MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Adam M. Bullins,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 28, 2022

Court of Appeals Case No. 22A-CR-1424

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2107-F4-217

Bailey, Judge.

Case Summary

[1] Adam Bullins appeals his convictions and sentence for possession of methamphetamine with intent to deliver, as a Level 4 felony,[1] and possession of marijuana, as a Class B misdemeanor.[2] We affirm.

Issues

[2] Bullins raises the following two issues for our review:

1. Whether the State presented sufficient evidence to support his convictions.

2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

Facts and Procedural History

[3] On July 15, 2021, Jesse Earhart sent Bullins a Facebook message. In that message, Earhart "attempt[ed] to buy" methamphetamine. Tr. Vol. 2 at 206. Bullins responded to Earhart's message and said: "I got a g left for 80 if you can swing it."[3] Ex. at 14. Earhart responded: "Ya." *Id*. Bullins then asked his

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[1] Ind. Code § 35-48-4-1.1 (a)(2) and (c)(1) (2022).

[2] I.C. § 35-48-4-11(a)(1) and (b)(1).

[3] A "g" refers to a gram. Tr. Vol. 3 at 3.

former girlfriend, Amy McNutt, to drive him from his home in Huntington to Earhart's home in Andrews. McNutt was planning on doing laundry at a friend's house in Andrews, so she drove Bullins to Earhart's home. On the way, McNutt stopped briefly to throw away some trash that was in the backseat of her car.

[4] When they arrived at Earhart's house, Bullins asked McNutt to drive the three of them to a gas station so that Earhart could get money from an ATM. McNutt agreed, and Earhart got into the rear passenger seat behind Bullins. McNutt had previously placed a laundry basket in the back seat, so Bullins reached into the back and moved the basket in order to give Earhart more room. Once they arrived at the gas station, Earhart exited the car, entered the gas station, and withdrew $200 from the ATM.

[5] Andrews Deputy Marshall Dean Young, who was off duty at the time, was in the gas station when Earhart entered. Deputy Marshall Young saw Earhart, and he was aware that Earhart was "a wanted person" in Huntington County. Tr. Vol. 2 at 216. Deputy Marshall Young then watched Earhart leave the store and enter McNutt's car. Deputy Marshall Young called Town Marshall Austin Bullock and reported his observations. Marshall Bullock was able to confirm that Earhart "had an active warrant out for his arrest." *Id*. at 235.

[6] When Earhart returned to the car, McNutt left the gas station and began to drive back to Earhart's house. As they left, Earhart gave Bullins $80. Shortly after they had left the gas station, Marshall Bullock arrived and conducted a

traffic stop on the vehicle. Marshall Bullock then confirmed that Earhart was in the rear passenger seat of the car.

[7] McNutt's vehicle only had two doors, so Marshall Bullock asked Bullins to exit the car so that Earhart could also exit. When Bullins opened the door, Marshall Bullock detected "the odor associated with marijuana." *Id*. at 237. Bullins had a hood over his head, which he removed at Marshall Bullock's request. When Bullins removed his hood, Marshall Bullock recognized him. And Marshall Bullock believed that Bullins also had an active warrant out for his arrest. Once Marshall Bullock confirmed the existence of a warrant, he placed both Bullins and Earhart in handcuffs. Marshall Bullock searched Bullins and found $80 on his person.

[8] Marshall Bullock then conducted a search of McNutt's car with her consent. On the front passenger floorboard, Marshall Bullock found a blue duffle bag. Bullins admitted that the bag "belonged to him." *Id*. at 239. Marshall Bullock asked Bullins if there was anything "dangerous" in the bag, and Bullins responded that there were "some syringes" in the bag that he used to "induce methamphetamine into his body." *Id*. Marshall Bullock found some "loose syringes," a "baggie with some residue in it" and a black eyeglasses case that contained a spoon with a "crystal like residue" and "some syringes." *Id*. at 243-44.

[9] Marshall Bullock then searched the laundry basket that was located behind the driver's seat. In that basket, Marshall Bullock found a plastic grocery bag

underneath a towel. Inside that bag, Marshall Bullock discovered a black nylon case and a green plastic container. In the black case, Marshall Bullock found "a device used to grind up . . . marijuana," a "glass smoking device," a digital scale, two syringes, and "many small plastic baggies" that are typically "used to package illegal substances." *Id*. at 247-48. Marshall Bullock also found rolling papers, a "small baggie with a crystal-like substance" and "a marijuana cigarette."[4] *Id*. at 250. In the green container, Marshall Bullock observed a "glass smoking device with residue in it," an unopened package of syringes, and two torches. Tr. Vol. 3 at 4. The Indiana State Police Laboratory later confirmed that the crystal-like substance was 1.72 grams of methamphetamine and that the cigarette contained 0.20 grams of marijuana. *See* Ex. at 33.

