MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Adam Peyton Taylor,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 25, 2021

Court of Appeals Case No. 21A-CR-881

Appeal from the Johnson Superior Court

The Honorable Peter Nugent, Special Judge

Trial Court Cause No. 41D02-1904-F4-32

Bailey, Judge.

Case Summary

[1] After pleading guilty to Dealing in Methamphetamine, as a Level 4 felony,[1] Adam Peyton Taylor ("Taylor") received an eight-year sentence that consisted of five years in the Indiana Department of Correction (the "DOC") and three years suspended, with two of the suspended years to be served on probation. The trial court also recommended that Taylor be placed in the Recovery While Incarcerated ("RWI") program. Taylor appeals, challenging the decision to place him in the DOC rather than a community corrections program. He contends that the court abused its sentencing discretion and imposed an inappropriate sentence.

[2] We affirm.

Facts and Procedural History[2]

[3] In October 2018, Taylor's then-girlfriend, Meghann King ("King"), agreed to sell methamphetamine to a confidential informant and another person, who was an undercover officer. King arranged the transaction. Taylor and King entered the confidential informant's vehicle and met up with the undercover officer. The undercover officer entered the backseat of the vehicle next to Taylor. King refused to complete a "hand to hand" exchange because she did

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[1] Ind. Code § 35-48-4-1.1(a)(1), (c)(1).

[2] The facts are largely drawn from the probable cause affidavit, which both parties draw from on appeal.

not know the undercover officer. App. Vol. 2 at 63. She instead placed a baggie on the console and exited the vehicle. Taylor then told the undercover officer that the price was $125. Taylor handed the baggie to the undercover officer in exchange for the money, telling the undercover officer that he could get more and to "hit him up." *Id.* Taylor ended the conversation by telling the undercover officer to "enjoy." *Id.* Law enforcement conducted a field test, which indicated that the baggie contained four grams of methamphetamine.

[4] Months later—before the State initiated the instant criminal cause—Taylor picked up charges in a separate cause, which resulted in Taylor pleading guilty to Level 6 felony Unlawful Possession of a Syringe. As to the instant matter, the State filed a single charge in April 2019, alleging that Taylor had committed Dealing in Methamphetamine, as a Level 4 felony. While the matter was pending, the trial court ordered Taylor to meet with the probation department for the completion of a presentence investigation report ("PSI"), which was filed in January 2020. In the ensuing months, there were scheduling delays, including delays due to the COVID-19 pandemic and Taylor's failure to appear.

[5] In October 2020, Taylor pleaded guilty pursuant to a plea agreement, which provided that any executed portion of the sentence would not exceed eight years. The trial court accepted the plea of guilty and entered a judgment of conviction. The court then conducted a sentencing hearing on April 15, 2021.

[6] At the sentencing hearing, the parties looked to the PSI, which documented Taylor's history of substance abuse. As to substance abuse, Taylor reported

that he began using marijuana at the age of fourteen, alcohol at the age of sixteen, and cocaine at the age of nineteen. At some point, Taylor was prescribed pain pills after sustaining injuries in a motorcycle accident. Taylor was also in a car wreck. At the sentencing hearing, Taylor testified that the prescription drugs "played hand in hand" with his addiction, as he progressed from using the pain pills to using heroin at the age of twenty-six, ultimately using approximately two grams daily. Tr. Vol. 2 at 19. Taylor testified that he transitioned from heroin to methamphetamine and that "[m]eth kind of gave [him his] life back, in a way." *Id.* at 20. Taylor noted that "[e]verything has its own pros and cons" and, whereas he was a "zombie" when using heroin, "meth actually gave [him] the edge" to try to recover from his injuries. *Id.*

[7] Taylor claimed that, since the PSI was prepared—more than one year before the sentencing hearing—he had taken control of his addiction.[3] He explained that he started a treatment program and participated for five days until the program was shut down due to COVID-19. He said that he "went to a drug

