

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Roger Storey,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 27, 2022

Court of Appeals Case No.  
21A-CR-2431

Appeal from the DeKalb Superior  
Court

The Honorable Monte L. Brown,  
Judge

Trial Court Cause No.  
17D02-1810-F5-53

**Bailey, Judge.**

## Case Summary

[1] In exchange for the dismissal of several counts and participation in a drug court program, Roger Lee Storey pleaded guilty to Possession of Methamphetamine, as a Level 5 felony,<sup>1</sup> and to his status as a habitual offender.<sup>2</sup> After Storey was terminated from the program, the trial court imposed a three-year sentence in the Indiana Department of Correction with that sentence enhanced by an executed term of four years. Storey now appeals, seeking sentence revision.

[2] We affirm.

## Facts and Procedural History

[3] According to the factual basis, in October 2018, law enforcement recognized Storey—who reportedly had a suspended driver’s license—driving a vehicle that was registered to a person law enforcement knew had been dating Storey. After Storey was pulled over, he could not provide identification. He was eventually handcuffed, with a search of his person revealing a baggie containing a crystal substance. After Storey received an advisement of his rights, he told law enforcement that he buys methamphetamine and had paraphernalia at his residence. Storey also stated that he was addicted to methamphetamine. Law

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<sup>1</sup> Ind Code § 35-48-4-6.1.

<sup>2</sup> I.C. § 35-50-2-8.

enforcement conducted an inventory search of the vehicle, which revealed a single automobile insurance card for a policy cancelled in the prior year.

[4] Law enforcement transported Storey to his residence where Storey was advised of his rights. Storey then consented to a search of the residence, reporting that he lived there with his girlfriend and her juvenile daughter. Inside the residence, Storey handed law enforcement an eyeglasses case containing a glass smoking device with white residue. Storey reported that he used the device to smoke methamphetamine. That case was in the living room of the residence, in which the fifteen-year-old juvenile resided full time. Storey said that he often stored his methamphetamine pipe under the living room couch.

[5] The State charged Storey with Level 5 felony Possession of Methamphetamine; Class A misdemeanor Driving While Suspended;<sup>3</sup> Class A misdemeanor and Class C misdemeanor Possession of Paraphernalia;<sup>4</sup> and Class C misdemeanor Operating a Motor Vehicle without Financial Responsibility.<sup>5</sup> The State also alleged that Storey had the status of a habitual offender.

[6] Storey and the State reached an oral plea agreement under which Storey would plead guilty to the Level 5 felony and admit to the habitual offender allegation in exchange for dismissal of the remaining counts, deferral of sentencing, and

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<sup>3</sup> I.C. § 9-24-19-2.

<sup>4</sup> I.C. § 35-48-4-8.3.

<sup>5</sup> I.C. § 9-25-8-2.

participation in a drug court program. In August 2019, the trial court accepted the plea agreement, with Storey allowing the court to use information in the probable cause affidavit as a factual basis to support his plea. The court entered judgment of conviction and ordered that Storey complete the program.

- [7] During Storey’s participation in the drug court program, he received “intermittent sanctions[.]” App. Vol. 2 at 97. Eventually, he was the subject of a drug court violation report and terminated from the program in July 2021.
- [8] The trial court scheduled a sentencing hearing and obtained a presentence investigation report. At the sentencing hearing, Storey acknowledged that he had a “significant criminal history”—which consisted of six prior misdemeanor convictions and nine prior felony convictions, including multiple convictions for Burglary. Tr. Vol. 2 at 35. Storey pointed out that he also had a significant history of drug abuse, including an addiction to methamphetamine. When Storey personally addressed the court, he referred to his addiction. As to the offense at issue, Storey acknowledged that he “did possess drugs” and that he knew “there’s consequences behind that,” which he accepted. Tr. Vol. 2 at 38.
- [9] In selecting a sentence, the trial court found that Storey’s decision to plead guilty was a mitigating circumstance. As to aggravating circumstances, the trial court looked to Storey’s criminal history and the fact that he was on probation when he reoffended. The court also found that Storey’s “past arrests, convictions, probations, incarcerations, counseling programs, and the like have not yet caused him to become rehabilitated,” noting that Storey’s “subsequent

illegal conduct has not been deterred even after having been subject to the police authority of the State[.]” App. Vol. 2 at 196. The court sentenced Storey to three years in the Department of Correction for the Level 5 felony with that sentence enhanced by four years, for an aggregate executed sentence of seven years.

[10] Storey now appeals.

