

## 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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Julius Evans,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 10, 2022

Court of Appeals Case No.  
21A-CR-1013

Appeal from the Hendricks  
Superior Court

The Honorable Stephenie LeMay-  
Luken, Judge

Trial Court Cause No.  
32D05-1908-F2-30

**Bailey, Judge.**

# Case Summary

- [1] Julius Evans (“Evans”) appeals the sentence imposed upon his plea of guilty to Possession of Cocaine, as a Level 3 felony.<sup>1</sup> He presents the sole issue of whether his sixteen-year sentence, with ten years to be served on work release, is inappropriate. We affirm.

## Facts and Procedural History

- [2] On August 19, 2019, Evans was detained in a traffic stop and found to be in possession of thirty grams of cocaine. The State of Indiana charged Evans with Dealing in Cocaine, as a Level 2 felony,<sup>2</sup> Possession of Cocaine, as a Level 3 felony, and Possession of Marijuana, as a Class A misdemeanor.<sup>3</sup>
- [3] On May 12, 2021, Evans pled guilty to the charge of Possession of Cocaine and the other charges were dismissed. The trial court found as aggravators: Evans had two prior convictions for dealing illegal drugs; in the present offense, the large quantity of cocaine seized, together with plastic packaging, indicated intent to deal; and Evans was on parole when he committed the instant offense. In mitigation, the trial court recognized that Evans had small children; his

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<sup>1</sup> Ind. Code § 35-48-4-6(d).

<sup>2</sup> I.C. § 35-48-4-1.

<sup>3</sup> I.C. § 35-48-4-11.

parents had been drug addicted; Evans admitted his own addiction; and he began to use drugs at a young age, potentially affecting his development.

- [4] The trial court imposed upon Evans a sentence of sixteen years, with six years to be served in the Indiana Department of Correction (“DOC”) and ten years to be served on work release. The trial court also stated that it would consider a modification of the sentence after Evans served three years in work release. Evans now appeals.

## Discussion and Decision

- [5] Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by a trial court. *See, e.g., Sanders v. State*, 71 N.E.3d 839, 843 (Ind. Ct. App. 2017), *trans. denied*. This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Under 7(B), the appellant must demonstrate that his sentence is inappropriate in light of the nature of his offense and his character. *Id.* (citing Ind. Appellate Rule 7(B)). In conducting our review under this Rule, deference to the trial courts “should prevail 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).

- [6] The Indiana Supreme Court has explained that the principal role of appellate review is to attempt to leaven the outliers, “not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The question is not whether another sentence is more appropriate, but whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).
- [7] A defendant convicted of a Level 3 felony is subject to a sentencing range of six to twenty years; ten years is the advisory sentence. I.C. § 35-50-2-5. Evans contends that “a sentence very near the maximum is inappropriate when the offense is a nonviolent drug crime, and the offender is an untreated addict whose condition is the primary motivation for his crimes.” Appellant’s Brief at 6. We observe that Evans was ordered to serve only six years of his sixteen-year sentence in the DOC, and thus did not receive a near-maximum sentence. *See Bratcher v. State*, 999 N.E.2d 864, 871 (Ind. Ct. App. 2013) (observing that the maximum term of years is not the maximum sentence if it is anything less than a fully executed sentence.)
- [8] First, we look to the nature of the offense. Evans admitted that he possessed cocaine. As Evans points out, this is not a violent offense. However, Evans was not sentenced for a violent offense. Indiana Code Section 35-48-4-6(d) provides that Possession of Cocaine is a Level 3 offense if a person possesses at least 28 grams; Evans was found in possession of 30 grams of cocaine, together with cellophane baggies.

[9] Next, we consider what we know of the defendant's character. Evans pled guilty, which reflects favorably upon his character, but he received a substantial benefit in return. Evans has prior convictions for dealing in cocaine, dealing in marijuana, driving while suspended, and resisting law enforcement. He has violated the conditions of probation and parole on multiple occasions. Approximately four months after being released to parole for dealing in cocaine, Evans possessed more than 30 grams of cocaine. Although Evans has received services for his addiction during his prior incarceration, they have been unsuccessful, and prior attempts at rehabilitation short of incarceration have failed.

[10] In sum, we are unpersuaded that Evans has met his burden to show that this sentence is inappropriate.

## Conclusion

[11] Evans' sixteen-year sentence, with ten years to be served in work release, is not inappropriate.

[12] Affirmed.

Mathias, J., and Altice, J., concur.