MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Charles Reed,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 29, 2022

Court of Appeals Case No. 22A-CR-262

Appeal from the Kosciusko Circuit Court

The Honorable Torrey J. Bauer, Judge

Trial Court Cause No. 43C01-2007-F3-527

Brown, Judge.

[1] David Charles Reed appeals his sentence for dealing in methamphetamine as a level 3 felony, possession of a firearm by a serious violent felon as a level 4 felony, possession of a syringe as a level 6 felony, and possession of paraphernalia as a class C misdemeanor. We affirm.

Facts and Procedural History

[2] On July 28, 2020, law enforcement officers conducted a controlled buy of methamphetamine from Reed. The officers equipped a confidential informant (the "CI") with recording devices and provided him with bills to purchase methamphetamine. The CI entered the residence where Reed lived with his mother, purchased methamphetamine from Reed in Reed's bedroom, left the residence, met the officers at a post-buy location, and provided the officers with the remaining bills and a baggie containing a crystal-like powder, which was later determined to weigh 3.62 grams and was analyzed to contain methamphetamine. The officers then obtained a warrant to search Reed's residence, executed the warrant, and found three firearms, ammunition, approximately $1,300 in Reed's wallet which included the bills provided to the CI to purchase the methamphetamine, and drug paraphernalia including pipes, a syringe, and digital scales.

[3] The State charged Reed with: Count I, dealing in methamphetamine as a level 3 felony; Count II, dealing in methamphetamine as a level 3 felony; Count III, possession of a firearm by a serious violent felon as a level 4 felony; Count IV, possession of methamphetamine as a level 5 felony; Count V, possession of a

syringe as a level 6 felony; Count VI, possession of a controlled substance as a class A misdemeanor; Count VII, possession of marijuana as a class B misdemeanor; Count VIII, possession of paraphernalia as a class C misdemeanor; Count IX, dealing in methamphetamine as a level 3 felony; and Count X, possession of methamphetamine as a level 5 felony.

[4] During a bench trial, the CI indicated on cross-examination that he was purchasing a Jeep from Reed, and the court admitted a handwritten note by the CI stating that he was buying a Jeep Grand Cherokee from Reed for $4,100 and that he had given Reed $500. When asked if he had paid any more on the Jeep, the CI answered "[n]ot that I know of." Transcript Volume II at 117. Reed testified that he had undergone three surgeries, seen a pain specialist, and been prescribed medications for pain. He testified that methamphetamine helped with the pain, at some point he started purchasing methamphetamine from the CI, and he did not sell drugs. Reed indicated his understanding was that the CI gave him the money for the use of his Jeep, the CI still owed him for the vehicle, and the CI still had the vehicle. Reed's daughter testified that her understanding was that the CI was Reed's supplier. She indicated that Reed provided her with methamphetamine on several occasions. The court found Reed guilty of the charges alleged under Counts II, III, V, VIII, IX, and X. The State moved to dismiss Counts I, IV, and VII, and the court found Reed not guilty of the charge under Count VI.

[5] Prior to sentencing, Reed submitted a memorandum regarding his physical impairments with attachments for consideration in sentencing. An attached

vocational progress report stated that Reed sustained an injury while weightlifting at the Department of Correction (the "DOC") in March 2014, and underwent surgery. The memorandum stated that, as of January 2015, Reed suffered chronic pain, neurogenic bladder, chronic anxiety, panic disorder with agoraphobia, depression, peripheral neuropathy, and degenerative disc disease at the cervical level; that, as of 2016, he continued to have neck pain, numbness, and tingling; he cannot walk without an assistive device and has fallen as many as seven times a day; and he has bowel and bladder incontinence and occasionally has to catheterize himself.

[6] At sentencing, the trial court found Reed's prior criminal record including multiple previous felony and misdemeanor convictions and his previous violation of probation to be aggravating factors, found his health and the restrictions his health placed on him to be mitigating factors, and found the aggravating factors outweighed the mitigating factors. The court sentenced Reed to thirteen years with five years suspended to probation under Count II, eight years under Count III, two years under Count V, and sixty days under Count VIII. The court found that Counts IX and X merged into Count II. It ordered that the sentences under Counts II, V, and VIII be served concurrently and that the sentence under Count III be served consecutive to his sentence under Count II.

