

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.



ATTORNEY FOR APPELLANT

Benjamin Loheide
Columbus, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Megan M. Smith
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James H. Wilson, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 29, 2021

Court of Appeals Case No.
20A-CR-2330

Appeal from the Bartholomew
Circuit Court

The Honorable Kelly S. Benjamin,
Judge

Trial Court Cause No.
03C01-1901-F6-164

Altice, Judge.

Case Summary

[1] James H. Wilson Jr. was convicted, pursuant to a plea agreement, of Level 6 felony possession of methamphetamine. After a significant delay due to Wilson's failure to appear twice for sentencing, the trial court sentenced him to an executed term of 730 days in the Bartholomew County Jail. On appeal, Wilson argues that his sentence is inappropriate in light of the nature of his offenses and his character.

[2] We affirm.

Facts & Procedural History

[3] On the afternoon of November 7, 2018, Columbus Police Department officers were dispatched to an address on the report of an unconscious individual in a parked vehicle behind the residence. Wilson was discovered in the driver's seat of the vehicle, and Officer Kyle Weaver observed in plain view on the middle console of the vehicle a corner-cut baggie with a crystal-like substance, which later tested positive for methamphetamine. Upon a search of the vehicle, Officer Weaver also discovered a glass smoking pipe with burnt residue and several open corner-cut baggies with residue inside them. Wilson, after being cleared by EMS at the scene, was placed under arrest.

[4] On January 9, 2019, the State charged Wilson with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. Thereafter, on August 19, 2019, Wilson and the State entered into a plea agreement, pursuant to which Wilson pleaded guilty to Level 6 felony possession of methamphetamine. In exchange, the State agreed to dismiss the

misdemeanor count and to refrain from filing charges in another case.

Sentencing was left to the trial court's discretion. At the change of plea hearing, the trial court took the matter under advisement and set the sentencing hearing, which was rescheduled several times on Wilson's motion.

[5] On January 9, 2020, Wilson failed to appear for his sentencing hearing, and the trial court issued a bench warrant. On January 21, 2020, Wilson filed a motion to recall the warrant, alleging confusion regarding the previous hearing date. The trial court granted Wilson's motion and reset the sentencing hearing. On February 17, 2020, Wilson failed to appear again and another warrant was issued. The arrest warrant was served July 13, 2020.

[6] Wilson's sentencing hearing was finally held on October 26, 2020, more than a year after he had pleaded guilty. By that time, Wilson had accrued two new felony criminal causes, one for possession of methamphetamine and another for leaving the scene of an accident. The trial court accepted the plea agreement and entered conviction accordingly. In sentencing, the trial found as aggravating Wilson's criminal history, his several violations of probation, the availability of prior treatment for substance abuse that proved unsuccessful, his failure to appear at the first two scheduled sentencing hearings, and his accumulation of two new criminal charges since the plea in this case. The court recognized that Wilson had been employed for a significant period of time but found that the aggravating circumstances far outweighed this mitigating circumstance. The trial court sentenced Wilson to an executed term of 730 days in the Bartholomew County Jail and granted him credit for 115 days of

presentencing confinement. Wilson now appeals. Additional information will be provided below as needed.

Discussion & Decision

[7] Wilson argues that the sentence imposed by the trial court is inappropriate. We may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of 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." *Id.* at 1224. Deference to the trial court "prevail[s] 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)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). The burden is on the defendant to persuade us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

- [8] Here, the trial court imposed a sentence of 730 days – that is, 2 years – for Wilson’s Level 6 felony conviction for possession of methamphetamine. The sentencing range for a Level 6 felony is 6 months to 2 ½ years, with the advisory sentence being 1 year. Thus, Wilson received an aggravated, but not maximum, sentence in this case.
- [9] Wilson begins his appellate argument by asserting that the nature of his offense was “very much a ‘garden variety’ case of possession.” *Appellant’s Brief* at 13. Even if we accept this as true, we, like the trial court, find Wilson’s character to be particularly aggravating and worthy of the sentence imposed. In short, Wilson has an extensive prior criminal history in three Indiana counties – three Class C felony convictions (burglary, attempted escape, and forgery), four Class D felony convictions (thefts and receiving stolen property), and a number of misdemeanor convictions, as well as many charges dismissed pursuant to various plea agreements. Wilson has received suspended sentences in the past and has had probation revoked at least three times. He also served an executed six-year sentence in prison for his 2012 forgery conviction during which he received drug treatment. Wilson later returned to abusing drugs and, after pleading guilty in the instant case, he failed to appear for sentencing twice and, during the nine-month delay, was charged with two new felony offenses, one involving methamphetamine.
- [10] In light of Wilson’s character, which reflects an ongoing disregard of the law and failure to reform despite past lenient sentences, probation, and treatment for his substance abuse, the 730-day executed sentence imposed by the trial

court was not inappropriate. This is true despite Wilson's period of employment prior to sentencing, his need to support his two teenage children (for whom he has a support arrearage), and his claimed desire to enter an inpatient drug treatment program.

[11] Judgment affirmed.

Kirsch, J. and Weissmann, J., concur.