[10] The State charged Bullins with possession of methamphetamine with intent to deliver, as a Level 4 felony; possession of a hypodermic syringe, as a Level 6 felony;[5] possession of marijuana, as a Class A misdemeanor; and possession of paraphernalia, as a Class C misdemeanor.[6] The court then held a jury trial. During the trial, McNutt testified that the plastic grocery bag Marshall Bullock had found in the laundry basket had not been in the basket when she placed it in the back seat. And she testified that the grocery bag was not in the basket

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[4] The State asserts that the marijuana cigarette was found in the green container. And Bullins contends that both the methamphetamine and the marijuana were found in the green container. But Marshall Bullock testified that he discovered both the methamphetamine and the marijuana cigarette in a "smaller plastic container" that was located inside the black case. Tr. Vol. 2 at 249-250; *see also* Ex. at 18, 21.

[5] I.C. § 16-42-19-18.

[6] I.C. § 35-48-4-8.3(b)(1).

when she stopped to throw away her trash. McNutt then testified that she recognized the green plastic container as belonging to Bullins and that she had seen him with it "a couple times[.]" *Id*. at 182.

[11] Earhart testified that, after he had withdrawn $200 from the ATM, he gave Bullins $80 in exchange for methamphetamine. And he testified that Bullins was going to give him the methamphetamine when they returned to Earhart's house but that the exchange had not occurred because Marshall Bullock had stopped the car shortly after they left the gas station.

[12] At the conclusion of the trial, the jury found Bullins guilty of Counts 1, 2, and 4 as charged. And the jury found him guilty of possession of marijuana, as a Class B misdemeanor, for Count 3.[7] The court entered judgment of conviction accordingly and sentenced Bullins as follows: ten years on Count 1, two years on Count 2, 180 days on Count 3, and 60 days on Count 4. The court then ordered the sentences to run concurrently, for an aggregate sentence of ten years, fully executed in the Department of Correction. This appeal ensued.

Discussion and Decision

[7] The State correctly notes that Bullins was charged with possession of marijuana, as a Class A misdemeanor. However, the State incorrectly contends that "the jury found Bullins guilty as charged." Appellee's Br. at 5. The jury found Bullins guilty of possession of marijuana, as a Class B misdemeanor. *See* Tr. Vol. 3 at 70. And the State decided against pursing the enhancement to a Class A offense. *See id*. at 71-72. Accordingly, the court entered judgment of conviction against Bullins for a Class B misdemeanor. *See id*. at 72; *see also* Appellant's App. Vol. 2 at 19.

Issue One: Sufficiency of the Evidence

[13] Bullins first contends that the State failed to present sufficient evidence to support his convictions on Counts 1 and 3.[8] Our standard of review on a claim of insufficient evidence is well settled:

> For a sufficiency of the evidence claim, we look only at the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess the credibility of witnesses or reweigh the evidence. *Id*. We will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id*.

Love v. State, 73 N.E.3d 693, 696 (Ind. 2017).

[14] To demonstrate that Bullins committed possession of methamphetamine with intent to deal, as a Level 4 felony, the State was required to show that he had knowingly or intentionally possessed methamphetamine, pure or adulterated, with the intent to deliver and that the amount of methamphetamine involved was at least one gram but less than five grams. Ind. Code § 35-48-4-1.1(a)(2) and (c)(1). And to establish that Bullins committed possession of marijuana, as a Class B misdemeanor, the State was required to show that Bullins had knowingly or intentionally possessed pure or adulterated marijuana. I.C. § 35-48-4-11(a)(1).

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[8] Bullins does not challenge his convictions on Counts 2 or 4.

[15] On appeal, Bullins concedes that the substances found in the car were methamphetamine and marijuana, and he acknowledges that the amount of methamphetamine found was between one and five grams. In addition, Bullins does not challenge "whether there was any intent to deal or distribute the methamphetamine[.]" Appellant's Br. at 15. However, Bullins contends that the State failed to prove that he possessed either substance.

