

## 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.



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## IN THE COURT OF APPEALS OF INDIANA

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James Eugene Roberts,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 8, 2021

Court of Appeals Case No.  
20A-CR-1872

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven P. Meyer,  
Judge

Trial Court Cause No.  
79D02-2004-F6-420

**Darden, Senior Judge.**

## Statement of the Case

[1] James Roberts pleaded guilty to failure to return to lawful detention, a Level 6 felony,<sup>1</sup> and admitted to being an habitual offender.<sup>2</sup> He was sentenced to a term of two years for failure to return to lawful detention, enhanced by three years because he was an habitual offender, with the sentence to be served in the Indiana Department of Correction (“DOC”). He appeals his sentence. We affirm.

## Issue

[2] The sole issue Roberts raises for our review is whether his sentence is inappropriate in light of the nature of the offense and his character.

## Facts and Procedural History

[3] In 2009, Roberts was convicted under Cause No. 79D02-0812-FA-41 (“FA-41”) of Class A felony dealing in cocaine or narcotic drug and served eleven years of a twenty-five-year executed sentence in the DOC. His sentence was modified in 2018, and he was order to serve twenty-two years executed in the DOC with the final three years of his twenty-five-year sentence to be served in community corrections. In September 2019, he was released early from prison in order to serve the remainder of his sentence in community corrections.

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<sup>1</sup> Ind. Code § 35-44.1-3-4(c) (2014).

<sup>2</sup> Ind. Code § 35-50-2-8(i) (2017).

[4] On January 16, 2020, Roberts was serving his sentence through Tippecanoe County Community Corrections (“TCCC”). At approximately 1:00 p.m. on that date, Roberts was released from TCCC to attend a meeting at Valley Oaks where he was undergoing substance abuse treatment. However, Roberts did not attend the meeting. Instead, his GPS tracking device showed that he was at a residence located on Perrin Avenue for approximately four hours and then traveled to I.U. Hospital, where he stayed from 7:34 p.m. until 10:20 p.m. The last location that the tracking device registered for Roberts was on Rainey Street at 10:47 p.m., after which the signal for the device was lost.

[5] At 8:40 p.m., a woman who identified herself as Roberts’s girlfriend called Corrections Officer Jeremy Norman and informed him that Roberts “was having stomach issues and red spots and was waiting to be seen” at the hospital. Appellant’s App. Vol. II, p. 44. The girlfriend called the officer a second time, at 10:54 p.m., and told him that “Roberts was in the waiting room and was still waiting to be seen[,] but the emergency room was backed up.” *Id.* At midnight, Officer Norman contacted the hospital and was told that Roberts had been discharged at 10:42 p.m.

[6] At 1:33 a.m., on January 17, Roberts’s tracking device returned a signal, showing that he was on Herbert Street. At 2:05 a.m., Officer Norman activated the alarm for the device. Twenty minutes later, Roberts’s girlfriend called the officer and told him that she was “returning to the hospital and that Roberts had called her stating that [the alarm for] his unit was going off and that he was still waiting to be seen” at the hospital. *Id.*

[7] Officer Norman asked to speak with Roberts. Roberts reiterated that he was still waiting to be seen at the hospital and added that he had been at the hospital “the entire time.” *Id.* The officer then told Roberts that he knew that Roberts had already been discharged from the hospital and that if, in fact, Roberts was still waiting to be seen at the hospital, the officer would need to speak with a nurse.

[8] Roberts’s tracking device showed that, after speaking with Officer Norman, Roberts returned to the hospital. At 2:26 a.m., a woman contacted TCCC from an I.U. Hospital phone number and spoke with Corrections Officer Williams.<sup>3</sup> The caller told Officer Williams that her name was Brandy, and that she was a nurse at St. Elizabeth Hospital. Officer Williams challenged the woman about stating that she was calling from St. Elizabeth Hospital “since Roberts was at [I.U.] Hospital.” *Id.* at 45. The woman stated that it had been a “long night and that [hospital staff] were very busy.” *Id.* Officer Williams told the woman that he knew she was Roberts’s girlfriend, and that Roberts had until 3:00 a.m. to return to TCCC or Roberts’s absence would be considered an escape.

[9] At 2:34 a.m., Corrections Officer Whitley Mohler received a call from a woman who claimed to be an employee of I.U. Hospital. The caller stated, ““James Roberts is my patient here at [I.U.;] could you please turn off [the alarm on] his ankle unit, it is bothering the other patients.”” *Id.* at 46. The caller further

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<sup>3</sup> Officer Williams’s first name was not provided in the record.

explained that Roberts was not a “‘priority patient’” because his symptoms were not serious and the hospital was very busy. *Id.* Officer Mohler contacted I.U. Hospital and verified that Roberts had been seen earlier but was discharged at 10:42 p.m. on January 16.

