MEMORANDUM DECISION

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IN THE

Court of Appeals of Indiana

Joseph M. Heffley,

Appellant-Defendant

v.

State of Indiana,

Appellee-Plaintiff

May 9, 2024

Court of Appeals Case No.
23A-CR-2724

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No.
79D01-2302-F5-36

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Joseph Heffley appeals his adjudication as a habitual offender and his sentence following his convictions for Level 5 felony domestic battery, Level 6 felony domestic battery, Class A misdemeanor interference with the reporting of a crime, and Class A misdemeanor invasion of privacy. Heffley presents three issues for our review:

1. Whether the trial court abused its discretion when it admitted evidence of his prior felony convictions in Florida.

2. Whether the State presented sufficient evidence to support his adjudication as a habitual offender.

3. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] In February 2023, Heffley was living in a motel room with his then-girlfriend, Makela Thompson, and their ten-month-old son in violation of an order of protection. On February 13, Heffley and Thompson argued, and Heffley pinned Thompson down on the bed. Knowing that Thompson thought she was pregnant at that time, Heffley punched Thompson in the stomach. Thompson then threatened to call the police, and Heffley took her cell phone. Thompson left the motel room and asked someone at the front desk to call the police.

[4] When Thompson returned to the motel room to retrieve her son, Heffley pinned her again on the bed and placed her in a chokehold. Thompson was able to free herself again, and she returned to the front desk. By the time she went back to the motel room, Heffley and her son were gone. Law enforcement later found Heffley and arrested him.

[5] The State charged Heffley with three counts of domestic battery, strangulation, criminal confinement, interference with reporting of a crime, and invasion of privacy. The State also alleged that Heffley was a habitual offender. The trial was bifurcated, with a bench trial (after the jury trial) for the court to hear the charge of Level 5 felony domestic battery with a prior conviction and the habitual offender charge. A jury found Heffley guilty of Level 6 felony domestic battery, Class A misdemeanor domestic battery, Class A misdemeanor interference with the reporting of a crime, and Class A misdemeanor invasion of privacy. The jury acquitted him of strangulation, and it could not reach a verdict on the criminal confinement count, which the State subsequently dismissed.

[6] During the ensuing bench trial, the trial court found Heffley guilty of Level 5 felony domestic battery and adjudicated Heffley to be a habitual offender based on three prior felony convictions in Florida. The trial court vacated the jury's verdict for Class A misdemeanor domestic battery and entered judgment of conviction for Level 5 felony domestic battery, Level 6 felony domestic battery, Class A misdemeanor interference with the reporting of a crime, and Class A

misdemeanor invasion of privacy. And the court sentenced Heffley to an aggregate sentence of eight years executed. Heffley now appeals.

Discussion and Decision

Issue One: Admission of Evidence

[7] Heffley first contends that the trial court abused its discretion when it admitted evidence of his prior convictions in Florida. A trial court has broad discretion regarding the admission of evidence, and its decisions are reviewed only for abuse of discretion. *Hall v. State*, 177 N.E.3d 1183, 1193 (Ind. 2021). We will reverse only if the trial court's ruling was clearly against the logic and effect of the facts and circumstances before it and the errors affect a party's substantial rights. *Id.*

[8] During the habitual offender phase of Heffley's trial, the State proffered certified records of several of his felony convictions in Florida. Each of those convictions was based on nolo contendere pleas. Heffley objected to the admission of those records. Specifically, he argued that the records were hearsay and did not fall under the exception in Evidence Rule 803(22), which excludes the admission of a judgment of conviction pursuant to a nolo contendere plea. The trial court admitted three of the records over Heffley's objections.

[9] On appeal, Heffley argues that the trial court abused its discretion when it admitted the records. However, in *Scott v. State*, we held that, while Evidence Rule 803(22) "is intended to prevent the nolo contendere conviction from being

used in a subsequent proceeding to prove the defendant's actual guilt of that prior offense," it "does not prevent the admission under [Evidence Rule] 803(8) of a nolo contendere plea as a public record proving the fact of the conviction." 924 N.E.2d 169, 178 (Ind. Ct. App. 2010), *trans. denied*. Accordingly, here, the trial court did not abuse its discretion when it admitted the three records of Heffley's prior convictions in Florida.