[16] Conviction for possession of illegal items can be based on either actual or constructive possession. "A person actually possesses contraband when []he has direct physical control over it." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). Here, when Marshall Bullock conducted the traffic stop, Bullins was sitting in the front passenger seat. And Marshall Bullock found the contraband inside a black nylon case, which was inside a plastic grocery bag that was inside a laundry basket located in the back seat of the car. It is clear that Bullins did not have direct physical control over the drugs. Thus, contrary to the State's assertions, Bullins was not in actual possession of the illegal substances.

[17] Nonetheless, "[w]hen the State cannot show actual possession, a conviction for possessing contraband may rest instead on proof of constructive possession." *Id*. As this Court has stated:

> In order to prove constructive possession of drugs, the State must show that the defendant has both: (1) the *intent* to maintain dominion and control over the drugs; and (2) the *capability* to maintain dominion and control over the drugs. *Wilkerson v. State,* 918 N.E.2d 458, 462 (Ind. Ct. App. 2009) (emphasis added) (quoting *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004)). "The

> capability prong may be satisfied by 'proof of a possessory interest in the premises in which illegal drugs are found.'" *Monroe v. State*, 899 N.E.2d 688, 692 (Ind.Ct.App.2009) (citing *Gee*, 810 N.E.2d at 340). "This is so regardless of whether the possession of the premises is exclusive or not." *Id*. . . .
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> With regard to the intent prong of the test, where, as here, a defendant's possession of the premises upon which contraband is found is not exclusive, the inference of intent to maintain dominion and control over the drugs must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence. *Id*. (citing *Gee*, 810 N.E.2d at 341). Those additional circumstances include:
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> > (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.
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> *Wilkerson*, 918 N.E.2d at 462.

Houston v. State, 997 N.E.2d 407, 410 (Ind. Ct. App. 2013). "Those enumerated circumstances are nonexhaustive; ultimately, our question is whether a reasonable fact-finder could conclude from the evidence that the defendant knew of the nature and presence of the contraband." *Johnson v. State*, 59 N.E.3d 1071, 1074 (Ind. Ct. App. 2016).

[18] On appeal, Bullins contends that the State did not demonstrate that he constructively possessed the methamphetamine or marijuana because "he lack[ed] the intent to possess the contraband" and he "lacked the capability to maintain dominion and control over the contraband." Appellant's Br. at 16. In particular, Bullins contends that "both McNutt and Earhart could have [had] the intent to possess the contraband" because they each have histories of drug use. *Id*. at 17. He further contends that "he is not the only individual" who was located in the car. *Id*. And he maintains that he did not know about the existence of the contraband and that, "without knowledge of the contraband being located in the laundry basket, . . . he lacked the capability to reduce the controlled substance to his personal possession." *Id*. at 18.

[19] However, we hold that the State presented sufficient evidence from which a reasonable jury could conclude that Bullins had knowledge of the nature and presence of the methamphetamine and marijuana. The evidence most favorable to the verdict demonstrates that Bullins and Earhart had engaged in a conversation during which Bullins offered to sell one gram of methamphetamine to Earhart in exchange for $80. Shortly after that conversation, Bullins obtained a ride from McNutt to Earhart's house. Upon arrival at Earhart's, Bullins asked McNutt to drive the three of them to a gas station so that Earhart could withdraw money from an ATM. Earhart then withdrew money and gave $80 to Bullins in exchange for methamphetamine. Earhart testified that Bullins did not give him the methamphetamine but,

rather, that the plan had been for Bullins to provide the methamphetamine after they had returned to Earhart's house, which did not occur.

[20] Further, at the time of the traffic stop, Marshall Bullock found $80 on Bullins' person. Then, during his search of the car, Marshall Bullins found a plastic grocery bag that contained both the black nylon case and the green plastic container. McNutt testified that, at the time she had placed the laundry basket in her car, the plastic grocery bag had not been there. She also testified that the plastic bag was not in the laundry basket at the time she stopped to remove the trash from her car. In addition, McNutt testified that the green container belonged to Bullins and that she had seen him with it "a couple times." Tr. Vol. 2 at 182. And Marshall Bullock found the black case, which contained the methamphetamine and marijuana, in the same plastic grocery bag where he had found the green container that belonged to Bullins.

