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IN THE
COURT OF APPEALS OF INDIANA

Roy L. Skeens,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 5, 2022

Court of Appeals Case No. 21A-CR-2889

Appeal from the Wabash Circuit Court

The Honorable Robert R. McCallen III, Judge

Trial Court Cause No. 85C01-2105-F5-479

Mathias, Judge.

[1] Roy L. Skeens appeals his conviction for Level 6 felony possession of methamphetamine and his ensuing sentence.[1] Skeens raises two issues for our review, which we restate as the following three issues:

I. Whether the State presented sufficient evidence to support his conviction.

II. Whether the trial court abused its discretion when it sentenced Skeens to eight-and-one-half years in the Department of Correction.

III. Whether Skeens's sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts and Procedural History[2]

[3] On May 9, 2021, Wabash County Sheriff's Department Officer Devin Bechtold observed a black Chevy Cobalt traveling westbound on State Road 114. Officer Bechtold pulled his unmarked cruiser behind the Cobalt and observed that the license plate was expired. Officer Bechtold ran the license plate number, which came back as registered to a 2001 tan Ford vehicle.

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[1] Skeens was also found to be a habitual offender. He does not challenge that finding on appeal.

[2] We held oral argument at Trine University in Angola, Indiana. We thank our hosts and guests for their courtesy, and we commend counsel for the quality of their advocacy.

[4] Officer Bechtold initiated a traffic stop. As he approached the vehicle, he observed a male driver and female passenger, both of whom "were . . . moving around." Tr. Vol. 2, p. 160. As Officer Bechtold got closer, he observed that "the male driver had his right hand inside his pants messing around with something." *Id.* When the officer knocked on the window, the driver, Skeens, was "startled" and "removed his hands." *Id.*

[5] Dispatch informed Officer Bechtold that Skeens had a suspended license, and the officer opened the driver's door and asked Skeens to step out of the vehicle. At that point, Skeens "start[ed] reaching again near the right side of his body" and "reach[ed] out and either shove[d] the door or kind of pull[ed] it to where the door closes . . . ." *Id.* at 164. Officer Bechtold opened the door again and instructed Skeens to put his hands on the steering wheel. The officer then radioed for other units to assist, including a K9 unit.

[6] Another officer arrived shortly thereafter, and Officer Bechtold had Skeens step out of the vehicle. As Skeens was standing up, Officer Bechtold observed "a small container, a green and white container that was sitting on the driver's seat where" Skeens had been sitting. *Id.* at 168. Officer Bechtold then escorted Skeens back to his cruiser, and the K9 unit arrived on the scene. The K9 unit gave a positive alert for narcotics in the Cobalt. An officer then removed the container from the driver's seat and opened it. From inside that container, officers seized .52 grams of methamphetamine out of a plastic baggie and another .63 grams of methamphetamine that had been inside a rolled-up dollar bill.

[7] The State charged Skeens in relevant part with Level 6 felony possession of methamphetamine. Officer Bechtold testified at Skeens's ensuing jury trial, as did Jerry Hetrick, a forensic scientist with the Indiana State Police Laboratory. The jury found Skeens guilty of the possession charge and, in a bifurcated proceeding, also found him to be a habitual offender.

[8] Following a sentencing hearing, the trial court found the following aggravating circumstances: "[s]ignificant criminal history; probation has not been successful in the past; out on bond from Lake County, Indiana[,] when he committed this offense . . . ; out on bond from another case in this county." Appellant's App. Vol. 2, p. 202. The court found no mitigating circumstances. The court then ordered Skeens to serve two-and-one-half years in the Department of Correction for the Level 6 felony, enhanced by an additional term of six years for being a habitual offender. This appeal ensued.

Discussion and Decision

I. Sufficiency of the Evidence

[9] On appeal, Skeens first asserts that the State failed to present sufficient evidence to support his conviction for Level 6 felony possession of methamphetamine. For sufficiency-of-the-evidence challenges, we consider only probative evidence and reasonable inferences therefrom that support the judgment of the trier of fact. *Hall v. State*, 177 N.E.3d 1183, 1191 (Ind. 2021). We will neither reweigh evidence nor judge witness credibility. *Id.* We will affirm the conviction unless

no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.*

[10] To show that Skeens committed Level 6 felony possession of methamphetamine, the State had to prove beyond a reasonable doubt that Skeens "knowingly or intentionally possesse[d] methamphetamine . . . ." Ind. Code § 35-48-4-6.1(a) (2020). "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." I.C. § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." I.C. § 35-41-2-2(a).

