MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT

Michael Frischkorn
Frischkorn Law LLC
Fortville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Joseph Craig Peerson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 5, 2022

Court of Appeals Case No. 22A-CR-26

Appeal from the Hamilton Superior Court

The Honorable William J. Hughes, Judge

Trial Court Cause No. 29D03-2103-F2-1258

Tavitas, Judge.

Case Summary

[1] Joseph Craig Peerson pleaded guilty to one count of dealing in methamphetamine, a Level 2 felony. The trial court sentenced Peerson to a term of twenty-five years, with twelve years executed and thirteen years suspended to probation. Peerson now appeals and argues that his sentence is inappropriate in light of the nature of the offense and his character. We disagree. Accordingly, we affirm.

Issue

[2] Peerson raises one issue, which we restate as whether Peerson's sentence was inappropriate in light of the nature of the offense and his character.

Facts[1]

[3] On March 1, 2021, law enforcement received a complaint that Peerson was smoking drugs in his garage. Officers responded and encountered Peerson leaving his garage. Officers smelled marijuana on Peerson. Officers conducted a pat down search and found marijuana along with $3,391.00 in cash. A search warrant was issued for Peerson's apartment, garage, and his fiancé's vehicle, which Peerson drove frequently. The search resulted in the discovery of drug

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[1] The fact sections of the briefing before this Court rely heavily on the probable cause affidavit attached to the pre-sentence investigation report ("PSI"). Peerson agreed that the facts in the PSI were true and that he had the opportunity to review and raise issues prior to the sentencing.

paraphernalia, various drugs, and 26.5 grams of a substance that tested positive for methamphetamine.

[4] On March 2, 2021, the State charged Peerson as follows: Count I, dealing methamphetamine, a Level 2 felony; Count II, dealing in cocaine, a Level 2 felony; Count III, dealing in a narcotic drug, a Level 4 felony; Count IV, possession of methamphetamine, a Level 3 felony; Count V, possession of cocaine, a Level 3 felony; Count VI, possession of a narcotic drug, a Level 6 felony; Count VII, unlawful possession of a syringe, a Level 6 felony; Count VIII, resisting law enforcement, a Class A misdemeanor; Count IX, possession of marijuana, a Class B misdemeanor; Count X, dealing in a narcotic drug, a Level 3 felony; Count XI, possession of a narcotic drug, a Level 5 felony; and Count XII, possession of marijuana, a Class A misdemeanor.

[5] Peerson entered into a plea agreement with the State and agreed to plead guilty to Count I, dealing methamphetamine, a Level 2 felony. The State agreed to dismiss the remaining charges and limit Peerson's sentence to no more than twenty-five years with no more than twelve years executed in the Department of Correction ("DOC").

[6] At the sentencing hearing, the trial court found aggravating factors that included: (1) Peerson's criminal history; (2) Peerson possessed drugs far in excess of that used for personal use; and (3) Peerson's drug dealing was related to the death and injury of others related to drug sales—four persons overdosed and one person died after purchasing drugs from Peerson. The trial court gave

minimal weight to the hardship that imprisonment would cause Peerson's thirteen-year-old child because Peerson was dealing drugs out of the home in which his child lived.[2] The trial court sentenced Peerson to a term of twenty-five years, with twelve years executed and thirteen years suspended to probation. The sentence was ordered to run consecutively to Peerson's sentence in a different cause.

Analysis

[7] Peerson argues the sentence imposed is inappropriate in light of the nature of the offense and his character. The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[3] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v.*

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[2] Peerson claimed to have two children—a twenty-one-year-old child to whom Peerson owes a child support arrearage and a thirteen-year-old child who lived with Peerson when he was charged with dealing drugs.

[3] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

State, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[8] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate '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.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[9] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Peerson was convicted of dealing methamphetamine, a Level 2 felony. Indiana Code Section 35-50-2-4.5 provides that an individual "who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and

thirty (30) years, with the advisory sentence being seventeen and one-half (17 ½) years." Peerson was sentenced to the maximum allowed by the plea agreement: twenty-five years, with twelve years executed in the DOC and thirteen years suspended to probation.

[10] Peerson argues that "the facts underlying the offense were not particularly egregious." Appellate Br. p. 8. Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. While out on bond for charges related to dealing drugs, forty-year-old Peerson was found in possession of a large amount of drugs, including 26.5 grams of methamphetamine.[4] Moreover, Peerson's drug dealing has been implicated in multiple overdoses and an overdose death.

[11] Peerson argues that his character warrants a revision of his sentence because he pleaded guilty, thereby lessening the burden on our courts. Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-49 (Ind. Ct. App. 2007). It is apparent that Peerson's decision to accept the plea agreement was a pragmatic decision.

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[4] At the time of this offense, Peerson was out on bond for a separate, additional case, which occurred in 2020 (Cause Number 29D03-2008-F2-5190). In that case, Peerson was charged with similar offenses: (1) dealing methamphetamine more than 10 grams, Level 2 Felony; (2) dealing in narcotic drugs, level 2 felony; (3) various other lesser offenses involving possession of drugs; and (4) being an habitual offender.

"'[A] guilty plea may not be significantly mitigating when it does not demonstrate the defendant's acceptance of responsibility or when the defendant receives a substantial benefit in return for the plea.'" *McCoy v. State*, 96 N.E.3d 95, 99 (Ind. Ct. App. 2018) (quoting *Anglemyer v. State*, 875 N.E.2d 218, 220-21 Ind. 2007)). Here, multiple charges were dismissed as a result of Peerson's plea agreement.

[12] We also note that Peerson's extensive criminal history reflects poorly on his character. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[13] Peerson's juvenile history includes adjudications for possession of marijuana, a Class A misdemeanor (1998), and theft, a Class D felony (1999). Peerson's criminal history includes convictions for: driving while suspended, a Class A misdemeanor (2002, 2006, 2008, 2008, 2008, 2016, 2020); possession of a controlled substance, a Class D felony (2002 with a revocation of probation); burglary, a Class B felony (2003 with two violations of probation); dealing in cocaine or a narcotic drug, a Class B felony (2012 with multiple violations of probation); possession of paraphernalia, a Class A misdemeanor (2012); visiting

a common nuisance, a Class B misdemeanor (2017); and leaving the scene of an accident, a Class B misdemeanor (2020). In addition, at the time of the instant offense, Peerson had pending charges related to drug dealing in 2020, and Peerson pleaded guilty to dealing in methamphetamine, a Level 2 felony, in that cause.

[14] Peerson argues that his sentence would cause an undue hardship to his children. We find, however, that Peerson does not offer evidence or a compelling argument detailing a special circumstance showing the undue hardship. In fact, the trial court found that Peerson was dealing drugs from his home where he lived with his thirteen-year-old child, which demonstrates a lack of parental responsibility. Given the nature of Peerson's offense and his character, we cannot say the sentence imposed by the trial court is inappropriate.

Conclusion

[15] The trial court's sentence in this case is not inappropriate. Accordingly, we affirm.

[16] Affirmed.

Riley, J., and May, J., concur.