[10] At 2:45 a.m., Roberts’s tracking device indicated that he had returned to the residence on Perrin Avenue instead of returning directly to TCCC. Roberts remained at the residence from 2:54 a.m. until 3:07 a.m. and then went to a Village Pantry where he stayed from 3:26 a.m. until 3:29 a.m. Thereafter, the device showed him at Calvary Court from 3:33 a.m. until 4:53 a.m. At 4:53 a.m., the battery for the device died, after which Roberts’s whereabouts were unknown. A form was then filled out and filed with the Tippecanoe County Sheriff’s Department, showing that Roberts had escaped from TCCC.

[11] At approximately 10:46 p.m. on January 17, Crawfordsville police officers found Roberts in a Montgomery County hotel room, wearing a tracking device that had been wrapped with aluminum foil. The officers discovered an illegal substance and drug paraphernalia in the hotel room, and they were informed by dispatch that there was a warrant for Roberts’s arrest for his escape from TCCC. Roberts was arrested on January 18, 2020, and transported to jail. He was charged in Montgomery County with possession of methamphetamine and possession of paraphernalia.

[12] On April 8, 2020, the State filed an information in Tippecanoe County charging Roberts with Level 6 felony failure to return to lawful detention for allegedly

failing to return to TCCC. In a separate information, the State alleged Roberts to be an habitual offender. On August 3, under the terms of a plea agreement, Roberts pleaded guilty to the Level 6 felony offense<sup>4</sup> and admitted to being an habitual offender. In exchange, the State agreed to dismiss a pending motion to execute the approximately fourteen months that remained on Roberts's community corrections sentence under Cause No. FA-41.

[13] On October 7, 2020, the trial court sentenced Roberts to two years for the Level 6 felony failure to return to lawful detention offense and enhanced that sentence by an additional three years based upon Roberts being found to be an habitual offender. The five-year sentence was ordered served in the DOC, consecutive to the remaining sentence under Cause No. FA-41. Roberts appeals.

## Discussion and Decision

[14] Roberts argues that his five-year sentence is inappropriate in light of the nature of his offense and his character and asks that his sentence be revised downward such that he would serve only three years in the DOC and have two years of his sentence suspended to probation.

We may review and revise criminal sentences pursuant to the authority derived from Article 7, Section 6 of the Indiana Constitution. Indiana Appellate Rule 7(B) empowers us to revise

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<sup>4</sup> Although Roberts was charged with failure to return to lawful detention, he pleaded guilty to escape as a Level 6 felony. *See* Ind. Code § 35-44.1-3-4(b). The sentencing order states that Roberts was convicted of escape, and the Abstract of Judgment states that Roberts was convicted of failure to return to lawful detention. The trial court and the parties used “escape” and “failure to return to lawful detention” interchangeably. In this opinion, we refer to Roberts's conviction as failure to return to lawful detention.

a sentence “if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Because a trial court’s judgment “should receive considerable deference[,]” our principal role is to “leaven the outliers.” *Cardwell v. State*, 895 N.E.2d 1219, 1222-25 (Ind. 2008). “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). The defendant bears the burden to persuade this court that his or her sentence is inappropriate, *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006), and we may look to any factors appearing in the record for such a determination. *Stokes v. State*, 947 N.E.2d 1033, 1038 (Ind. Ct. App. 2011), *trans. denied*.

*Reis v. State*, 88 N.E.3d 1099, 1101-02 (Ind. Ct. App. 2017). The question under Appellate Rule 7(B) analysis is “not whether another sentence is *more* appropriate” but rather “whether the sentence imposed is inappropriate.” *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Whether a sentence is 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.” *Cardwell*, 895 N.E.2d at 1224.

[15] We begin with the advisory sentence in determining the appropriateness of a sentence. *Childress*, 848 N.E.2d at 1081. The sentencing range for a Level 6 felony is “a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being one (1) year.” Ind. Code § 35-50-2-7(b)

(2019). A person found to be an habitual offender for a Level 5 or Level 6 felony may be sentenced to an additional fixed term of between two and six years. Ind. Code § 35-50-2-8(i)(2) (2017). Roberts was sentenced to two years for the Level 6 felony and to an additional term of three years for the habitual offender finding which was below the maximum possible sentence that could be imposed.