[11] Skeens asserts that the State failed to show that he knowingly or intentionally possessed the methamphetamine found inside the container in the driver's seat. He cites no case law in his sufficiency argument on appeal. Rather, he argues that the State failed to show that he "knowingly" possessed the methamphetamine because "the car in question contained lots of trash and debris," and "[i]t is perfectly reasonable for a driver to sit on a small piece of trash if the vehicle itself is cluttered." Appellant's Br. at 18. Skeens further argues that "the mere placement of the tin . . . would not cause a reasonable person to suspect" that it contained contraband, and "there was no indicia on the tin, or in the tin, that . . . the tin was holding illegal drugs; that Skeens owned the tin; or that Skeens'[s] personal identifying information" associated him with the tin. *Id.*

[12] Similarly, Skeens asserts that the evidence does not show that he intentionally possessed the methamphetamine, arguing that the tin and its contents "lack any indicia that he knew of those contents [or] had any intention of possessing the same." *Id.* at 19. Skeens adds that "[t]he only connection linking Skeens to the tin is the location," and "the vehicle wasn't [his] vehicle." *Id.*

[13] We cannot agree. The evidence shows that Skeens both actually possessed the methamphetamine and also constructively possessed it. "A person actually possesses contraband when [he] has direct physical control over it." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). In *Grubbs v. State*, we held that a defendant had actual possession over contraband inside of a purse when she was observed inside a vehicle with the purse on her lap. 132 N.E.3d 451, 453 (Ind. Ct. App. 2019). Similarly, Skeens had direct physical control over the methamphetamine, and thus actual possession of it, because he was sitting on the tin container when Officer Bechtold removed him from the vehicle.

[14] Further, even if the State had not shown actual possession, it may nonetheless prevail on proof of constructive possession. *See Gray*, 957 N.E.2d at 174. "A person constructively possesses contraband when the person has (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it." *Id.* There is no question that, by sitting on the container, Skeens had the capability to maintain dominion and control over it and its contents.

[15] Where, as here, the defendant is in nonexclusive possession of the location in which the contraband is found, i.e., the vehicle, the inference of intent for constructive possession must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence. *E.g.*, *Johnson v. State*, 59 N.E.3d 1071, 1074 (Ind. Ct. App. 2016). Those additional circumstances include:

> (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.

Id. (quotations omitted). "[W]e have also recognized that the nature of the place in which the contraband is found can be an additional circumstance that demonstrates the defendant's knowledge of the contraband." *Id.* (citing *Carnes v. State*, 480 N.E.2d 581, 587 (Ind. Ct. App. 1985), *trans. denied*). And the enumerated circumstances are nonexhaustive; "ultimately, our question is whether a reasonable fact-finder could conclude from the evidence that the defendant knew of the nature and presence of the contraband." *Id.* at 1074.

[16] For example, in *Canfield v. State*, 128 N.E.3d 563, 573 (Ind. Ct. App. 2019), *trans. denied*, the State presented sufficient evidence of constructive possession based on the following facts:

> Canfield acknowledges that the anonymous call included a report regarding a male in a Taco Bell uniform who appeared to pull

> something from his waist, a description of the male, and a report that the item may have been illegal substances. Major Bridges observed Canfield stand off to the left side of the food preparation area and "appeared to be digging around his waistband area." He heard something fall at one point which he later determined was a pizza box, and Canfield "kind of squatted down and then came back up shortly after" and "it was like he picked up something or had moved something." Major Bridges went back where Canfield was seen digging in his waistband, looked down under a wire rack, and saw a bag containing several smaller bags with white crystal powdery substance inside about six to seven inches under the shelving, which later tested positive for methamphetamine and weighed 4.23 grams. Further, after being Mirandized, Canfield requested to speak to a drug detective or somebody that he could work with "advising that the items found had came from the plug or the source, that he can get some big players . . . ." Major Bridges also testified that at some point in time he asked Canfield how much he thought he had on him at the time, and he said three grams or so. The court admitted evidence that Canfield had a prior conviction for dealing in methamphetamine as a class B felony.

Id. (record citations omitted).

[17] Similarly, the following circumstances permitted the fact-finder to draw a reasonable inference that Skeens knew of the nature and presence of the methamphetamine: his furtive gestures when Officer Bechtold approached the vehicle; having his hand in his pants and reaching around and fidgeting; and his close proximity to the contraband, namely, sitting on it.

[18] Thus, the State presented sufficient evidence to support Skeens's conviction for Level 6 felony possession of methamphetamine.

