

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Brian A. Karle
Ball Eggleston, PC
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Britt M. Hembree,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

September 28, 2023

Court of Appeals Case No.
23A-CR-1086

Appeal from the Tippecanoe
Superior Court

The Honorable Michael S.
Bergerson, Senior Judge

Trial Court Cause No.
79D02-2212-F5-192

Memorandum Decision by Judge Pyle

Judges Tavitas and Foley concur.

Pyle, Judge.

Statement of the Case

[1] Britt Hembree (“Hembree”) appeals the five-year and nine-month sentence imposed after he pleaded guilty, pursuant to a plea agreement, to Level 5 felony possession of methamphetamine.¹ His sole argument is that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that Hembree’s sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether Hembree’s sentence is inappropriate.

Facts

[3] On December 11, 2022, law enforcement officers were dispatched to a local motel regarding twenty-seven-year-old Hembree and another guest who were refusing to leave the motel. When the officers arrived at the motel, Hembree told the officers that he was Blake Hembree, who is Hembree’s brother. He later admitted that he was Britt Hembree, and the officers discovered that he was on probation in two cases. In addition, Hembree had a bag that contained

¹ IND. CODE § 35-48-4-6.1.

.79 grams of methamphetamine, a glass smoking pipe, a counterfeit \$100 bill, small plastic bags, knives, and marijuana.

- [4] The following day, the State charged Hembree with Level 5 felony possession of methamphetamine with two prior convictions for dealing methamphetamine, Level 6 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia.
- [5] In February 2023, pursuant to a plea agreement, Hembree pleaded guilty to Level 5 felony possession of methamphetamine, and the State dismissed the remaining charges. The plea agreement left sentencing to the discretion of the trial court.
- [6] At the May 2023 sentencing hearing, the trial court reviewed Hembree's pre-sentence investigation report ("the PSI"), which revealed that Hembree has an extensive criminal history. Specifically, Hembree has three felony convictions, including two convictions for dealing methamphetamine and one conviction for possession of methamphetamine. Hembree also has six misdemeanor convictions, including convictions for disorderly conduct, battery, possession of a synthetic drug, and visiting a common nuisance. The PSI also revealed that Hembree was on probation in two cases at the time he committed the offense in this case. In addition, the PSI revealed that, over the years, the State had filed five petitions to revoke Hembree's probation. Four of those petitions were pending at the time of Hembree's sentencing hearing. The probation revocation

petitions alleged, in part, that Hembree had twice failed to complete court-ordered substance abuse treatment.

[7] Thereafter, the trial court found the following aggravating factors: (1) Hembree’s criminal history; (2) Hembree was on probation in two cases at the time he committed the offense in this case; (3) the State had filed five petitions to revoke Hembree’s probation, with four still pending; (4) Hembree was unlikely to respond to probation given his failed attempts at probation in the past; and (5) prior attempts at rehabilitation had failed. The trial court also found Hembree’s guilty plea to be a mitigating factor. The trial court then sentenced Hembree to five (5) years and nine (9) months in the Department of Correction. The trial court further stated that after serving three (3) years of his sentence, Hembree would be permitted to enroll in the Recovery While Incarcerated (“RWI”) program. Upon successful completion of that program, Hembree would be permitted to file a petition to modify his sentence.

[8] Hembree now appeals his sentence.

Decision

[9] Hembree argues that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Whether we regard a sentence as inappropriate turns on 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). We further note that our Indiana Supreme Court has stated that the revision of a defendant’s sentence under Rule 7(B) is reserved for “exceptional” cases. *Taylor v. State*, 86 N.E.3d 157, 165 (Ind. 2017), *cert. denied*.

[10] 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. *Childress*, 848 N.E.2d at 1081. Here, Hembree was convicted of a Level 5 felony. The sentencing range for a Level 5 felony is between one (1) and six (6) years, and the advisory sentence is three (3) years. IND. CODE § 35-50-2-6(b). The trial court sentenced Hembree to five years and nine months, three months less than the maximum sentence.

[11] Regarding the nature of the offense, we note that after law enforcement officers had been dispatched to the motel that Hembree had refused to leave, Hembree gave the officers a false name. We further note that Hembree, who was on probation in two cases, had a bag that contained .79 grams of methamphetamine, a glass smoking pipe, marijuana, a counterfeit \$100 bill, small plastic bags, and knives.

[12] Regarding Hembree’s character, we note that Hembree has an extensive criminal history that includes three felony and six misdemeanor convictions. The prior felony convictions, like the conviction in this case, were for

methamphetamine-related offenses. In addition, over the years, the State has filed five petitions to revoke Hembree's probation. Four of those petitions were pending at the time of the sentencing hearing. We further note that Hembree was on probation in two cases at the time he committed the offense in this case. Hembree's extensive criminal history reflects poorly on his character for the purposes of sentencing. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (explaining that the significance of a defendant's criminal history varies based on the gravity, nature, and number of prior offenses in relation to the present offense). We further note that Hembree's former contacts with the law have not caused him to reform himself. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*. Yet, despite his criminal history, the trial court weaved into Hembree's sentence a pathway towards rehabilitation and reformation by recommending his placement in RWI and, upon successful completion of the program, the opportunity to petition the court for a sentence modification.

[13] Based on the nature of the offense and his character, Hembree has failed to persuade this Court that his five-year and nine-month sentence is inappropriate.

[14] Affirmed.

Tavitas, J., and Foley, J., concur.