Discussion

[7] Reed asserts that his sentence is inappropriate. Ind. 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 find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[8] Reed argues the CI had a financial incentive to have him arrested and convicted and has profited by retaining the Jeep, there is little reason to think that he was engaged in dealing other than selling to the CI, and there is no reason to believe that he poses a significant threat to his community. He argues that he is disabled and unable to walk without the use of a cane or wheelchair, his injuries were sustained while committed to the DOC, and his conditions are degenerative and likely to worsen with time. He also asserts the events took place in a short time frame and that consecutive sentences are not warranted. He contends that "concurrent sentences resulting in an executed sentence of eight (8) years with five (5) years suspended to probation would be more appropriate in light of the nature of the offenses and the character of Reed." Appellant's Brief at 9.

[9] Ind. Code § 35-50-2-5(b) provides that a person who commits a level 3 felony shall be imprisoned for a fixed term of between three and sixteen years with the advisory sentence being nine years. Ind. Code § 35-50-2-5.5 provides that a person who commits a level 4 felony shall be imprisoned for a fixed term of between two and twelve years with the advisory sentence being six years. Ind. § Code 35-50-2-7 provides that a person who commits a level 6 felony shall be

imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year. Ind. Code § 35-50-3-4 provides that a person who commits a class C misdemeanor shall be imprisoned for a fixed term of not more than sixty days.

[10] Our review of the nature of the offenses reveals that Reed, a serious violent felon, sold a baggie of 3.62 grams of a crystal-like substance containing methamphetamine to the CI, and law enforcement found three firearms, ammunition, pipes, a syringe, and digital scales in the residence.

[11] Our review of the character of the offender reveals that, according to the presentence investigation report ("PSI"), Reed has a substantial prior legal history with multiple felony and misdemeanor convictions, has been to the DOC, and has had an opportunity for probation. The PSI indicates that Reed had prior convictions for operating vehicle with a blood alcohol content of .10% or more as a class C misdemeanor in 1999; driving while suspended as a class A misdemeanor in 1999; false informing as a class B misdemeanor and possession of marijuana as a class A misdemeanor in 2000; forgery as a class C felony and theft as a class D felony in 2001; theft as a misdemeanor, driving while suspended as a class A misdemeanor, receiving stolen property as a class D felony, visiting a common nuisance as a class B misdemeanor, possession of marijuana as a class A felony, theft as a class D felony, and driving while suspended as a class A misdemeanor in 2002; two counts of neglect of a

dependent resulting in serious bodily injury as class B felonies in 2004[1]; dealing in methamphetamine as a class B felony in 2010; and false informing as a class B misdemeanor in 2018. The PSI indicates that charges were pending against Reed under three cause numbers which include charges of dealing in methamphetamine, possession of methamphetamine, possession of marijuana, possession of a controlled substance, and possession of paraphernalia. The PSI also indicates Reed's probation was revoked under three cause numbers.

[12] With respect to his physical health, the PSI states that Reed reported that he suffers from spinal stenosis and neuropathy, he has had three spinal surgeries, he cannot walk without a cane or wheelchair, and he needs additional surgeries as he is numb from his neck down and has muscle spasms. With respect to his substance abuse, the PSI states that, "[i]n a previous PSI, the subject stated that he first used marijuana and alcohol at the age of 12, and cocaine and crank at the age of 18," "[h]e indicated that he became addicted to methamphetamine and cocaine after the loss of his children," and "[h]e does indicate that his use of drugs and alcohol are a definite problem." Appellant's Appendix Volume III at 11. Reed testified at trial regarding his health and submitted a memorandum with attachments outlining his medical issues and physical restrictions. Reed provided methamphetamine to his daughter on several occasions. The PSI

[1] The PSI indicates that the date of the offenses was in March 1998, Reed was charged with two counts of murder, he pled guilty to two counts of neglect of a dependent as class B felonies, the date of sentencing was in March 2004, and Reed was sentenced to twenty years with five years suspended on each count.

indicates that Reed's overall risk assessment score using the Indiana risk assessment system tool places him in the high risk to reoffend category.

[13] After due consideration, we conclude that Reed has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.[2]

[14] For the foregoing reasons, we affirm Reed's sentence.

[15] Affirmed.

Mathias, J., and Molter, J., concur.

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[2] To the extent Reed argues the court abused its discretion in sentencing him or ordering that his sentence under Counts III be served consecutive to his sentence under Count II, we need not address this issue because we find that his sentence is not inappropriate. *See Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant's guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh'g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate"), *trans. denied*), *trans. denied*. Even if we were to address whether the court abused its discretion in sentencing Reed, we would not find Reed's argument to be persuasive in light of the record, his criminal history, and the lack of a cogent argument citing relevant authority.