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IN THE
COURT OF APPEALS OF INDIANA

Randall S. Mitchell II,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

February 28, 2022

Court of Appeals Case No.
21A-CR-1570

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2003-F6-302

Pyle, Judge.

Statement of the Case

- [1] Randall Mitchell II (“Mitchell”) appeals his convictions, following his guilty plea, for Level 6 felony possession of methamphetamine¹ and Class C misdemeanor possession of paraphernalia.² Mitchell argues that: (1) his one-and-one-half-year sentence is inappropriate; and (2) the trial court abused its discretion when it committed him to the Indiana Department of Correction (“the DOC”). Concluding that the one-and-one-half-year sentence is not inappropriate, but that the trial court abused its discretion when it sentenced Mitchell to the DOC, we affirm in part, reverse in part, and remand.
- [2] We affirm in part, reverse in part, and remand.

Issues

1. Whether Mitchell’s sentence is inappropriate.
2. Whether the trial court abused its discretion when it committed Mitchell to the DOC.

Facts

- [3] In February 2020, Allen County Police Department Officer Bada (“Officer Bada”) responded to a civil disturbance in Fort Wayne. Officer Bada located Mitchell, who matched the description of an individual involved in the disturbance. When Officer Bada approached Mitchell, Mitchell identified

¹ IND. CODE § 35-48-4-6.1.

² IND. CODE § 35-48-4-8.3.

himself and admitted that he had an outstanding warrant. Officer Bada asked Mitchell if he had anything illegal on his person, and Mitchell disclosed that he had a pipe in his jacket pocket. Officer Bada conducted a search of Mitchell's person and discovered two pipes as well as a crystal-like substance wrapped in a piece of paper. One of the pipes contained a burnt residue. The crystal-like substance was identified as 0.5 grams of methamphetamine. After the search, Officer Bada arrested Mitchell.

[4] The State charged Mitchell with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. In August 2020, Mitchell pled guilty to both charges. In exchange for Mitchell's guilty plea, the State agreed to allow Mitchell to participate in the Drug Court Diversion Program ("the Drug Court Program"), and the parties signed a Drug Court participation agreement ("Drug Court Agreement"). The terms of the Drug Court agreement provided, among other things, that Mitchell would not possess or use any drugs or alcohol and would not violate any laws. Additionally, Mitchell agreed to submit to drug testing. The Drug Court agreement also provided that Mitchell's participation in the Drug Court Program would be required for twelve to eighteen months. The trial court took Mitchell's plea under advisement and ordered Mitchell's placement into the Drug Court Program.

[5] In May 2021, Mitchell's case manager for the Drug Court Program filed with the trial court a motion to terminate Mitchell's placement in the program. The motion alleged that Mitchell had violated the terms of the Drug Court Program

by testing positive for Fentanyl on May 4, 2021 and May 15, 2021, testing positive for Buprenorphine and Fentanyl on May 18, 2021, and failing to appear for his drug screening on May 20, 2021. During a hearing, Mitchell admitted that he had violated the terms of the Drug Court Program as alleged. The trial court found Mitchell in violation of the Drug Court Program and revoked him from the program.

[6] Thereafter, the trial court accepted Mitchell's guilty pleas and entered judgment of conviction on the Level 6 felony possession of methamphetamine and the Class C misdemeanor possession of paraphernalia charges. During Mitchell's sentencing hearing, the trial court stated the following regarding aggravating circumstances:

The Court [found] as an aggravating circumstance [Mitchell's] criminal record, with failed efforts at rehabilitation covering a period of time from 2011 to 2021, where [Mitchell] ha[d] two misdemeanors, with short jail sentences and longer jail sentences. Those suspended sentences were revoked twice and [Mitchell] w[as] placed in home detention and then, ultimately, time in the Drug Court Program.

(Sentencing Tr. at 6). The trial court found Mitchell's guilty plea and remorse as mitigating circumstances. The trial court sentenced Mitchell to the DOC for one and one-half (1½) years for his Level 6 felony conviction and sixty (60)

days for his Class C misdemeanor conviction.³ The trial court ordered the sentences to be served concurrently with each other.

[7] Mitchell now appeals.

Decision

[8] Mitchell argues that: (1) his one-and-one-half-year sentence is inappropriate; and (2) the trial court abused its discretion when it committed him to the DOC. We address each argument in turn.

