

# MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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Amber N. Egan,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 15, 2023

Court of Appeals Case No.  
23A-CR-891

Appeal from the Henry Circuit  
Court

The Honorable Kit C. Dean Crane,  
Judge

Trial Court Cause No.  
33C02-2205-F5-33

**Memorandum Decision by Judge Mathias**  
Judges Vaidik and Pyle concur.

**Mathias, Judge.**

[1] Amber Egan pleaded guilty in Henry Circuit Court to Level 5 felony dealing in a controlled substance. Egan appeals her three-year sentence, with one-year suspended to probation, and argues that it is inappropriate in light of the nature of the offense and her character.

[2] We affirm.

### **Facts and Procedural History**

[3] In April and May 2021, Egan delivered between one and five grams of buprenorphine, a schedule III controlled substance, to a confidential informant in Henry County, Indiana. On May 13, 2022, the State charged Egan with three counts: two counts of Level 5 felony and one count of Level 6 felony dealing in a schedule III controlled substance.

[4] Egan agreed to plead guilty to one count of Level 5 dealing in a controlled substance and the State agreed to dismiss the remaining two counts. The terms of the plea agreement capped Egan's sentence at three years. The trial court accepted Egan's guilty plea and her sentencing hearing was held on October 20, 2022.

[5] During the sentencing hearing, Egan testified that she was medically discharged from the Navy after she injured her leg. After her discharge, Egan was diagnosed with PTSD, depression, and anxiety. She also stated that she became addicted to pain pills. Egan has guardianship over her niece, but the child lives with Egan's mother. Egan planned to live with her mother while seeking treatment for substance abuse. The State presented evidence of Egan's prior

criminal history in North Carolina, which consisted of charges for several controlled substance offenses and possession of a dangerous weapon. She was ultimately convicted of disorderly conduct and carrying a concealed weapon. She was placed on probation and her probation was later revoked. Counsel asked Egan if she was a drug addict when she was arrested for this offense, and she responded, “At the time, not entirely.” Tr. p. 15.

[6] The trial court found Egan’s criminal history to be an aggravating circumstance. The court was also troubled by Egan’s failure to fully admit that she suffers from a drug addiction. *Id.* at 18. The court acknowledged Egan’s guilty plea but declined to consider it as a mitigating circumstance because she received a significant benefit by pleading guilty. The court found Egan’s military service to be “somewhat” mitigating. *Id.* After weighing the aggravating and mitigating circumstances, the court ordered Egan to serve three years, with one year suspended to formal probation.

[7] Egan now appeals.

## **Discussion and Decision**

[8] Egan argues that her three-year sentence is inappropriate in light of the nature of the offense and her character. Pursuant to [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “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 v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[9] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing “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). The defendant bears the burden of persuading us that her sentence is inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1045 (Ind. Ct. App. 2016).

[10] The sentencing range for a Level 5 felony is one to six years, with an advisory sentence of three years. *See Ind. Code 35-50-2-6(b)*. Egan and the State agreed that her sentence would be capped at the advisory three-year sentence. The trial court ordered Egan to serve three years, but suspended one year of that sentence to formal probation.

[11] Egan argues that there is nothing particularly egregious about her offense. We agree. Egan sold less than five grams of an opioid to a confidential informant. But we also observe that Egan agreed to a three-year cap on her sentence for

committing Level 5 felony dealing in a controlled substance. Considering the nature of the offense, it was not inappropriate for the trial court to impose the advisory sentence.

[12] Egan argues that her sentence is inappropriate in light of her character because she is a military veteran who became addicted to opioids and her offense was related to her addiction. Appellant's Br. at 8. Egan notes that she would like to continue her substance abuse treatment and argues that she is at low risk to reoffend.

[13] The trial court considered Egan's testimony and military service but weighed it against her criminal history in North Carolina and her refusal to fully acknowledge that she is a drug addict. We are sympathetic to Egan's struggles with her mental health after her discharge from the military. However, Egan did not present compelling evidence of substantial virtuous traits or persistent examples of good character.

[14] Egan has not met her burden to establish that her three-year sentence, with one year suspended to probation, is inappropriate in light of the nature of the offense and her character.

[15] Affirmed.

Vaidik, J., and Pyle, J., concur.