

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nathine Dyer,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 5, 2023
Court of Appeals Case No.
23A-CR-199

Appeal from the
Franklin Circuit Court

The Honorable
J. Steven Cox, Judge

Trial Court Cause No.
24C01-2104-F2-235

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Nathine Dyer (“Dyer”) pleaded guilty to possession of methamphetamine¹ as a Level 4 felony and theft² as a Level 6 felony. The trial court sentenced him to an aggregate sentence of eleven years with three years suspended to probation. He appeals and argues that his sentence is inappropriate in light of the nature of the offenses and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On March 29, 2021, deputies with the Franklin County Sheriff’s Department received a report of a possible theft at Brackney, Inc. (“Brackney”) in Franklin County, Indiana. The deputies learned that four company vehicles and a trailer had been taken without permission by unknown suspects. After recovering the four vehicles at different locations throughout Franklin County, the Sheriff’s Department was contacted by an employee of Brackney who had seen the stolen trailer being pulled on Sleepy Hollow Road by a Chevy Avalanche, which was later determined to belong to Dyer. The deputies went to the location on Sleepy Hollow Road and discovered the stolen trailer.

[4] The Dyer residence is located near to where the stolen trailer was found, and the deputies observed a Chevy Avalanche parked outside of the residence. When the deputies spoke to the homeowner, Dyer’s father, he told them that

¹ Ind. Code § 35-48-4-6.1(c).

² I.C. § 35-43-4-2(a)(1)(A).

Dyer and Brian Lemmel (“Lemmel”) had brought the trailer to the residence, and Dyer’s father told them to leave because he suspected that the trailer was stolen.

[5] At that time, Dyer and Lemmel were still present at the Dyer residence, and the deputies arrested them. During a pat-down search of Dyer, the deputies discovered cash in the amount of \$2,139 in his pants pocket. Lemmel admitted to stealing the four vehicles and the trailer from Brackney. When Dyer was interviewed, he admitted driving the Chevy Avalanche with the attached trailer while Lemmel was a passenger in the truck. Dyer at first denied knowing that the trailer was stolen but later claimed that Lemmel had told him they needed to “get rid of it,” so he helped Lemmel unhook the trailer and left it at the Sleepy Hollow Road location. Appellant’s App. Vol. 2 p. 21.

[6] The deputies applied for and received a search warrant for Dyer’s Chevy Avalanche. When they executed the search warrant, the deputies found several syringes, approximately 28.5 grams of methamphetamine, and 2.85 grams of an unknown substance believed to be heroin in Dyer’s vehicle. Dyer admitted that the methamphetamine belonged to him. On April 1, 2021, the State charged Dyer with Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 6 felony possession of heroin, Level 6 felony possession of a syringe, and Level 6 felony theft.

[7] On July 28, 2021, while Dyer was in jail after his arrest on March 29, Dyer’s bond was modified, and he was released on his own recognizance on the terms

that he was ordered to enroll at the Salvation Army Adult Rehabilitation Center and to return to the Franklin County Security Center upon completion of the program. Dyer successfully completed the program in February 2022, and returned to incarceration. On July 1, 2022, while incarcerated in the Franklin County Security Center, Dyer was charged with trafficking with an inmate in a controlled substance after he allegedly conspired to bring Suboxone into the facility in a Bible.

[8] On July 20, 2022, a plea agreement was filed pursuant to which Dyer agreed to plead guilty to possession of methamphetamine as a Level 4 felony, possession of a syringe as a Level 6 felony, and theft as a Level 6 felony, and the State agreed to an aggregate sentence of twelve years with four years suspended to probation. The trial court rejected this plea agreement because there was no filed plea agreement accompanying the motion for a guilty plea hearing. Thereafter, Dyer pleaded guilty in an open plea to Level 4 felony possession of methamphetamine and Level 6 felony theft, and the State agreed to dismiss the remaining charges.

[9] On August 24, 2022, a sentencing hearing was held. At the conclusion of the hearing, the trial court found several aggravating factors: Dyer's criminal history, which included eighteen misdemeanor and two felony convictions; his high risk to reoffend; and the fact that he was charged with trafficking with an inmate in a controlled substance while he was incarcerated. The trial court also found as mitigating factors that Dyer took ownership of his behavior, showed remorse, and engaged in remedial actions in an effort to change his behavior.

The trial court sentenced Dyer to eleven years for his Level 4 felony possession of methamphetamine conviction and two years for his Level 6 felony theft conviction with the sentences to run concurrently and with three years suspended to probation. The trial court left the option for sentence modification open upon Dyer enrolling in and completing the Recovery While Incarcerated Program. Dyer now appeals.

Discussion and Decision

- [10] Dyer argues that his eleven-year aggregate sentence is inappropriate. The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).
- [11] Our review under Appellate Rule 7(B) focuses on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).

[12] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Dyer was convicted of one Level 4 felony and one Level 6 felony. A Level 4 felony carries a possible sentence of between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. A Level 6 felony carries a possible sentence of between six months and two and one-half years with the advisory sentence being one year. I.C. § 35-50-2-7(b). The trial court sentenced Dyer to eleven years for Level 4 felony possession of methamphetamine and two years for Level 6 felony theft and ordered the sentences to be served concurrently with three years suspended to probation for an aggregate sentence of eight years executed. Dyer received the benefit of both a suspended sentence and eligibility to participate in the Recovery While Incarcerated Program.