1. Inappropriate Sentence

[9] Mitchell contends that his aggregate one-and-one-half-year sentence for his Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia convictions is inappropriate. He asks this Court to reduce his sentence to the advisory term of one year.

[10] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the

³ The trial court ordered Mitchell to be committed to the DOC at both his sentencing hearing and in his sentencing order.

sentencing statutes, but not to achieve a perceived correct result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008) (internal quotation marks omitted). Whether a sentence is inappropriate ultimately turns on “the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Id.* at 1224. “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[11] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. Mitchell pled guilty and was convicted of Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. A person who commits a Level 6 felony “shall be imprisoned for a fixed term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year.” IND. CODE § 35-50-2-7(b). A person who commits a Class C misdemeanor “shall be imprisoned for a fixed term of not more than sixty (60) days[.]” I.C. § 35-50-3-4. Here, the trial court sentenced Mitchell to an aggregate sentence of one and one-half years for his two convictions, which is less than the maximum sentence.

[12] Turning first to the nature of the offenses, we note that Mitchell possessed 0.5 grams of methamphetamine and two pipes. One of the pipes contained a burnt

residue. The elements necessary to convict Mitchell for his possession of paraphernalia only require the possession of “an instrument, a device, or another object[.]” I.C. § 35-48-4-8.3. Here, Mitchell has gone beyond the elements necessary to be convicted of the crime by possessing two pipes. *See Ricketts v. State*, 108 N.E.3d 416, 422 (Ind. Ct. App. 2018) (holding that the nature of a defendant’s crime weighed against his sentence being inappropriate where the defendant’s conduct went “beyond the acts necessary to prove the crime with which he was charged”), *trans. denied*. Mitchell argues that the nature of the offense weighs against his aggregate one-and-one-half-year sentence because he did not resist officers and he was not found to be dealing methamphetamine. However, these arguments do not speak to the nature of the crime he committed. Rather, his argument essentially equates to a request that this Court reduce his sentence because he did not commit additional crimes. We do not find this argument to be persuasive.

[13] Turning to Mitchell’s character, we acknowledge that Mitchell has a criminal history containing two misdemeanors. His rehabilitation efforts span over ten years. He has had suspended sentences revoked twice and has spent time in home detention and in the Drug Court Program. Mitchell failed to take advantage of these rehabilitative efforts. Mitchell argues that his remorse for his actions justifies a lesser sentence than the one imposed. We do not find Mitchell’s remorse to be a sufficient justification to impose a lesser sentence, especially where the trial court already considered it as a mitigating circumstance.

[14] Mitchell has not persuaded us that his aggregate one-and-one-half-year sentence for his Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia convictions is inappropriate. Therefore, we affirm the trial court’s sentence.

2. Commitment to the DOC

[15] Mitchell also argues that the trial court abused its discretion when it sentenced him to the DOC. Specifically, he argues that INDIANA CODE § 35-38-3-3 “prohibits committing . . . [him] to the DOC” for his Level 6 felony and Class C misdemeanor convictions, making “his sentence . . . not statutorily authorized.” (Mitchell’s Br. 15).

[16] Sentencing decisions rest within the discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002). An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” *Pierce v. State*, 705 N.E.2d 173, 175 (Ind. 1998).

[17] INDIANA CODE § 35-38-3-3 provides the guidelines that trial courts are to follow in determining whether a defendant is committed to the DOC or another alternative. Subsection (a) provides that “a person convicted of a misdemeanor may not be committed to the [DOC]” except under certain circumstances, and subsection (d) provides that a “court may not commit a person convicted of a Level 6 felony to the [DOC] unless” certain circumstances apply. IND. CODE § 35-38-3-3. Here, none of those necessary statutory circumstances apply.

Indeed, the State concedes that the trial court “lacked statutory authority” to order Mitchell’s sentences to be served at the DOC. (State’s Br. 14). Because Mitchell does not qualify for commitment to the DOC under INDIANA CODE § 35-38-3-3, he should have been ordered to serve his executed sentence at the county jail. *See* Ind. Code § 35-38-3-3(d) (“A person who may not be committed to the department of correction may be placed on probation, committed to the county jail, or placed in community corrections for assignment to an appropriate community corrections program.”). As a result, the trial court abused its discretion by ordering Mitchell’s placement at the DOC. Accordingly, we remand to the trial court with instructions to correct its abstract of judgment and sentencing order so that Mitchell can be transferred to the appropriate county jail.

[18] Affirmed in part, reversed in part, and remanded.

May, J., and Brown, J., concur.