

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ricky C. Newman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 15, 2021

Court of Appeals Case No.
20A-CR-1767

Appeal from the Ripley Circuit
Court

The Honorable Jeffrey Sharp,
Special Judge

Trial Court Cause No.
69C01-1903-F2-2

Baker, Senior Judge.

- [1] Ricky C. Newman appeals the sentence he received for his conviction of conspiracy to commit dealing in methamphetamine, a Level 2 felony,¹ arguing it is inappropriate. Finding nothing inappropriate about his twenty-year sentence, we affirm.

Facts and Procedural History

- [2] On March 8, 2019, Indiana State Trooper Jordan Craig initiated a traffic stop of a vehicle driven by sixty-one-year-old Newman and containing two other men. Rather than pulling over immediately, Newman drove for approximately two more minutes until he reached his residence and pulled into his driveway. After being stopped, Newman explained that he continued driving to his residence because he is an habitual traffic violator, and he did not want his vehicle to be towed. In Newman's possession, police discovered a loaded 9 mm firearm and approximately sixty-one grams of methamphetamine. Newman admitted to knowing he was not to possess a firearm due to prior felony convictions but stated he did so due to the danger of conducting drug deals in the city. Newman further informed Trooper Craig that he travels weekly or bi-weekly to a source city to obtain methamphetamine both for personal use and to sell. He further advised the trooper that for two to three months he had been dealing the drug to six to ten people on a weekly basis. Newman consented to a search of

¹ Ind. Code §§ 35-48-4-1.1 (2017), 35-41-5-2 (2014).

his residence, and officers found paraphernalia, more firearms, and 157 syringes.

[3] Based upon this incident, the State charged Newman with conspiracy to commit dealing in methamphetamine, a Level 2 felony; dealing in methamphetamine, a Level 2 felony; conspiracy to commit possession of methamphetamine, a Level 3 felony; carrying a handgun without a license, a Level 5 felony; operating a motor vehicle after forfeiture of license for life, a Level 5 felony; corrupt business influence, a Level 5 felony; conspiracy to commit carrying a handgun without a license, a Level 5 felony; unlawful possession of a syringe, a Level 6 felony; resisting law enforcement, a Level 6 felony; maintaining a common nuisance, a Level 6 felony; and possession of methamphetamine, a Level 3 felony. The State also alleged that Newman is an habitual offender. Based on these charges, Newman faced a possible aggregate penalty of 123½ years, plus an additional twenty-year enhancement if determined to be an habitual offender. *See* Ind. Code §§ 35-50-2-4.5 (2014), -5 (2014), -6 (2014), -7 (2016), -8 (2017).

[4] Newman agreed to plead guilty to conspiracy to commit dealing in methamphetamine, and, in exchange, the State agreed to dismiss all remaining charges. Sentencing was left to the court's discretion with a cap of twenty-five years. The court sentenced Newman to twenty years and entered a thorough and well-reasoned sentencing order in which it found Newman's criminal history to be a significant aggravating circumstance consisting of at least eight misdemeanor and at least eleven felony convictions that include theft, operating

while intoxicated, operating as an habitual traffic violator, operating after lifetime forfeiture of driving privileges, dealing marijuana, possession of marijuana, and possession of methamphetamine. Not surprisingly, Newman has previously been adjudged an habitual offender. The court also noted that Newman has a history of violating probation and found as an aggravator that he was on probation at the time he committed this offense. The final aggravator found by the court is Newman's very high likelihood to reoffend. The court also found three mitigators—Newman's age, his guilty plea, and his mental health and history of substance abuse. Newman does not challenge any of these factors.

Discussion and Decision

[5] Newman contends his sentence is inappropriate. Indiana 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 determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). The defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[6] To assess whether a sentence is inappropriate, we look first to the statutory range established for the class of the offense. Here, Newman was convicted of a Level 2 felony, for which the advisory sentence is seventeen and one-half years,

with a minimum of ten and a maximum of thirty years. Ind. Code § 35-50-2-4.5. The court sentenced Newman to twenty years.

[7] Next, we look to the nature of the offense and the character of the offender. Upon pooling his money with two other men, Newman, who has forfeited his license for life and is prohibited from possessing a firearm, armed himself with a loaded handgun and drove to another city to purchase a large quantity of methamphetamine. “Even a minor criminal history is a poor reflection of a defendant’s character,” *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*; yet, Newman has an extensive criminal history. Moreover, the fact that Newman committed this offense while on probation, is a “substantial consideration” in our assessment of his character. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*.

[8] Notwithstanding all the aggravators as outlined by the trial court, Newman still received a sentence five years below what his plea allowed and only two and one-half years above the advisory. As a result, we decline to find his sentence inappropriate.

[9] The judgment of the trial court is affirmed.

Robb, J., and Tavitas, J., concur.