[13] As to the nature of his offenses, Dyer contends that his sentence is inappropriate because his convictions were for non-violent offenses, his possession of methamphetamine conviction was the result of his long-standing drug addiction, and he was not convicted of distributing the methamphetamine. The circumstances of Dyer's offenses revealed that, when the deputies were investigating the theft of several vehicles and a trailer from a local business, they

discovered the trailer near Dyer's residence, and a Chevy Avalanche belonging to Dyer had been observed pulling the trailer. Dyer admitted to transporting the trailer after Lemmel asked him to help him "get rid of it," and he helped Lemmel unhook the trailer and left it at the Sleepy Hollow Road location. Appellant's App. Vol. 2 p. 21. When Dyer was arrested, the deputies found \$2,139 in cash in his pants pocket. After executing a search warrant for Dyer's Chevy Avalanche, the deputies found a large amount of methamphetamine under the seat. Although Dyer told the deputies that this methamphetamine was for personal use, he was found to be in possession of over \$2,000 in cash in addition to the large amount of methamphetamine that was initially suspected to be enough to justify a dealing charge based on the amount alone. After further weighing, it was found to be under twenty-eight grams. Therefore, the nature of Dyer's offenses actually exceeded what was necessary to prove his conviction. Further, despite Dyer's assertion that the nature of the offenses reveal that his crimes were the result of his addiction, he was alleged to have committed another drug-related offense while incarcerated pending trial and after he had completed the Salvation Army Rehabilitation Program. Dyer's actions do not portray his offenses in a positive light, such as accompanied by restraint, regard, and lack of brutality, and he has not shown that his sentence is inappropriate based on the nature of the offenses.

[14] As to his character, Dyer argues that, despite his significant criminal history, his sentence is inappropriate because his convictions are primarily drug related, he had an abusive childhood, and he took responsibility for his actions by pleading

guilty. The character of the offender is found in what we learn from his life and conduct. *Merriweather v. State*, 151 N.E.3d 1281, 1286 (Ind. Ct. App. 2020). “A defendant’s criminal history is one relevant factor in analyzing character, the significance of which varies based on the ‘gravity, nature, and number of prior offenses in relation to the current offense.’” *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant’s character for the purposes of sentencing. *Id.*

[15] The record reflects that Dyer, who was twenty-seven at the time of sentencing, has a lengthy criminal history and extensive contacts with law enforcement in more than one state beginning when he was juvenile and continuing his entire adult life. He had several juvenile adjudications, and his adult criminal history began in 2013 when he was eighteen years old and was convicted of possession of marijuana. In 2015, he was convicted of disorderly conduct, an underage alcohol offense, and a drug paraphernalia offense, and in 2016, he was again convicted of disorderly conduct. Later in 2016, Dyer was convicted of possession of drug paraphernalia and driving under suspension, and in 2017, he was convicted twice of driving under license forfeiture and once for driving under suspension. In 2018, Dyer was convicted of petty theft and aggravated trespassing, and in 2019, he was convicted of unlawful possession of a syringe, visiting a common nuisance, possession of methamphetamine, and possession of a controlled substance. Less than a year after being sentenced for possession of methamphetamine, possession of a controlled substance, and possession of a

syringe, Dyer was charged with the present offenses. In total, prior to the present offenses, Dyer had eighteen misdemeanor convictions and two felony convictions. Further, while he was incarcerated awaiting trial for the current charges, Dyer was charged with trafficking with an inmate in a controlled substance. Dyer's repeated contacts with the criminal justice system, including committing a new offense while awaiting trial establish that he has not been deterred from committing new offenses and reflect poorly on his character.

[16] Regarding Dyer's contention that his character renders his sentence inappropriate because he took responsibility for his actions and has begun to address his addiction issues, this claim is belied by the fact that two months prior to sentencing, he was alleged to have conspired with another inmate to traffic a controlled substance into the detention center in a Bible. This alleged offense occurred after he had completed a program at the Salvation Army Adult Rehabilitation Center. Additionally, although Dyer pleaded guilty to Level 4 felony possession of methamphetamine, the guilty plea was likely pragmatic since he had admitted to the deputies that the methamphetamine found in his vehicle belonged to him when he was arrested. Further, although Dyer had a difficult childhood, this type of evidence generally warrants little, if any, mitigating weight. *Lewis v. State*, 116 N.E.3d 1144, 1155 (Ind. Ct. App. 2018), *trans. denied*. Consequently, Dyer has failed to identify "substantial virtuous traits or persistent examples of good character" to support reducing his sentence. *Stephenson*, 29 N.E.3d at 122. We do not find that his sentence is inappropriate in light of his character.

[17] Based on the facts in the record, neither the nature of Dyer's crimes nor his character merit a lesser sentence, and he has not shown that his eleven-year aggregate sentence is inappropriate.

[18] Affirmed.

Altice, C.J., and May, J., concur.