

MEMORANDUM DECISION

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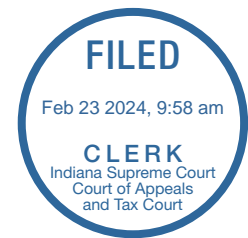


IN THE
Court of Appeals of Indiana

Jeremiah Shawn Randolph,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 23, 2024

Court of Appeals Case No.
23A-CR-2383

Appeal from the Tippecanoe Superior Court
The Honorable Steven P. Meyer, Judge
The Honorable Sarah M. Wyatt, Magistrate

Trial Court Cause No.
79D02-2305-F5-96

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Jeremiah Shawn Randolph appeals his sentence for possession of methamphetamine as a level 6 felony and being an habitual offender. He claims his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On May 18, 2023, law enforcement found two bags of methamphetamine with an aggregate weight of 7.53 grams on Randolph's person following a traffic stop.¹ The State charged Randolph as amended with: Count I, possession of methamphetamine weighing at least five grams as a level 5 felony; Count II, possession of paraphernalia as a class C misdemeanor; and Count III, possession of methamphetamine as a level 6 felony. The State also alleged he was an habitual offender. The State and Randolph entered into a plea agreement in which he agreed to plead guilty to Count III and to admit being an habitual offender and the State agreed to dismiss the other counts. The agreement left sentencing to the court's discretion. Randolph pled guilty pursuant to the plea agreement.

¹ On appeal, Randolph cites to the probable cause affidavit in his statement of facts. .

[3] At sentencing, the prosecutor requested that Randolph be sentenced to two years on Count III enhanced by four years for being an habitual offender. Randolph's counsel requested that Randolph be sentenced to one year on Count III enhanced by two years for being an habitual offender and that he be allowed to serve the sentence as a direct commitment to community corrections. The court found the aggravating factors included Randolph's criminal history beyond the convictions supporting the habitual offender determination, his history of violating terms of probation and community corrections, and that prior attempts at rehabilitation had failed. It found the mitigating factors included Randolph's acceptance of responsibility, that the crime did not cause harm to other individuals or property, and that Randolph had taken advantage of rehabilitative services and became a trustee at the Tippecanoe County Jail. The court found the aggravating factors outweighed the mitigating factors and sentenced Randolph to two years for possession of methamphetamine as a level 6 felony and enhanced the sentence by two years for being an habitual offender. The court stated that, upon completion of the Recovery While Incarcerated Program and the habitual offender portion of his sentence, it would consider modification.

Discussion

[4] Randolph argues that his conduct amounted to no more than that necessary to establish the elements of the offense and that his criminal history is "somewhat subsumed in the habitual offender adjudication." Appellant's Brief at 8. He states that, while he received the minimum enhancement due to the habitual

offender adjudication, he “would note that the prescribed range for that adjudication applies to persons convicted of both Level 5 and Level 6 felony offenses such that it may be reasonably assumed that the legislature intended the upper echelon for Level 5 felony offenders.” *Id.* at 9. He also argues “it is not the aggregate length of his sentence that [he] challenges as inappropriate on appeal, but the fact that the trial court ordered the sentence to be fully executed in the Department of Correction” and “requests that this Court revise his sentence to an aggregate term of four (4) years with two (2) years to be executed in the Department of Correction and two (2) years executed on community corrections.” *Id.* at 9-10.

[5] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[6] Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year. At the time of the offense, Ind. Code § 35-50-2-8(i) provided that the court shall sentence a person found to

be an habitual offender to an additional fixed term that is between two and six years for a person convicted of a level 5 or level 6 felony.²

[7] Our review of the nature of the offense reveals that law enforcement found two bags of methamphetamine with an aggregate weight of 7.53 grams on Randolph's person. Our review of the character of the offender reveals that Randolph, pursuant to a plea agreement, pled guilty to possession of methamphetamine as a level 6 felony and admitted to being an habitual offender, and the State dismissed the charges for possession of methamphetamine as a level 5 felony and possession of paraphernalia as a class C misdemeanor. The presentence investigation report ("PSI") indicates that Randolph was adjudicated as delinquent for theft and illegal consumption of an alcoholic beverage in 1993 and burglary in 1995. His adult history includes convictions for battery as a class A misdemeanor in 1999; domestic battery as a class A misdemeanor in 2000; operating a vehicle while intoxicated and conversion as class A misdemeanors and failure to stop after an accident as a class B misdemeanor in 2003; battery resulting in bodily injury as a class A misdemeanor in 2004; driving while suspended and possession of marijuana as class A misdemeanors in 2005; domestic battery as a class A misdemeanor in 2008; two counts of operating a vehicle while intoxicated as class D felonies in 2009; operating a vehicle after being adjudged an habitual traffic offender as a

² Ind. Code § 35-50-2-8(i) was amended, effective July 1, 2023, to provide that the court shall sentence a person found to be an habitual offender to an additional fixed term that is between three and six years for a person convicted of a level 5 or level 6 felony. Pub. Law No. 37-2023, § 2 (eff. July 1, 2023).

class D felony in 2011; operating a vehicle after lifetime forfeiture of driving privileges as a class C felony in 2012; possession of methamphetamine as a level 6 felony in 2020; felon carrying a handgun as a level 5 felony in 2021; and possession of methamphetamine as a level 6 felony in 2022. The PSI provides that he was found to be an habitual substance offender in 2009 and 2022.

[8] The PSI further states that Randolph has had twelve “Petitions for Revocation of Probation/Petitions to Revoke Probation filed against him, with at least six (6) having been found true” and has had seven “Community Corrections Home Detention/Work Release Violations/Petitions to Terminate Community Corrections Pre-Trial Release/Motions to Violate Home Detention Sentence filed against him, with at least four (4) having been granted, and one (1) is pending.” Appellant’s Appendix Volume II at 72. It states that he was on home detention when he committed the instant offense. With respect to substance abuse, the PSI states that Randolph reported first consuming alcohol at the age of fourteen or fifteen and last consuming in April 2023 and first using drugs at the age of sixteen and last using in May 2020. He reported completing the MATRIX Program through Wabash Valley in 2009 and the Q360 Program in the Tippecanoe County Jail in 2021. The PSI also indicates that Randolph’s overall risk assessment score using Indiana’s risk assessment tool places him in the high risk to reoffend category.

[9] After due consideration, we conclude that Randolph has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[10] For the foregoing reasons, we affirm.

[11] Affirmed.

Riley, J., and Foley, J., concur.

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