[3] From the record before us, it is unclear why the court ordered Taylor to meet with probation for the preparation of a PSI in January 2020, well before Taylor executed the plea agreement in October 2020. Indiana law authorizes a court to obtain a **pretrial** risk assessment for certain purposes, including setting bail. *See generally* I.C. § 35-33-8-0.5. However, a pretrial risk assessment is not interchangeable with a **presentence** investigation report, which is to be prepared only after culpability is established. *See, e.g.*, I.C. § 35-38-1-9(b) (requiring, as part of a PSI, that information be gathered regarding "the convicted person's" criminal history and "the circumstances attending the commission of the offense"). Preparing a PSI before the establishment of culpability is inconsistent with Indiana law and poses a host of issues. For example, there is a risk that the PSI will become stale, as was the case here. Of greater concern, the trial court invites the defendant to answer incriminating questions about pending allegations, implicating the Fifth Amendment. *See, e.g.*, App. Vol. 2 at 54 (containing a space on the form for the "Defendant['s] Version" of the events), 57 (noting that Taylor was "asked about his thoughts on his current charges and past criminal history"). Taylor does not challenge the trial court's approach. However, for the foregoing reasons, we find no basis in the law to sanction this procedure.

place called St. Peters and finished [a program] up there." *Id.* at 17. Taylor testified that he last used an illegal substance "about a year ago," *id.* at 27, when someone "showed up with a needle and a spoon . . . [a]nd at that point, [him] being an addict, it's done and done," *id.* at 28. Taylor ultimately asked the court to place him on probation or house arrest, so he could "seek treatment while taking care of his grandfather." *Id.* at 32. Taylor acknowledged that he had "screwed up" and he admitted that he had a problem. *Id.* at 23. He told the court: "I'm an addict. I'm always going to be an addict. I'm learning how to function as an addict. I've changed my people, persons and things." *Id.*

[8] In seeking a sentence with executed time, the State noted that, although Taylor did not have a "horrendous criminal history"— one prior felony conviction and two prior misdemeanor convictions—his criminal history relates to substance abuse in that it "includes an OWI with controlled substances in [Taylor's] blood" and the recent "syringe charge." *Id.* at 32. The State also noted that Taylor violated the conditions of his probation in that recent cause, testing positive for "meth, Xanax, and/or opiates[.]" *Id.* at 26. The State pointed out that Taylor had been afforded at least some "prior attempts at rehabilitation," with "at least a little bit of time on community corrections." *Id.* at 32. The State ultimately asserted that Taylor "need[s] drug treatment," and requested a period of incarceration in the DOC with placement in the RWI program. *Id.*

[9] In sentencing Taylor, the trial court identified one aggravator, *i.e.*, "you've got a little bit of history," and one mitigator, *i.e.*, "you came in here and you owned it." *Id.* at 32. The trial court then provided insight into its deliberations:

> The question I have that I have to try and figure out is whether I think you can get a hold of this on your own. That's my concern. It truly is my concern. And some people can and some people can't. And my concern is that you can't. It's something that's been at you for a long, long time. I mean I will say and I wrote this down, you may be the first person I've had come in here and say meth saved my life. It's honest. I hadn't heard it before. But now I have. And I think that you've got a bad addiction problem. I think that we have a lot of good facilities around here. But I don't think that a thirty day somewhere . . . it just isn't going to do it. It's not going to do it with somebody that's got a bad addiction. It's going to take a program that you can be involved in every day. Our [DOC] has an excellent program. Nobody wants to go to the DOC, I understand. But you have children. You want to be involved with these children. And there's one way it's going to happen, and that's if you're clean. It's just the truth. I have compassion about your grandpa's situation. Anyone who has elderly relatives understands. But we make choices, and our choices have consequences. And one of the consequences is, we don't get a hold of this, and it gets a hold of us, things happen. Sometimes they happen in the criminal arena, and that's what happened to you.

Id. at 33. Determining that "the aggravators outweigh the mitigators," the court imposed an eight-year sentence, with five years executed in the DOC, three years suspended, and two of the suspended years to be served on probation. *Id.* The court also recommended placement in the RWI program, explaining that it was "a therapeutic community, . . . a good program" and that, upon successful completion of the program, the court would consider modifying the sentence so Taylor could "get back out, start trying to reacclimate to society and get back

involved." *Id.* at 34. The court later clarified the sentence, at one point stating: "This isn't a punishment sentence. This is a treatment sentence." *Id.* at 35.

