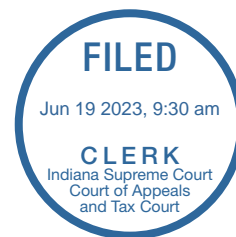


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

David Lloyd Claytor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 19, 2023

Court of Appeals Case No.
22A-CR-2913

Appeal from the Jay Circuit Court

The Honorable Brian D.
Hutchison, Judge

Trial Court Cause No.
38C01-2205-F4-15

Memorandum Decision by Judge Weissmann
Judges Riley and Bradford concur.

Weissmann, Judge.

- [1] David Claytor appeals the appropriateness of his 24-year sentence for dealing in methamphetamine, a Level 4 felony, combined with a habitual offender enhancement. Considering the nature of Claytor’s crimes and his character, we cannot say his sentence was inappropriate.

Facts

- [2] Police searched Claytor’s home after a woman died there from a heroin and methamphetamine overdose. This was the second reported overdose death at Claytor’s home in recent years. Although police located only modest amounts of drugs, about 4 grams of methamphetamine, the search turned up numerous signs of drug use.
- [3] In the house itself, police found several lighters with Claytor’s name or initials on them; a butane torch; numerous unused plastic baggies marked with a skull design; and other bags containing drug paraphernalia. In the home’s attached garage, police located Narcan, a substance used to reverse opioid overdoses; more lighters; syringes with needles; four tourniquets typically used for injections; pill cutters; alcohol prep pads; and a smoking pipe that had ashes and burn marks on it. In Claytor’s attic, police discovered several scales, at least one of which had signs of significant use.
- [4] The State charged Claytor with four crimes:
1. dealing in methamphetamine, a Level 4 felony;
 2. maintaining a common nuisance, a Level 6 felony;

3. unlawful possession of syringe, a Level 6 felony;
4. possession of paraphernalia, a Class C misdemeanor

App. Vol. II, pp. 9-10. The State also moved to classify Claytor as a habitual offender for sentencing purposes. A jury convicted Claytor of all charges and found him to be a habitual offender.

[5] In crafting Claytor’s sentence, the trial court found several aggravating circumstances. Claytor has a substantial and lengthy criminal history, including a juvenile adjudication, five misdemeanors, and seven felony convictions. Claytor had violated probation three times and community corrections twice. The trial court also determined Claytor had a high risk of re-offending. The trial court found no mitigating circumstances. Ultimately, the trial court sentenced Claytor to 11 years imprisonment for the Level 4 felony, enhanced by 13 years due to Claytor’s habitual offender status. The court also sentenced Claytor to concurrent sentences of 2 years each for the Level 6 felonies and to 60 days for the Class C misdemeanor.¹

Discussion and Decision

[6] Under Indiana Appellate Rule 7(B), this 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

¹ Although the trial court specified habitual offender enhancements for both Claytor’s Level 4 felony and Level 6 felony convictions, only “the felony conviction with the highest sentence imposed” receives the enhancement. Ind. Code § 35-50-3-8(j).

and the character of the offender.” The goal of appellate sentence review is “to attempt to leaven the outliers and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Claytor bears the burden to show that his sentence is inappropriate. *Stephenson v. State*, 29 N.E.3d 111, 112 (Ind. 2015).

[7] “The advisory sentence is the starting point to determine the appropriateness of a sentence.” *Baumholser v. State*, 62 N.E.3d 411, 418 (Ind. Ct. App. 2016).

Although Claytor was convicted of four crimes, his respective sentences all run concurrently. Thus, Claytor’s 24-year sentence is based on his conviction for dealing in methamphetamine, as a Level 4 felony, and a corresponding habitual offender enhancement. The sentencing range for a Level 4 felony is between 2 and 12 years, with an advisory sentence of 6 years. Ind. Code § 35-50-2-5.5. At the time of this case, the habitual offender statute provided for a sentencing enhancement between 6 and 20 years for a Level 4 felony. Ind. Code § 35-50-2-8(i)(1) (2022).² Claytor’s sentence of 11 years for the dealing charge with another 13 years for the habitual offender enhancement falls within these ranges.

[8] The nature of Claytor’s offenses aligns with his sentence. The catalyst for this case was an overdose death at Claytor’s home. Indeed, this was the second

² The habitual offender statute was recently amended to provide for a sentencing enhancement between 8 and 20 years for a Level 4 felony. Ind. Code § 35-50-2-8(i)(1) (2023).

death at his home in the past two years. Despite this, Claytor argues that the nature of his offenses supports a revision in his sentence because the low amount of methamphetamine discovered by the police suggests that he is “an addict who shares his drugs with others” rather than a drug dealer. Appellant’s Br., p. 10. Setting aside that this is an impermissible invitation to reweigh the evidence, this argument ignores that the amount of drugs at Claytor’s home has been enough to kill two people as well as the numerous signs of significant drug use such as the multiple scales and drug paraphernalia. Accordingly, Claytor has not shown the nature of his offenses warrants sentence revision.

[9] Claytor’s character also does not compel a revised sentence. He possesses a long criminal history spanning decades, including seven prior felony convictions. “The significance of a criminal history in assessing a defendant’s character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Though many of Claytor’s past convictions relate to drug use, he has also resisted arrest multiple times, committed a weapons offense, and engaged in burglary. We find his criminal history highly significant. Further, the trial court did not impose the maximum allowable sentence for his Level 4 felony conviction or his habitual offender enhancement and ordered Claytor to serve his four sentences concurrently. For these reasons, Claytor has not demonstrated that his character justifies a revised sentence.

[10] Lastly, we note that the evidence introduced at Claytor’s sentencing hearing suggests he has struggled with the effects of his drug addiction for decades. At the same time, that alone is not enough to justify a revised sentence. While Claytor’s criminal history at times appears to “largely share a nexus with his substance abuse issues” and he has taken steps on his own initiative to seek rehabilitative treatment—both facts weighing towards relief—this sentence is not one of the “rare and exceptional case[s]” justifying revision. *See Kellams v. State*, 198 N.E.3d 375, 375-76 (Ind. 2022d) (Rush, C.J., dissenting from the denial of transfer) (mem.) (quoting *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam)).

[11] Affirmed.

Riley, J., and Bradford, J., concur.