Issue Two: Sentencing Discretion

[1] We next consider Skeens's argument that the trial court abused its discretion when it sentenced him.[3] As our Supreme Court has made clear:

> We have long held that a trial judge's sentencing decisions are reviewed under an abuse of discretion standard. An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.

McCain v. State, 148 N.E.3d 977, 981 (Ind. 2020) (cleaned up). Further:

> One way in which a trial court may abuse its discretion is failing to enter a sentencing statement at all. Other examples include entering a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law.

Anglemyer v. State, 868 N.E.2d 482, 490-91 (Ind.), *clarified on other grounds on reh'g*, 875 N.E.2d 218 (2017).

[2] Skeens asserts that the trial court abused its discretion when it did not find any one of three purported mitigating circumstances. However, the first of these two

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[3] Skeens has embedded this argument within his argument for a revision of his sentence pursuant to Indiana Appellate Rule 7(B). As we have noted, "inappropriate sentence and abuse of discretion claims are to be analyzed separately." *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008).

purported circumstances—that the crime "neither caused nor threatened serious harm" and Skeens's alleged "life-long history of alcohol and substance abuse problems," Appellant's Br. at 23—were not offered by Skeens as mitigating circumstances before the trial court. *See* Tr. Vol. 3, pp. 103-04. "If the defendant does not advance a factor to be mitigating at sentencing, this Court will presume that the factor is not significant[,] and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal." *Hollin v. State*, 877 N.E.2d 462, 465 (Ind. 2007) (quotation marks omitted). Thus, those two purported mitigating circumstances are not properly before us.

[3] As for Skeens's third purported mitigating circumstance, his entire argument is as follows: "Skeens raised an additional mitigating circumstance, which was Skeens'[s] mother being on life support and in the hospital (hardship on family). The trial [court] expressed its sympathy for Skeens'[s] mother but did not consider this as a mitigating factor." Appellant's Br. at 24 (citations to the record omitted). This argument does not explain how the purported hardship was significant or why the court was required to give it any weight. Therefore, Skeens has not met his burden of showing that the trial court abused its discretion with respect to this purported mitigating circumstance.

Issue Three: Appellate Rule 7(B)

[4] Last, Skeens asserts that his eight-and-one-half year aggregate sentence is inappropriate under Indiana Appellate Rule 7(B). Under this Rule, we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The

defendant bears the burden of persuading this Court that the sentence was inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). This determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done others, and myriad of 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).

[5] 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, we will not modify the court's sentence unless the defendant produces compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[6] Skeens was convicted of a Level 6 felony. The sentencing range for a Level 6 felony is between six months and two-and-one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7. He was also found to be a habitual offender, which required an additional term of two to six years. I.C. § 35-50-2-8(i). The trial court found as aggravating circumstances Skeens's significant criminal history, his unsuccessful history of probation, and that he was on bond

on charges pending in both Lake County and in Wabash County when he committed the instant offense. The court found no mitigating circumstances. The court then sentenced Skeens to two-and-one-half years in the Department of Correction for the Level 6 felony enhanced by an additional term of six years for being a habitual offender, for an aggregate term of eight-and-one-half years.

[7] Skeens asserts that his sentence is inappropriate in light of the nature of the offense because his offense was "not very egregious" and was "a 'victimless' crime." Appellant's Br. at 21-22. He also asserts that the sentence is inappropriate in light of the nature of the offense because "the amount of controlled substance involved" was "a miniscule amount and . . . much, much less than the minimum of five . . . grams to raise the offense to a Level 5 felony." *Id* at 22. And he asserts that his sentence is inappropriate in light of his character because he is far from "being the 'worst of the worst,'" and his "moderate criminal history" of eleven prior felony convictions, seven prior misdemeanor convictions, four probation violations, two community corrections violations, and two pending cases are mostly "related to the use and abuse of alcohol and drugs." *Id*.

[8] Skeens's sentence is not inappropriate in light of the nature of the offenses. Skeens was uncooperative with law enforcement as he had to be told on multiple occasions during the traffic stop to have his hands where the officer could see them. Skeens further appeared to actively conceal the contraband during the traffic stop. And paraphernalia and large amounts of cash were also found in the vehicle.

[9] Skeens's sentence is also not inappropriate in light of his character. Skeens has a significant criminal history. And Skeens presents no compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *See Stephenson, 29 N.E.3d at 122*. Thus, our deference to the trial court's sentence prevails, and we affirm Skeens's sentence. *See id.*

Conclusion

[10] For all of the above reasons, we affirm Skeens's conviction for Level 6 felony possession of methamphetamine and his sentence.

[11] Affirmed.

Bradford, C.J., and Tavitas, J., concur.