MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles S. Martin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 23, 2021

Court of Appeals Case No. 20A-CR-1723

Appeal from the Jay Circuit Court

The Honorable Brian D. Hutchison, Judge

Trial Court Cause No. 38C01-1903-F5-16

Kirsch, Judge.

[1] Charles S. Martin ("Martin") pleaded guilty to possession of a narcotic drug[1] as a Level 5 felony and was sentenced to five years executed in the Indiana Department of Correction ("DOC"). Martin raises one issue on appeal, which we restate as: whether his five-year-sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On February 19, 2019, Jay County Sheriff's Department Deputy Derek Bogenschutz ("Deputy Bogenschutz") observed a silver Chrysler driving on Highway 67 near Sycamore Street in Redkey, Indiana. *Tr. Vol. II* at 13; *Appellant's Conf. App. Vol. II* at 63. When Deputy Bogenschutz conducted a plate inspection and ran the car's license plate, he discovered that Alyssa Stephens ("Stephens"), the owner of the car, only had an identification card and did not have a valid driver's license. *Appellant's Conf. App. Vol. II* at 63. Deputy Bogenschutz stopped the car and saw that Stephens was driving with Martin seated in the car's passenger seat. *Id*.

[4] After stopping the car and asking for Stephens's identification and registration, Deputy Bogenschutz observed that Martin "was moving around in the vehicle and appeared to be on some type of narcotic drug." *Id*. Deputy Bogenschutz

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[1] *See* Ind. Code § 35-48-4-6.

further observed Martin "move around constantly and then begin to reach into the rear of his pants multiple times." *Id*. Deputy Bogenschutz walked around to the passenger side of the car and asked Martin to step out of the car. *Id*. Martin began to get out of the car but then "fumbled" with items in the center console of the car. *Id*. Deputy Bogenschutz observed Martin "immediately lunge[] back into the car and began to move his hands around the center console in a fast motion." *Id*. Deputy Bogenschutz then grabbed Martin's left arm and told him to stop reaching into the car and step outside. *Id*. Martin did not comply and pulled away from Deputy Bogenschutz, attempting to get back into the car. *Id*. At that point, Deputy Bogenschutz observed a clear baggy in Martin's left hand that contained a green leafy-like substance as well as a tan rock-like substance. *Id*. Martin threw the clear baggy into the rear passenger side of the car and continued to struggle away from Deputy Bogenschutz. *Id*. Deputy Bogenschutz eventually handcuffed Martin and placed him in a patrol car. *Id*. Deputy Bogenschutz found three additional bags containing the tan rock-like substance when he searched the car. *Id*. at 63-64. The rock-like substance field tested positive for heroin, and the bag of green leafy-like substance field tested positive for marijuana. *Id*. at 64.

[5] On March 4, 2019, the State charged Martin with Level 5 felony possession of a narcotic drug, Class A misdemeanor resisting law enforcement, and Class B misdemeanor possession of marijuana. *Id*. at 2, 59. The State also filed a notice of intent to seek an enhanced penalty of Martin's possession of a narcotic drug based upon a prior conviction. *Id*. at 61. On January 16, 2020, the State

filed a motion to dismiss the resisting law enforcement count, which the trial court granted the same day. *Id*. at 46-47. On January 30, 2020, Martin pleaded guilty to Level 5 felony possession of a narcotic drug and admitted that on February 19, 2019 when he was stopped by Deputy Bogenschutz, he was in possession of heroin, a schedule I narcotic drug. *Tr. Vol. II* at 13-14; *Appellant's Conf. App. Vol. II* at 48. Martin also admitted to having a prior conviction for dealing in a schedule III controlled substance in cause number 68D01-1709-F6-689. *Tr. Vol. II* at 13-14. The State orally moved to dismiss the Class B misdemeanor possession of marijuana count. *Id*. at 15; *Appellant's Conf. App. Vol. II* at 48.

[6] After the change of plea hearing, Martin traveled to Florida and failed to appear for his sentencing hearing. *Tr. Vol. II* at 29; *Appellant's Conf. App. Vol. II* at 5, 74. The trial court issued a warrant for Martin's arrest, and his bond was revoked. *Appellant's Conf. App. Vol. II* at 5, 74. Martin was later arrested, and a sentencing hearing was held on August 25, 2020. *Id*. at 6, 78. At the sentencing hearing, Martin and his witnesses testified that he had struggled with substance abuse and addiction since he was young. *Tr. Vol. II* at 21, 24, 28-29. Evidence was presented that Martin completed therapeutic substance abuse treatment while in DOC in 2011 and 2012 and that he also completed a residential substance abuse program at Harbor Lights Detox in 2014. *Id.* at 21; *Appellant's Conf. App. Vol. II* at 57.

