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IN THE COURT OF APPEALS OF INDIANA

Richard D. Conley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff,

May 24, 2022

Court of Appeals Case No. 21A-CR-2344

Appeal from the Ripley Circuit Court

The Honorable Ryan J. King, Judge

Trial Court Cause No. 69C01-2001-F2-1

Robb, Judge.

Case Summary and Issue

[1] Following a jury trial, Richard Conley was convicted of dealing in methamphetamine, a Level 2 felony. Subsequently, Conley admitted to being an habitual offender. The trial court sentenced Conley to forty-seven years with forty-three years to be executed in the Indiana Department of Correction ("DOC") and four years suspended to probation. Conley now appeals, raising one issue for our review which we restate as whether Conley's sentence is inappropriate in light of the nature of the offense and his character. Concluding his sentence is not inappropriate, we affirm.

Facts and Procedural History

[2] On January 23, 2020, while conducting a separate drug investigation, Officer Jordan Craig of the Indiana State Police was given Conley's name as a source of methamphetamine. At the time, Conley had a warrant out for his arrest in Ohio. With a cooperating source, Officer Craig arranged a drug buy with Conley for methamphetamine.[1] That same day, Officer Craig arrived at the agreed upon location and arrested Conley. Officer Craig then searched Conley and discovered 13.80 grams of methamphetamine on his person as well as 12.31 grams of methamphetamine, marijuana, a digital scale, several baggies, and two syringes in his vehicle.

[3] Conley told Officer Craig that he had come to their agreed upon location with the intention of selling half an ounce of methamphetamine. Conley admitted to selling methamphetamine to the cooperating source approximately fifteen to twenty times. *See* Transcript of Evidence, Volume 2 at 60. Conley also admitted to smoking marijuana as he crossed into Indiana from Ohio for the drug deal. *See* Appendix of Appellant, Volume II at 25.

[4] On January 29, 2020, the State charged Conley with dealing in methamphetamine, a Level 2 felony. The State also alleged Conley was an habitual offender. Following a jury trial, Conley was found guilty of dealing in methamphetamine. Conley then admitted to being an habitual offender. At sentencing, the trial court found Conley's criminal history, history of probation violations, and the specific facts and circumstances of the case to be aggravating circumstances. *See* App. of Appellant, Vol. III at 98. The trial court found no mitigating circumstances. *See id.*

[5] The trial court sentenced Conley to twenty-nine years with four years suspended on his dealing in methamphetamine conviction. The trial court then enhanced Conley's sentence by eighteen years for being an habitual offender for a total sentence of forty-seven years with forty-three years to be served in the DOC and four years suspended to probation. Conley now appeals. Additional facts will be provided as necessary.

Discussion and Decision

[1] The cooperating source had already been in communication with Conley that day to purchase methamphetamine but had yet to set a location.

I. Inappropriate Sentence Standard of Review

[6] Article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B). *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). Rule 7(B) provides, "The 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." Sentencing decisions rest within the discretion of the trial court and, as such, should receive considerable deference. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail 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).

[7] The defendant bears the burden of demonstrating his sentence is inappropriate under the standard, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors in the record in making such a determination, *Reis v. State*, 88 N.E.3d 1099, 1102 (Ind. Ct. App. 2017). Ultimately, "whether we regard a sentence as [in]appropriate 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 factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224. And the principal role of this court in reviewing a defendant's sentence is "not to achieve a perceived 'correct' result in each case[,]" but to attempt to leaven the outliers. *Id.* at 1225. Thus, the question is not whether the defendant's sentence is appropriate or another sentence is more appropriate; rather, the test is whether the sentence is inappropriate. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017).

II. Nature of the Offense

[8] We begin our analysis of the "nature of the offense" prong with the advisory sentence. *Reis*, 88 N.E.3d at 1104. The advisory sentence is the starting point the Indiana legislature has selected as an appropriate sentence for the committed crime. *Childress*, 848 N.E.2d at 1081.

