

## 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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Tony Lee Clemons, Jr.,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 10, 2021  
Court of Appeals Case No.  
21A-CR-301  
  
Appeal from the  
LaPorte Circuit Court  
  
The Honorable  
Thomas Alevizos, Judge  
  
Trial Court Cause No.  
46C01-1904-F2-437

**Vaidik, Judge.**

# Case Summary

- [1] Tony Lee Clemons, Jr., appeals his seventeen-and-a-half-year sentence for Level 2 felony dealing in methamphetamine. We affirm.

## Facts and Procedural History

- [2] In March 2019, Clemons was charged with Level 4 felony dealing in methamphetamine and Level 6 felony possession of methamphetamine in Starke County, and a warrant was issued for his arrest. *See* Cause No. 75C01-1903-F4-11. The next month, while the Starke County warrant was still outstanding, the police were called to a motel in LaPorte County. Clemons was with a seventeen-year-old girl and had seventeen grams of meth and paraphernalia. Clemons was arrested and charged with Level 2 felony dealing in methamphetamine. *See* Cause No. 46C01-1904-F2-437. Clemons and the State entered into a plea agreement under which Clemons would plead guilty to Level 2 felony dealing in methamphetamine in LaPorte County and his sentence would be capped at seventeen-and-a-half years, the advisory sentence for a Level 2 felony.
- [3] At the sentencing hearing, evidence was presented about Clemons' extensive criminal history. According to the presentence investigation report, Clemons has been arrested twenty-nine times and has eight felony convictions and nine misdemeanor convictions. Of the eight felony convictions, six are meth-related: possession of methamphetamine (2003); conspiracy to commit dealing in

methamphetamine (2006); unlawful possession of methamphetamine precursor and possession of anhydrous ammonia (Kentucky 2006); possession of methamphetamine (2012); and conspiracy to commit dealing in methamphetamine (2014). In addition, Clemons has served significant time in prison since 2003, received the benefit of parole and probation, and violated both multiple times.

[4] The State asked the trial court to sentence Clemons to seventeen-and-a-half years, the maximum sentence under the plea agreement. Defense counsel asked the court to sentence Clemons to ten years, pointing out that Clemons was a drug addict who needed more treatment, pled guilty, and had “worked his way up” to a “laundry worker” in the LaPorte County Jail. Tr. p. 15. In addition, Clemons testified about a cognitive behavior therapy program—called “Moral Reconciliation Therapy” (MRT)—he completed in jail. *See* Appellant’s App. Vol. II p. 93.

[5] The trial court said it didn’t know if it would accept the plea agreement because it didn’t think the agreement was “anywhere close to what [Clemons] deserved.” Tr. p. 18. After taking a break to consider the issue, the court accepted the agreement due to the backlog of cases caused by COVID-19. The court found two aggravators: (1) Clemons has an “extensive” criminal history and (2) he has violated probation and parole multiple times. *Id.* at 17. The court found one mitigator: Clemons pled guilty. The court then sentenced Clemons to seventeen-and-a-half years, to be served consecutive to any sentence he receives in the Starke County case, which is still pending.

[6] Clemons now appeals.

## Discussion and Decision

### I. Mitigators

[7] Clemons contends the trial court should have considered as mitigators that he has “a long history of substance abuse and was able to successfully complete the MRT program.” Appellant’s Br. p. 9. The finding of mitigators rests within the sound discretion of the trial court, and we review such decisions only for an abuse of that discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied*. One way a trial court abuses its discretion is by not recognizing mitigators that are clearly supported by the record and advanced for consideration. *Id.* However, even if we find an abuse of discretion, “we need not remand for resentencing if we can say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Vega v. State*, 119 N.E.3d 193, 203 (Ind. Ct. App. 2019).

[8] The record supports that Clemons has a long history of substance abuse and completed the MRT program in jail. However, we need not decide whether the trial court should have found those facts to be mitigators, because we can say with confidence it would have imposed the same sentence even if it had. The primary basis for the court’s sentence was Clemons’ criminal history, and that history is extensive. According to the PSI, Clemons has eight felony convictions (six of which are meth-related) and nine misdemeanor convictions along with

multiple parole and probation violations. In addition, he has spent significant time in prison since 2003. Given this history and the court's hesitation in accepting the plea agreement because it thought the advisory sentence was too lenient, we have no doubt the court would have sentenced Clemons to seventeen-and-a-half years regardless of the alleged mitigators.

## II. Inappropriate Sentence

[9] Clemons also contends that even if we don't reverse for an abuse of discretion, his sentence is inappropriate and should be reduced to twelve years. Indiana Appellate Rule 7(B) provides that an appellate court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." The appellate court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). "Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate." *Id.* at 160 (quotation omitted).

[10] Clemons' sentence is not an outlier needing revision. The sentencing range for a Level 2 felony is ten to thirty years, with an advisory sentence of seventeen-and-a-half years. *See* Ind. Code § 35-50-2-4.5. Clemons' advisory sentence is supported by both the nature of the offense and his character. After being charged with meth-related offenses in Starke County, Clemons was found in a

LaPorte County motel with a minor and seventeen grams of meth, which is more than what is required to commit Level 2 felony dealing in methamphetamine. *See* I.C. § 35-48-4-1.1(e) (making dealing in methamphetamine a Level 2 felony if the amount is at least ten grams). As for Clemons' character, it is true he pled guilty and did some good things in jail after his arrest in this case. But as already noted, Clemons had eight felony convictions (six of which were meth-related) and nine misdemeanor convictions, along with multiple parole and probation violations, before this incident. As the State highlighted at sentencing, Clemons has been a meth dealer for "most of his adult life." Tr. p. 11. Clemons has failed to convince us his advisory sentence is inappropriate.

[11] Affirmed.

Kirsch, J., and May, J., concur.