[7] At the conclusion of the sentencing hearing, the trial court found as aggravating circumstances Martin's criminal history consisting of multiple misdemeanor

and felony convictions, his multiple probation violations, and the fact that he "absconded from the State of Indiana and absconded from the jurisdiction of [the] trial court" after his conviction. *Tr. Vol. II* at 30. The trial court also took note of Martin's prior attempts at substance abuse treatment, which had failed. *Id*. at 30-31. The trial court found no mitigating circumstances. *Id*. at 31. The trial court rejected the joint recommendation of the State and Martin for a sentence of thirty months. *Id*. Instead, the trial court sentenced Martin to five years executed in DOC and recommended Martin for the recovery while incarcerated program. *Id*. at 31; *Appellant's Conf. App. Vol. II* at 78. The trial court stated it would be willing to consider modification of Martin's sentence upon completion of the recovery while incarcerated program. *Tr. Vol. II* at 31. Martin now appeals.

Discussion and Decision

[8] Pursuant to Indiana Appellate Rule 7(B), this court "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the [c]ourt finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Our Supreme Court has explained that the principal role of appellate review should be to attempt to leaven the outliers, "not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We independently examine the nature of the defendant's offenses and his character under Appellate Rule 7(B) with substantial deference to the trial court's sentence. *Satterfield v. State*, 33 N.E.3d 344, 355 (Ind. 2015). "In conducting our review, we do not look to see

whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is 'inappropriate.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Whether a sentence is inappropriate ultimately depends upon "the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Cardwell*, 895 N.E.2d at 1224. The defendant bears the burden of persuading us that his sentence is inappropriate. *Id*.

[9] Martin argues that his five-year executed sentence is inappropriate in light of the nature of his offense and his character. He contends that his sentence is inappropriate as to the nature of his offense because his actions did not cause harm to any other individual. As to his character, Martin asserts that his sentence is inappropriate because he has no history of violent or destructive behavior and is regarded as a kind and caring individual. He also maintains that he has struggled with drug addiction for some time, and his willingness to undergo drug treatment and the presence of involved, supportive family members indicate that he is a strong candidate for reform. Martin further urges that his sentence should be revised because, at just thirty-two years old, his sentence should reflect his potential for meaningful contributions to society in the future.

[10] Martin pleaded guilty to Level 5 felony possession of a narcotic drug. A person who commits a Level 5 felony shall be imprisoned for a fixed term of between one and six years, with the advisory sentence being three years. Ind. Code § 35-

50-2-6(b). The trial court sentenced Martin to five years executed. Martin's sentence was, therefore, one year less than the maximum he could have received.

[11] As this court has recognized, the nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). "When determining the appropriateness of a sentence that deviates from an advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that 'makes it different from the typical offense accounted for by the legislature when it set the advisory sentence.'" *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*. Here, the evidence showed that Martin possessed a bag of heroin and a bag of marijuana while riding in Stephens's car when the car was pulled over by Deputy Bogenschutz. *Tr. Vol. II* at 13; *Appellant's Conf. App. Vol. II* at 63-64. When Deputy Bogenschutz attempted to get Martin to exit the car, Martin resisted and continued to fumble with items in the center console of the car, eventually throwing a plastic baggie that contained the heroin and marijuana into the back seat area of the car. *Appellant's Conf. App. Vol. II* at 63. The State dismissed the possession of marijuana charge when Martin pleaded guilty. *Tr. Vol. II* at 15. While not the worst of offenses, Martin has failed to portray the nature of his offense in a positive light, "such as accompanied by restraint, regard, and lack of brutality" that is required to prove that his sentence should

be revised. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Thus, Martin has failed to show that his sentence is inappropriate considering the nature of his offense.