[9] Conley was convicted of dealing in methamphetamine, a Level 2 felony, and was found to be an habitual offender.[2] A Level 2 felony carries a sentencing range of between ten and thirty years imprisonment, with an advisory sentence of seventeen and one-half years. Ind. Code § 35-50-2-4.5. A person found to be an habitual offender convicted of a Level 2 felony shall be sentenced to an additional term of six to twenty years. Ind. Code § 35-50-2-8(i)(1). Here, Conley was sentenced to twenty-nine years with four years suspended for dealing in methamphetamine enhanced by eighteen years for an aggregate of forty-seven years with four years suspended.

[2] Generally, dealing in methamphetamine is a Level 5 felony. Ind. Code § 35-48-4-1.1(a). However, the crime is enhanced to a Level 2 felony if the State proves "the amount of the drug involved is at least ten (10) grams[.]" Ind. Code § 35-48-4-1.1(e)(1).

[10] Conley argues that his sentence is inappropriate given the nature of his offense because it "was a run-of-the-mill drug transaction[.]" Appellant's Brief at 12. The nature of the offense is found in the details and circumstances of the offense and the defendant's participation therein. *Lindhorst v. State*, 90 N.E.3d 695, 703 (Ind. Ct. App. 2017). When reviewing a defendant's sentence that deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*.

[11] Here, Conley crossed state lines to sell methamphetamine with an active warrant out for his arrest. He was in possession of 26.11 grams of methamphetamine, which is more than double the amount required to constitute a Level 2 felony for dealing in methamphetamine.[3] *See* Ind. Code § 35-48-4-1.1(e)(1). Further, he admitted to having previously dealt to the police's cooperating party between fifteen and twenty times. Therefore, given the nature of his offense, Conley's sentence is not inappropriate.

III. Character of the Offender

[12] Conley also argues that his sentence was inappropriate given his character. We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Moyer*, 83 N.E.3d at 143. A defendant's life and conduct are illustrative of his or her character. *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. And the trial court's recognition or nonrecognition of aggravators and mitigators serves as an initial guide in determining whether the sentence imposed was inappropriate. *Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016). The trial court found Conley's criminal history, history of probation violations, and the specific facts and circumstances of the case to be aggravating circumstances. *See* App. of Appellant, Vol. III at 98. The trial court found no mitigating circumstances. *See id.*

[13] A defendant's criminal history is one relevant factor in analyzing his or her character, the significance of which 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). We have held that "[e]ven a minor criminal record reflects poorly on a defendant's character[.]" *Reis*, 88 N.E.3d at 1105.

[14] Conley argues that his sentence is inappropriate because "he has never endured a prison sentence over four (4) years [and] much of his criminal history is related to his own drug abuse[.]" Appellant's Br. at 14. Conley relies on *Kovats v. State*, 982 N.E.2d 409 (Ind. Ct. App. 2013). In *Kovats*, we concluded that the defendant, who had been given a maximum sentence, was not "among the worst offenders" because most of her prior offenses were "related to her obvious addiction to narcotics" and there was "no indication that [she had] ever served a long-term executed sentence." *Id.* at 417.

[15] However, this case is distinguishable from *Kovats.* First, Conley did not receive the maximum sentence. He received three years less than the maximum with four years suspended to

[3] We also note that Conley was found in possession of marijuana and syringes for which he was not charged.

probation. *See Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010) (declining to "constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended").

[16] Second, although Conley has only served at most four years for a conviction, he has a much lengthier criminal history than the defendant in *Kovats* who we determined did "not possess a stellar character." *Kovats*, 982 N.E.2d at 417. Conley has twenty-one prior convictions, including five felonies and sixteen misdemeanors, and has violated probation fourteen times. Conley contends that, like *Kovats*, many of his prior charges are drug related. However, this ignores Conley's significant criminal history that is unrelated to any substance abuse issues, including convictions for invasion of privacy, domestic violence, attempted confinement, driving while suspended, theft, auto theft, and two convictions for battery. *See* App. of Appellant, Vol. III at 83-87.

[17] We conclude that Conley's significant criminal history reflects poor character. Therefore, given Conley's character, his sentence is not inappropriate.

Conclusion

[18] We conclude that Conley's sentence is not inappropriate. Accordingly, we affirm.

[19] Affirmed.

Pyle, J., and Weissmann, J., concur.