[16] To determine the nature of the offense, we examine the details and circumstances surrounding the offense. *Washington v. State*, 940 N.E.2d 1220, 1222 (Ind. Ct. App. 2011), *trans. denied*. Here, approximately four months after being released from the DOC to serve the remainder of his sentence in community corrections, Roberts left the TCCC facility under the pretense that he was attending a substance abuse treatment meeting. Instead of attending the meeting, and without permission from community corrections, Roberts traveled to at least six different locations, making two stops at I.U. Hospital. He had his girlfriend call corrections officers multiple times and lie to them about his whereabouts. For example, long after Roberts's tracking device indicated that he was at another location, Roberts's girlfriend called a corrections officer and told the officer that Roberts was still at the hospital, waiting to be seen by hospital staff. Roberts spoke to the officer and perpetuated the lie. Later, after the corrections officer activated the alarm on Roberts's tracking device, Roberts returned to the hospital and had his girlfriend phone the corrections officers to have the alarm deactivated. This time, Roberts's girlfriend posed as a nurse in the hospital. The corrections officer informed Roberts that he knew he was



lying about his whereabouts and that he had until 3:00 a.m. to return to TCCC, or his absence would be considered an escape. However, Roberts ignored the ultimatum and continued his escapade—making at least three more stops before the battery in his tracking device died. Approximately thirty-six hours after leaving TCCC, police officers found Roberts in a hotel room, that was located in a neighboring county, along with an illegal substance and drug paraphernalia.

[17] Roberts maintains that “his conduct on the dates in question amounted to no more than that necessary to establish the statutory elements of the offense of failure to return to lawful detention[.]” Appellant’s Br. p. 9. We disagree. After leaving TCCC, Roberts went to great length to hide his whereabouts, and he engaged in an elaborate scheme to deceive corrections officers. As such, nothing about the nature and circumstances of his offense leads us to the conclusion that his sentence is inappropriate.

[18] The character of the offender is found in what we learn of the offender’s life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). When considering the character of the offender, one relevant fact is the defendant’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Roberts’s criminal history is extensive. In 1993, Roberts was convicted of two counts of burglary. Three years later, in 1996, he was convicted of sexual misconduct with a minor. He was convicted of theft in 2003 and failure to register as a sex offender in 2006. In 2009, he was convicted of dealing in cocaine or narcotic drug and sentenced to twenty-five years executed in the

DOC. Five petitions to revoke probation have been filed against Roberts, with three having been found true. Three petitions to execute his community corrections sentence have been filed against him, with two having been granted. He has been unsuccessfully released from probation, and while he was serving a portion of his executed sentence in community corrections, he committed the instant offense. At the time of his sentencing in the instant case before us, Roberts had charges pending against him in Montgomery County for possession of methamphetamine and possession of paraphernalia.

[19] Roberts argues that his sentence is inappropriate as to his character because: he pleaded guilty and accepted responsibility for his crime; he expressed remorse for his crime; and he suffers from mental health issues, including depression and bipolar disorder. The trial court considered these circumstances as mitigating yet ultimately determined that the aggravating circumstances, namely Roberts's criminal history, outweighed the mitigating circumstances. Specifically, the trial court found the following at sentencing:

Well, unfortunately for you sir, I think you've burned your bridges too far here. So, with that, let me start out by saying I do appreciate you came and pled guilty. You accepted responsibility for your actions here. However, that's depreciated by the benefit of some of the Plea Agreement that you've gotten here. You do have some mental health issues and some substance abuse issues that I recognized in the reports. However, you've been given opportunities to address those in the past and they've not been successful. You are a Veteran. I think it's important for me to recognize that with a general discharge. However, there was the AWOL matter there as well. You do have some extensive substance abuse. . . . And that probably

does go to a significant substance abuse issue that you've got. But you've got to get a handle on it. . . . Another mitigator is, that you do have family support. There were so many reasons to elevate and impose a harsher sentence here. Your criminal history . . . , this history is just awful. . . . But also [what] I think is particularly aggravating for me sir, is that you were only out on Community Corrections for about four months as we established and you left and you decided to go off on this binge all the while, while we were trying to offer you the help . . . I'm gonna find the aggravators outweigh the mitigators.

Tr. Vol. 2, pp. 44-47.

[20] As noted by the trial court, Roberts has been afforded numerous opportunities to participate in mental health and substance abuse counseling but has failed to take full advantage of the programs. Furthermore, Roberts's criminal history reflects poorly on his character; he was not deterred by previous contacts with the criminal justice system from committing the current offenses; and he has squandered the opportunities of lenient sentencing that he has been afforded. Thus, we cannot say that his sentence is inappropriate for his character.

[21] Under these facts and circumstances, we find that both the nature of the offense and Roberts's character support the sentence imposed by the trial court. Roberts's sentence is not inappropriate.

## Conclusion

[22] For the reasons stated, we conclude that Roberts's five-year aggregate sentence is not inappropriate in light of the nature of the offense and his character.

[23] Affirmed.

Crone, J., and Brown, J., concur.