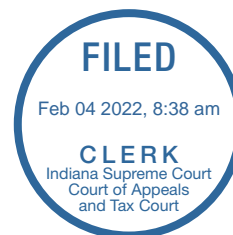


MEMORANDUM DECISION

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

Joseph Kilby Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 4, 2022

Court of Appeals Case No.
21A-CR-1635

Appeal from the Dearborn
Superior Court

The Honorable Jonathan Neil
Cleary, Judge

Trial Court Cause No.
15D01-2106-F6-235

Altice, Judge.

Case Summary

- [1] Joseph Kilby Jackson pled guilty to two Level 6 felonies, possession of methamphetamine and auto theft. Jackson claims that his sentence of two and one-half years with one and one-half years suspended to probation was inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

Facts & Procedural History

- [3] On June 4, 2021, Jackson's father (Father) reported the theft of his Mitsubishi Outlander to authorities. On June 7, a deputy with the Dearborn County Sheriff's Department conducted a stop of a vehicle that matched the Outlander's description. Jackson, age twenty-seven, was the driver, and there was one passenger. A VIN check confirmed that the vehicle was Father's Outlander. Jackson explained to police that he had driven the vehicle on occasion for a number of years and that he had just recently learned that his Father had reported it stolen after the two had argued.
- [4] Other officers arrived on the scene to assist. They found a syringe cap in Jackson's pocket, and, in the vehicle, they discovered a syringe and a copper pot with methamphetamine residue. Officers also found, in the passenger's bra, a bag of methamphetamine that Jackson admitted belonged to him.
- [5] On June 8, 2021, the State charged Jackson with three Level 6 felonies: possession of methamphetamine (Count I), possession of a syringe (Count II),

and auto theft (Count III). The initial hearing was held that same day, and Jackson appeared, pro se, by video. After an advisement of rights, Jackson pled guilty to all three charges without a plea agreement. The State dismissed Count II, unlawful possession of a syringe, and the court entered judgment of conviction on the remaining two counts.

[6] Jackson appeared, pro se, for the June 30, 2021 sentencing hearing. Jackson expressed remorse for his conduct, and he recognized his need for substance abuse treatment. He testified that, while awaiting sentencing, he had contacted an inpatient recovery center in Louisville and had been accepted in their program, and he had completed the orientation for the J-CAP program.¹ He confirmed no changes to the presentence investigation report (PSI), which, in addressing Jackson’s family and social background, noted that Jackson had two half-brothers that had died from drug overdoses and, since that time, Jackson described that his life had been “spiraling out of control.” *Appellant’s Appendix* at 27. The preparing officer noted that Jackson was “very remorseful” especially about damaging his relationship with Father. *Id.* at 29.

[7] The State presented the testimony of Father, the victim in this case. Father stated, in part:

Joe has stolen tools from me to pawn. He has stolen my car. I’m a dad that is upset and torn. My opinion is that Joe does need to go to prison as a reminder of where he doesn’t want to spend the

¹ J-CAP refers to the Jail Chemical Addictions Program.

rest of his life. But more than anything, I would like him to be sentenced to a long term rehab. He already knows he isn't getting any monetary help or a place to live, or a car to drive from the family. He has to do this on his own. Everyone has tried to help and all he has done is burn a lot of important bridges.

He has to use the resources he has available to him upon his release, if he's going to make it. The family, the love will be there. But he has to do it himself, 100 percent.

Transcript at 14-15.

[8] The State outlined Jackson's criminal history, which included six juvenile adjudications, a number of probation violations, several adult felony convictions, and a misdemeanor conviction. At the time of his arrest, Jackson also had a pending warrant out of Hamilton County, Ohio for assault. The State opined that "there's obviously a significant drug issue here," which existed "since before [Jackson] turned 18." *Id.* at 16. After acknowledging that Jackson saved the court and the State "a significant amount of time and resources" by pleading guilty at the initial hearing, the State recommended concurrent sentences of 910 days on each of the two counts, with 365 days suspended on each to probation. *Id.* at 17.

[9] The trial court reviewed Jackson's convictions and probation violations, which the court considered as an "ongoing" criminal history. *Id.* at 23. The court also noted that according to the PSI, Jackson was the aggressor in an incident in jail on June 8, at the time of booking, in which Jackson, unprovoked, attacked and

punched another inmate. The court considered as mitigating that Jackson pled guilty and, while awaiting sentencing, had applied to J-CAP.