## Discussion and Decision

[11] Storey seeks appellate revision of his sentence under Indiana Appellate Rule 7(B), which permits us to revise a sentence “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.” In conducting our review, we afford considerable deference to the decision of the trial court. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). At the same time, we are not limited by its findings of aggravators and mitigators. *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). All in all, our role is not to decide whether a different sentence is more appropriate. *Helsley v. State*, 43 N.E.3d 225, 228 (Ind. 2015). Our role is to determine whether the sentence imposed is inappropriate. *Id.*

[12] In general, “we reserve our 7(B) authority for exceptional cases,” *Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018)—those involving “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),”

*Stephenson*, 29 N.E.3d at 122. Furthermore, the defendant bears the burden of persuading us that the sentence is inappropriate. *Hall*, 177 N.E.3d at 1197.

[13] As to the nature of the offense, our legislature selected a Level 5 felony sentencing range of one year to six years with an advisory sentence of three years. I.C. § 35-50-2-6(b). Moreover, a habitual enhancement requires an additional fixed term between two years and six years. I.C. § 35-50-2-8. Thus, for the criminal conduct at issue, the court could have imposed an aggregate sentence of twelve years. The court chose an aggregate sentence of seven years.

[14] In arguing that his sentence is inappropriate in light of the nature of the offense, Storey points out that he was “fully cooperative” with law enforcement, “readily admitted” that he had an addiction, “volunteered that he had paraphernalia at his residence, consented to a search of the home,” and even “handed the paraphernalia” to law enforcement. Br. of Appellant at 8. Storey further argues that there is “no indication that [he] intended to deal or otherwise distribute the methamphetamine” and that he was “alone in his vehicle when he was found with the methamphetamine.” *Id.* at 8-9. Storey emphasizes that his criminal conduct “did not harm another person[.]” *Id.* at 9.

[15] Generally, we do not disagree with Storey’s characterization of his interaction with law enforcement. Still, we note that the criminal offense at issue does not require indicia of dealing or any physical harm. *See* I.C. § 35-48-4-6.1(b)(2).

Moreover, the offense was charged as a Level 5 felony rather than a Level 6 felony because the methamphetamine was in a home with a juvenile, who could have discovered and ingested the methamphetamine. *See* I.C. §§ 35-48-4-6.1(b)(2) & 35-48-1-16.5(6). In any event, apart from Storey’s decision to be candid and cooperative with law enforcement—a decision that generally speaks more to his character than the nature of the offense—we discern nothing particularly remarkable about the nature of the offense in this case.

[16] Turning to the character of the offender, Storey argues that, despite being “ultimately unsuccessful in drug court,” he was “an active participant for nearly 15 months before [a] report of violation was filed[.]” Br. of Appellant at 10. Storey also points out that the presentence investigation report documents “a significant history of substance abuse, mainly involving methamphetamine,” and that Storey had “freely admitted to his addiction and did not deny or try to conceal his responsibility at the time of his arrest.” *Id.* Storey argues that we “should not disregard his attempts to overcome his addiction”. *Id.*

[17] Storey likens this case to *Westlake v. State*, 893 N.E.2d 769 (Ind. Ct. App. 2008). That case involved a defendant who, like Storey, was cooperative with law enforcement, helping locate drugs in the home. *See id.* at 772. However, unlike Storey, the defendant’s criminal history was “relatively minor” in that she had not previously committed a felony. *Id.* Further, unlike Storey, the defendant was found guilty but mentally ill and diagnosed with bipolar disorder during her placement in a pre-conviction program. *See id.* at 772. After the diagnosis, the defendant showed a “comprehensive response to treatment” with “resulting

stellar success in . . . [the] pre-conviction program,” such that this Court decided to revise the original sentence of fourteen years. *Id.* These are “extremely unusual facts and circumstances” that are not present here. *Id.*

[18] As to Storey’s character, we acknowledge that he was especially cooperative with law enforcement throughout the investigation. We also acknowledge that Storey chose to plead guilty, a decision that was likely pragmatic but one that is also consistent with cooperativeness Storey displayed in this case. Further, we commend Storey for his candor in acknowledging the scope of his addiction. Still, we observe that possessing methamphetamine is a crime and Storey had a chance to address his addiction through the support of a problem-solving court. Ultimately, Storey was unsuccessful. Moreover, in addition to a deferral opportunity, Storey had opportunities to reform his behavior through extensive prior contacts with the criminal justice system, including prior lenient sentencing that involved placement on probation. Nevertheless, Storey has continued to break the law, which does not reflect well on his character.

[19] Ultimately, having considered the nature of the offense and the character of the offender, we are not persuaded that Storey received an inappropriate sentence.

[20] Affirmed.

Najam, J., and Bradford, C.J., concur.