Issue Two: Sufficiency of the Evidence

[10] Heffley contends that the State presented insufficient evidence to support his adjudication as a habitual offender. Our standard of review is well settled.

> When an appeal raises "a sufficiency of evidence challenge, we do not reweigh the evidence or judge the credibility of the witnesses . . . ." We consider only the probative evidence and the reasonable inferences that support the [judgment]. "We will affirm 'if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt.'"

Phipps v. State, 90 N.E.3d 1190, 1195 (Ind. 2018) (quoting *Joslyn v. State*, 942 N.E.2d 809, 811 (Ind. 2011)).

[11] To prove that Heffley was a habitual offender, the State was required to show that he had been convicted of three prior unrelated felonies and that at least one prior unrelated felony was a Level 5 felony, Level 6 felony, Class C felony, or a Class D felony and that not more than ten years had elapsed between the time he was released from imprisonment, probation, or parole (whichever is latest) for at least one of the three prior unrelated felonies and the time Heffley

committed the current offense. Ind. Code § 35-50-2-8(d). As the State points out, under Indiana Code Section 35-50-2-1(b), for purposes of the habitual offender statute, a "'felony conviction' means a conviction, at any time, with respect to which the convicted person might have been imprisoned for more than one (1) year."

[12] The trial court adjudicated Heffley a habitual offender based on the State's exhibits 7, 8, and 9. Exhibit 7 was a certified record of a judgment of conviction in Florida for "Third Degree Felony" driving while license suspended based on Heffley's plea of "no contest." Exhibit 8 was a certified record of a judgment of conviction in Florida for "Second Degree Felony" aggravated battery with a deadly weapon based on Heffley's plea of "no contest." And Exhibit 9 was a certified record of a judgment of conviction in Florida for "Third Degree Felony" grand theft of motor vehicle based on Heffley's plea of "no contest." For that conviction in 2013, Heffley was sentenced to five years.

[13] That evidence supports the trial court's adjudication of Heffley as a habitual offender. *See* I.C. § 35-50-2-1(b) and § 35-50-2-8(d). As the State points out, Heffley's arguments on appeal turn on a prior version of Indiana Code Section 35-50-2-1 and are misplaced. The State presented sufficient evidence to support the habitual offender adjudication.

Issue Three: Sentence

[14] Finally, Heffley argues that his sentence is inappropriate in light of the nature of the offenses and his 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).

[15] 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).

[16] The trial court imposed Heffley's sentence as follows: six years for Level 5 felony domestic battery (sentencing range of one to six years); two years for Level 6 felony domestic battery (sentencing range of six months to two and one-half years); and one year each for interference with the reporting of a crime and invasion of privacy, both Class A misdemeanors. The court imposed a five year

sentence for the habitual offender adjudication. The aggregate sentence is eight years executed.

[17] Heffley argues that the nature of the offenses is "typical" and supports only the advisory sentences for each offense. Appellant's Br. at 21. But Heffley ignores the fact that, at the time of the offenses, he was living with Thompson in violation of an order of protection. And, despite his belief that Thompson was pregnant at that time, he hit her in the stomach. The nature of the offenses supports the enhanced sentences.

[18] With respect to his character, Heffley points out that he is employed and has children to support. Be that as it may, Heffley's criminal history reflects his poor character and an extreme inability to abide by the rule of law. Heffley was previously convicted of twelve felonies and twenty-five misdemeanors, and he has violated the terms of his probation on at least fourteen occasions. Moreover, again, Heffley was living with Thompson in violation of an order of protection when he committed the instant offenses. Heffley has not shown that his sentence is inappropriate in light of his character.

[19] For these reasons, we conclude that Heffley's sentence is not inappropriate in light of the nature of the offenses and his character.

[20] Affirmed.

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

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