[10] The court imposed a sentence of 910 days in the Indiana Department of Correction on each count, to run concurrent to each other, and it suspended 545 days on each count to probation. The court ordered that, upon Jackson's release, "he shall participate in and complete the course of alcohol and drug program through the probation department." *Id.* at 24. Jackson now appeals.

Discussion & Decision

[11] Pursuant to Ind. Appellate Rule 7(B), 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 offenses and the character of the offender. Indiana's flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and 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 question under App. Rule 7(B) is not whether another sentence would be more appropriate; rather, the test is whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018).

[12] In determining whether a sentence is inappropriate, we may consider all aspects of the penal consequences imposed by the trial court, including whether any portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Our role is to “leaven the outliers,” which means we exercise our authority in “exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). Jackson bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[13] When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). Jackson was convicted of two Level 6 felonies, the sentencing range for which is six months to two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). For each conviction, the trial sentenced Jackson to concurrent terms of 910 days with 545 suspended to probation. Jackson offers that “[a]dmittedly, [his] executed sentence of one year was the advisory sentence for his crimes,” but urges that neither the nature of the offense or his character warranted imposition of an executed sentence. *Appellant’s Brief* at 9.

[14] When reviewing the nature of the offense we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Jackson argues that he had just learned that Father had reported the vehicle as stolen and intended to return it later that day but “was pulled over . . . before he had a chance” to do so. *Appellant’s Brief* at 10. We are not persuaded, however, that the nature of

the offense warrants revision of his sentence. Jackson not only took and used the Outlander, without permission, for several days, he also possessed methamphetamine and other paraphernalia in Father's vehicle. While Jackson highlights that his crimes "did not involve any violence or intent to cause harm to another person," this consideration, as the State observes, was already factored into the charges brought. *Id.* at 8. Jackson has not established that the nature of the offense warrants revision of his sentence.

[15] We conduct our review of a defendant's character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564. Character is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). In urging us to revise his sentence, Jackson argues that at an early age he lost two siblings to drug abuse and that he "fell prey to drug addiction," using marijuana at age sixteen and heroin at age nineteen, which thereafter progressed to methamphetamine. *Id.* at 12. Jackson highlights that he immediately took responsibility for his conduct by pleading guilty at the initial hearing and that, while awaiting sentencing, he actively sought out rehabilitation programs to determine what would be available to him.

[16] It is well settled that a defendant's criminal history is a relevant factor in analyzing character. *Madden*, 162 N.E.3d at 564. Jackson had six juvenile adjudications and seven violations of juvenile probation. His adult history began in 2012, when he was convicted of Class D felony theft and Class A misdemeanor contributing to the delinquency of a minor. In 2014, he was convicted of Class C felony forgery, and in 2015 he was convicted of Level 6

felony possession of a narcotic drug. He violated probation five times. On March 5, 2021, Jackson was charged in Ohio with assault, and, approximately three months later, Jackson was charged with the offenses in this case. As noted above, Jackson also was alleged to have attacked another jail inmate without provocation. The PSI indicates that this “was not the first time [Jackson] has been involved in a physical altercation while [] housed at the jail,” as a 2014 PSI indicated another incident in which Jackson was the aggressor. *Appellant’s Appendix* at 29.

[17] Jackson’s repeated and consistent disregard for the law does not portray his character “in a positive light,” which is his burden under App. R. 7(B). *See Stephenson*, 29 N.E.3d at 122. While it is unfortunate that Jackson experienced the death of two siblings from drug overdose, it is equally unfortunate that he chose the same path – drugs – to deal with the loss. In any event, “[o]ur supreme court has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.” *Hudson v. State*, 135 N.E.3d 973, 979 (Ind. Ct. App. 2019) (multiple quotations omitted). As the State observes, “Jackson received concurrent sentences with everything above the advisory sentence suspended to probation.” *Appellee’s Brief* at 7. Upon considering the nature of the offense and Jackson’s character, we do not find that the sentence imposed is inappropriate.

[18] Judgment affirmed.

Bailey, J. and Mathias, J., concur.