

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brian C. Flint,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 8, 2023

Court of Appeals Case No.
23A-CR-45

Appeal from the
Johnson Superior Court

The Honorable
Peter Nugent, Judge

Trial Court Cause No.
41D02-2203-F4-24

Memorandum Decision by Judge Vaidik
Judges Mathias and Pyle concur.

Vaidik, Judge.

Case Summary

- [1] Brian C. Flint appeals his sentence for two counts of Level 4 felony dealing in methamphetamine. We affirm.

Facts and Procedural History

- [2] On February 23, 2022, Flint dealt 2 grams of methamphetamine to a confidential informant. A few days later, he dealt 1.9 grams of methamphetamine to the same informant. He was arrested and charged with two counts of Level 4 felony dealing in methamphetamine. While the case was pending, Flint was granted work release. However, during work release he fled to Kentucky, where he was arrested and extradited to Indiana.
- [3] Flint ultimately pled guilty as charged, and sentencing was left to the discretion of the trial court. At sentencing, the State emphasized that Flint fled during pretrial release, had a criminal history consisting of five misdemeanors, and had violated probation in two of those cases. Flint testified that he had struggled with substance abuse for over thirty-five years and had attended several rehabilitation programs, none of which were successful. He further testified that he believes he needs a “longer [rehabilitation] program.” Tr. Vol. II p. 15.
- [4] The trial court then stated:

I've got to consider aggravators and mitigators. Obviously the aggravators are you do have a little bit of a criminal history. We did give you prior attempts through this Court. You know, you came in here, and you asked me, oh, please give me a chance, please give me a chance. And I did it. And then you take off. I'm not going to ignore that. Because I've got addicts all day asking for an opportunity, and you've got a lot of people around here that care, and give addicts the opportunity and more times than not they slap us in the face and go do their own thing. And that's okay. So since treatment didn't work your way, treatment is going to work our way. Okay? All right. So your criminal history is a little bit of an aggravator. You fled, had to be extradited. I consider that to be a major aggravator. Prior attempts at rehabilitation. But you did come in here and own it. I give you respect for that. So here's what I'm going to do. The advisory sentence on a Level 4 is six, I'm going to add three to it, so it's a nine year sentence. Counts one and two are going to be identical. So that's 3,285 days. That will be executed at the Indiana Department of Corrections. Credit for 207 actual days served. I'm going to recommend [Recovery While Incarcerated], and I will consider a modification after you have completed RWI and three actual years at the DOC from today's date. That should give you plenty of time to dry out, get into RWI, get some programming done.

Id. at 22-23.

[5] Flint now appeals.

Discussion and Decision

[6] Flint asks us to reduce “the overall length of his sentence” as well to “remov[e] the time constraints to seeking modification of his sentence following successful completion of Recovery While Incarcerated.” Appellant's Br. p. 21. Indiana

Appellate Rule 7(B) provides that an appellate court “may revise a sentence authorized by statute 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.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on 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.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[7] The sentence range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Here, the trial court imposed an above-advisory sentence of nine years for each conviction. However, these sentences were to be served concurrently, for an aggregate sentence of nine years.

[8] As for the overall length of Flint’s sentence, while the nature of the offense here is not particularly egregious, Flint’s character supports his sentence. As he acknowledges, he has a criminal history consisting of five misdemeanors and during two of those cases he violated probation. And during this case, he fled the state and had to be extradited. None of this reflects well on his character.

[9] Nor will we “remove the time constraints” to seeking sentence modification. The trial court noted its reasoning for considering modification only after three years—to give Flint a chance to complete Recovery While Incarcerated (a year-long program) and to “dry out” and get “some programming done.” Given that Flint testified he has struggled with drug abuse for over three decades and has participated in shorter treatment programs that did not work, we cannot say the court erred in ordering additional time for Flint to achieve sobriety.¹

[10] Affirmed.

Mathias, J., and Pyle, J., concur.

¹ Flint also argues the trial court erred in issuing its sentencing statement without “offer[ing] any reasoning on how those aggravating circumstances were evaluated and balanced in determining the court’s sentence.” Appellant’s Br. p. 15. However, as the State points out, trial courts are no longer required to do so. *See Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (trial courts “no longer ha[ve] any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence”).