[21] In other words, the evidence shows that Bullins had arranged to conduct a drug transaction with Earhart, that he had accepted money from Earhart, and that he had not yet given Earhart the methamphetamine. And the evidence shows that the methamphetamine and marijuana were found in a black case that was located in the same plastic grocery bag as another item owned by Bullins. A reasonable jury could infer from that evidence that Bullins was both aware of the marijuana and methamphetamine and that he had the intent to maintain dominion and control over them.

[22] The evidence similarly shows that Bullins had the capability to maintain dominion and control over the drugs. On this point, Bullins argued that the "laundry basket was behind the driver's seat of the vehicle while he was in the front passenger seat" such that he "lacked the ability to dig into McNutt's dirty laundry and place the green container therein[.]" Appellant's Br. at 18. But contrary to Bullins' assertions, the evidence demonstrates that he was able to access the laundry basket from the front seat. Indeed, McNutt testified that, when Earhart entered her car, Bullins "reach[ed] into the back seat" and "moved" the laundry basket over in order to give Earhart more room. Tr. Vol. 2 at 180. Stated differently, Bullins had the physical ability to reach the laundry basket where the contraband was located from his place in the front passenger seat.

[23] In sum, the State presented sufficient evidence from which a reasonable jury could conclude that Bullins had constructively possessed the methamphetamine and marijuana. Bullins' arguments to the contrary are simply requests that we reweigh the evidence, which we cannot do. We affirm Bullins' convictions.

Issue Two: Sentencing

[24] Bullins next contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he 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." This Court has recently held that "[t]he advisory sentence is the starting point the

legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[25] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). 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).

[26] The sentencing range for Bullins' Level 4 felony conviction is two years to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. The sentencing range for his Level 6 felony conviction is six months to two and one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). As a result of his Class B misdemeanor conviction, Bullins faced a maximum sentence of 180 days. I.C. § 35-50-3-3. And for his Class C misdemeanor conviction, Bullins faced a possible sentence of not more than 60 days. I.C. § 35-50-3-4.

[27] Here, the court identified as aggravators Bullins criminal history, the fact that he was on community corrections when he committed the instant offenses, and the fact that he had not obtained drug or alcohol counseling despite previous requests by the court. The court did not identify any mitigators. Accordingly, the court sentenced Bullins to an enhanced sentence of ten years for the Level 4 felony, an enhanced sentence of two years for the Level 6 felony, the maximum sentence of 180 days for the Class B misdemeanor, and the maximum sentence of the 60 days for the Class C misdemeanor.

[28] On appeal, Bullins contends that his sentence is inappropriate in light of the nature of the offenses because "he was caught with less than two (2) grams" of methamphetamine, which is "on the lower level of the charging scale of one (1) to five (5) grams[.]" Appellant's Br. at 21. He further argues that "there was no actual victim, there was no physical violence, nor was there any property damage" such that a near-maximum sentence was inappropriate. *Id*. at 22. And he maintains that his sentence is inappropriate in light of his character

because he "is afflicted by a drug addiction that remains unsolved" and because several of his prior felony convictions "are related to non-support of a dependent and most logically correlate to [an] inability to maintain regular employment due to drug addiction." *Id*.

[29] However, Bullins has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offense, Bullins possessed 1.72 grams of methamphetamine, which is almost double the amount required to support his Level 4 felony conviction. *See* I.C. § 35-48-4-1.1(c)(1). Further, while we acknowledge that the offenses were not crimes of violence, Bullins has not presented any evidence to show any restraint or regard on his part. Bullins has not presented compelling evidence portraying the nature of the offense in a positive light. *See Stephenson*, 29 N.E.3d 111, 122.

[30] As for his character, Bullins has a criminal history that includes two prior misdemeanor offenses and four prior felony convictions. In addition, he has had his probation revoked on at least one occasion, and he has had his placement on community corrections revoked once. Further, Bullins was on community corrections when he committed the instant offense, and there was an active warrant for his arrest at the time Marshall Bullock conducted the traffic stop. And, as the court noted, Bullins has a history of drug use for which he has not sought treatment, which reflects poorly on his character. We cannot say that Bullins' sentence is inappropriate in light of the nature of his character.

Conclusion

[31] The State presented sufficient evidence to demonstrate that Bullins constructively possessed the methamphetamine and marijuana. And his sentence is not inappropriate in light of the nature of the offenses and his character. We affirm his convictions and sentence.

[32] Affirmed.

Riley, J., and Vaidik, J., concur.