged crime and continues to be compromised.” *Id.* at 85. Finally, he concluded that Simone would not “be able to achieve the legal definition of sanity without psychopharmacological intervention.” *Id.*

[9] On June 23, 2023, the trial court concluded that Simone was competent to stand trial. On September 6, Simone pleaded guilty but mentally ill to both counts without a plea agreement.

[10] Simone’s sentencing hearing commenced on October 6. Richard testified that Simone’s “relentless stalking, threats, and harassment” had “taken an immense toll on [his family’s] emotional wellbeing.” Tr. p. 22. He stated that the family lives in a perpetual state of anxiety and fear. *Id.* Richard testified that his children and Erin’s children had also suffered distress because of Simone’s constant harassment. And Simone’s harassment has interfered with their relationship with their church and fellow church members. *Id.* at 23.

[11] Erin testified that Simone’s relentless threats caused her terror and that “every sense of security that [she] had in this world was stripped from [her].” *Id.* at 24. She stated that Simone’s harassment has also interfered with her professional life, and she has concerns about losing the business she has spent years building. *Id.* at 25. Erin testified that the toll Simone’s harassment has taken on

her own mental health has “prevented [her] from operating at full capacity.” *Id.* at 28. And she is “fearful for the safety of [her] children.” *Id.* at 29. Erin is too afraid to enjoy her backyard or take walks in her neighborhood. As a result of Simone’s threats, Erin also has fears for the safety of her clients. Erin felt it necessary to disclose Simone’s harassment to three clients and worried that she might lose their business as a result. *Id.* at 25-26. Because Erin was identified as a client’s chief financial officer on its website, and Simone had pulled Erin’s picture from their website, that client keeps their office space locked down as a security precaution. *Id.* at 26.

[12] The State also presented evidence that Simone had violated the workplace restraining order obtained by Emmanuel Church while the stalking charges were pending by sending the church over 100 letters. *Id.* at 35. Many of the letters blamed the church “for condoning the sinful behavior from [Richard] and Erin.” *Id.* at 36. The State also noted while the stalking charges were pending, Simone’s bond was revoked because she violated the no-contact order. *Id.* at 37.

[13] The trial court considered Simone’s guilty plea, lack of criminal history, and mental health issues as mitigating circumstances. As aggravating circumstances, the trial court considered the “astonishing pattern of activity that has occurred over the period of a couple of years.” *Id.* at 43. The court indicated it was “particularly troubled by . . . the violation of the workplace protective order that was issued in favor of the church.” *Id.* The court categorized Simone’s letters to the church as “atrocious.” *Id.* at 44. The court also noted the “extraordinary

impact that [Simone’s] behavior has had on Erin Whittle and Richard Simone, as well as [Erin’s] children, and [Simone and Richard’s] children.” *Id.* The court then stated that “[t]o run these sentences concurrently would ignore” the impact your behavior has had “on this family.” *Id.* at 45. The trial court imposed consecutive terms of four years, with three years executed and one year suspended to probation, for both Level 5 felony stalking convictions. Therefore, Simone’s aggregate sentence was eight years, with six years executed and two years suspended to probation. The trial court also ordered Simone to complete a mental health evaluation and comply with any ensuing treatment and medication.

[14] Simone now appeals her sentence.

Discussion and Decision

[15] Simone argues that her aggregate eight-year-sentence, with six years executed and two years suspended to probation, is inappropriate in light of the nature of the offenses and her character. Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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, 1224 (Ind. 2008). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam). Simone

bears the burden to show that her sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g 875 N.E.2d 218.

[16] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[17] Simone was convicted of two counts of Level 5 felony stalking. The sentencing range for a Level 5 felony is between one and six years, with three years being the advisory sentence. *See Ind. Code § 35-50-2-6*. The trial court imposed two consecutive four-year terms, with three years executed and one year suspended to probation.

[18] Concerning the nature of the offenses, Simone argues that her “behavior was certainly not innocuous but arguably not as egregious as other defendants who are convicted of stalking.” Appellant’s Br. at 10. Simone focuses on the fact that she never had any direct personal contact with her victims and her offenses were limited to emailing and driving by the victims’ home a few times.

[19] But Simone disregards that the extent of Simone’s stalking included tens of thousands of emails and the significant impact on Richard’s and Erin’s personal lives and Erin’s professional life. Simone’s offenses have caused Richard, Erin, and their children to suffer mental distress, anxiety, and fear for their safety to the extent that Erin testified that she does not feel safe in her own backyard or taking walks around her neighborhood. Because Simone sent over 100 letters to Richard and Erin’s church, their relationship with their church and surrounding community has also suffered. And Simone’s harassment has had a negative impact on Richard and Erin’s marriage and their children.

[20] Simone’s argument concerning her character is more compelling. Simone emphasizes the fact that she has no criminal history and that she suffers from mental illness. As the trial noted, Simone’s mental illness is well-documented, and it is evident that Simone needs mental health treatment. Our courts have often observed “the clear failure . . . of our criminal justice system to adequately and properly respond to and treat those with mental health issues.” *Wampler v. State*, 67 N.E.3d 633, 634 (Ind. 2017) (quoting *Wampler v. State*, 57 N.E.3d 884, 890 (Ind. Ct. App. 2016) (Mathias, J., dissenting)). There is a “large and ironic lapse in the logic of our criminal justice system,” in which the “initial imperative is to determine the competency of defendants prospectively, to assist counsel at trial,” not to promptly consider whether the defendant was competent at the time the crime was committed. *Habibzadah v. State*, 904 N.E.2d 367, 370-71 (Ind. Ct. App. 2009), *trans. denied* (Mathias, J., concurring); *see also A.J. v. Logansport State Hosp.*, 956 N.E.2d 96, 117-18 (Ind. Ct. App. 2011)

(Mathias, J., concurring); *Gross v. State*, 41 N.E.3d 1043, 1051-52 (Ind. Ct. App. 2015) (Mathias, J., concurring); *Robinson v. State*, 53 N.E.3d 1236, 1243-44 (Ind. Ct. App. 2016), *trans. denied* (Mathias, J., concurring) (all citing *Habibzadah*).

“[O]ur criminal procedure should permit a psychiatric examination of a defendant who likely suffers from serious mental illness very early after arrest to determine whether the defendant could have possibly had the requisite scienter or mens rea at the time of the crime.” *Gross*, 41 N.E.3d at 1052 (Mathias, J., concurring).

[21] In this case, Simone’s competency to stand trial was evaluated approximately six months after she was charged with the two stalking offenses. Both psychologists reported that Simone was able to appreciate the wrongfulness of her conduct when she committed her offenses. Yet, the psychologists agreed that Simone suffers from delusions, and the record in this case is replete with evidence of her delusional thinking and behavior.

[22] The trial court considered Simone’s mental illness and lack of criminal history and weighed those factors against the “astonishing” and “atrocious” nature of the tens of thousands of emails and letters Simone sent to Richard, Erin, and their church. Tr. pp. 43-44. It is also undeniable that Simone’s offenses have had an “extraordinary” impact on Richard’s and Erin’s personal and professional lives. *See id.* at 44. We might have imposed a different sentence, but that is not the standard we are governed by on appeal.

[23] For all of these reasons, we conclude that Simone’s eight-year aggregate sentence, with six years executed and two years suspended to probation, is not inappropriate in light of her offenses and her character.

[24] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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