[12] The character of the offender is found in what we learn of the offender's life and conduct. *Perry*, 78 N.E.3d at 13. 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). The evidence showed that Martin has a lengthy criminal history that consisted of seven misdemeanor convictions and seven felony convictions. *Appellant's Conf. App. Vol. II* at 53-55. Martin's criminal history began in 2007 when he pleaded guilty to three counts of Class B misdemeanor criminal mischief. *Id*. at 53. In 2008, Martin pleaded guilty to illegal consumption of an alcoholic beverage, a Class C misdemeanor, and in 2009, he pleaded guilty to public intoxication, a Class B misdemeanor. *Id*. at 53-54. On January 28, 2010, Martin pleaded guilty to Class B felony burglary, Class D felony theft, Class A misdemeanor conversion, and Class A misdemeanor criminal mischief. *Id*. at 54. He was later found to have twice violated the conditions of probation for those convictions. *Id*. On July 27, 2011, Martin was convicted of Class C felony burglary and was later found to have violated probation for that conviction. *Id*. In 2015, Martin was convicted for Level 6 felony theft, and in 2016, Martin pleaded guilty to Level 6 felony fraud and Level 6 felony possession of a narcotic drug. *Id*. at 54-55. On June 11, 2018, Martin was convicted of Level 6 felony dealing in a schedule II controlled substance. *Id*. at 55.

[13] Our Supreme Court has emphasized that "the extent, if any, that a sentence should be enhanced [based upon prior convictions] turns on the weight of an individual's criminal history." *Duncan v. State,* 857 N.E.2d 955, 959 (Ind. 2006). "This weight is measured by the number of prior convictions and their gravity, by their proximity or distance from the present offense, and by any similarity or dissimilarity to the present offense that might reflect on a defendant's culpability." *Bryant v. State,* 841 N.E.2d 1154, 1156 (Ind. 2006). Martin's criminal history includes convictions for serious offenses such as burglary, theft, and fraud, as well as two convictions for drug-related offenses. *Appellant's Conf. App. Vol. II* at 53-55. The number and type of his criminal convictions indicates a disdain for the law and that he has not been deterred from committing offenses even after being subjected to past consequences.

[14] Further evidence of Martin's poor character includes the fact that he has violated probation three times. *Id*. at 54. Additionally, Martin absconded from the jurisdiction of the trial court when he left Indiana and traveled to Florida after the change of plea hearing and failed to appear for his original sentencing hearing. *Tr. Vol. II* at 29. As a result, the trial court issued an arrest warrant and forfeited his bond. *Appellant's Conf. App. Vol. II* at 5, 71, 74. At the sentencing hearing, the trial court noted that Martin was "not a good candidate for community supervision" based on his probation violations and act of absconding from Indiana and the trial court's jurisdiction. *Tr. Vol. II* at 30. His action of absconding from the state and his criminal history shows a disrespect

for the law that does not reflect well on his character and does not show that his sentence is inappropriate.

[15] Martin contends that his sentence is inappropriate due to his struggle with drug addiction and his willingness to undergo treatment. Although substance abuse and a defendant's willingness to seek treatment can be seen as mitigating, this court has found that it does not necessarily weigh in favor of a lesser sentence and can reflect poorly on a defendant's character when he is aware of substance abuse problems but fails to take appropriate steps to treat the addiction. *See Marley v. State*, 17 N.E.3d 335, 341 (Ind. Ct. App. 2014) (finding that defendant's substance abuse problem did not weigh in favor of a lesser sentence because he never sought treatment until after his arrest for the offense for which he was being sentenced), *trans. denied*; *Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (noting that a history of substance abuse may be a mitigating circumstance but may also be an aggravating circumstance where the defendant is aware of a substance abuse problem but has not taken appropriate steps to treat it), *trans. denied*. Here, Martin completed substance abuse treatment between 2011 to 2012 while in DOC and completed a residential placement in 2014. *Tr. Vol. II* at 21; *Appellant's Conf. App. Vol. II* at 57. Although Martin told the trial court at sentencing that he believed he needs long-term treatment, when the trial court asked Martin what he had done to get such treatment, Martin stated he got "clean" when he absconded to Florida but that when he returned to Indiana, he "went right back to the lifestyle that [he] was living before." *Tr. Vol. II* at 29. He further stated that, after his past treatment, he did

good for a while but returned to drugs when he started hanging out with his "old crowd" again. *Id*. The evidence showed that Martin has failed to take appropriate steps to treat his substance abuse or seek treatment despite knowing that he has a substance abuse problem.

[16] Martin's arguments do not portray the nature of his crimes and his character in "a positive light," which is his burden under Appellate Rule 7(B). *See Stephenson*, 29 N.E.3d at 122. Martin has not shown that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We, therefore, affirm the sentence imposed by the trial court.

[17] Affirmed.

Altice, J., and Weissmann, J., concur.