[10] Taylor now appeals.

Discussion and Decision

Sentencing Discretion

[11] Pursuant to Indiana Code Section 35-38-1-1.3, the trial court "shall issue a statement of the court's reasons for selecting the sentence that it imposes" for a felony conviction "unless the court imposes the advisory sentence[.]" The Indiana Code identifies several circumstances that a court may consider when selecting a sentence. *See* I.C. § 35-38-1-7.1. However, the court is not limited to those circumstances. I.C. § 35-38-1-7.1(c). Ultimately, Indiana law permits the trial court to impose "any sentence . . . authorized by statute" and "permissible under the Constitution of the State of Indiana[.]" I.C. § 35-38-1-7.1(d).

[12] Here, the trial court was imposing a sentence for a Level 4 felony, for which the authorized sentencing range is two to twelve years with an advisory sentence of six years. I.C. § 35-50-2-5.5. The court selected a sentence of eight years, with five years executed and three years suspended, recommending that Taylor be placed in the RWI program. This sentence is within the statutory range.

[13] "So long as [a] sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clar'd on reh'g*. An abuse of discretion occurs when 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. *Id.* A trial court abuses its discretion if it fails to enter a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." *Id.* at 491. Moreover, even if a court enters a sentencing statement with reasons for the sentence, the court may abuse its discretion if "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." *Id.* at 490-91. Notably, although the reasons given by the trial court "and the omission of reasons arguably supported by the record, are reviewable . . . for abuse of discretion," the "relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id.*

[14] Here, Taylor argues that the trial court abused its sentencing discretion by imposing time in the DOC as opposed to placing him on home detention or probation for the duration of his sentence and requiring him to participate in a community-based treatment program. He directs us to Indiana Code Section 35-32-1-1, which provides that our criminal code should be "construed in accordance with its general purposes," among them, to "reduce crime by promoting the use of evidence[-]based practices for rehabilitation of offenders in a community setting" and to "keep dangerous offenders in prison by avoiding the use of scarce prison space for nonviolent offenders." According to Taylor, in light of these provisions, it should be a "rare exception" to use the DOC

"solely for treatment rather than a community-based program" and, "[i]n that rare exception, the record should provide support for a finding that community-based treatment is inadequate." Br. of Appellant at 11. Otherwise, Taylor contends, those provisions in the Indiana Code are "rendered meaningless." *Id.*

[15] Taylor argues that, here, "[t]he record does not support the trial court's conclusion that Taylor, with the help of the 'good facilities' in the community and their programs, cannot stay off drugs." *Id.* Taylor focuses on his testimony that "he currently was clean and sober and has been for the longest time in his life, ten or eleven months." *Id.* Taylor points out that the State "never argued, and the trial court never found, that Taylor was lying about his current sobriety." *Id.* at 12. Taylor asserts that "[t]he record does not support the trial court's finding that Taylor can only maintain sobriety by attending the DOC drug treatment program rather than a treatment center in the community." *Id.* at 12. Taylor further contends that the court abused its discretion by finding that "only [RWI] and not a community-based program would help Taylor overcome his addiction, as such a finding was not supported by the record." *Id.*

[16] At bottom, Taylor—thirty-eight years old as of the sentencing hearing—asks us to reweigh the evidence, placing more weight on evidence of his recent sobriety than on the evidence that he has struggled with addiction for many years. Yet, it is the trial court's role to weigh the evidence, with the court free to fashion a sentence based upon a person's habitual patterns of conduct. *See, e.g.*, *In re E.M.*, 4 N.E.3d 636, 643 (Ind. 2014) (noting in a different context that the trial court is entrusted with balancing recent improvements against habitual patterns

of conduct and, even upon evidence of improvements, a court could properly determine that a person's "past behavior is the best predictor of [his] future behavior"). All in all, the court was well within its discretion to determine that Taylor would not maintain his sobriety in a community setting. Thus, we are not persuaded that the court abused its sentencing discretion by ordering Taylor to serve a portion of his sentence in the DOC. Moreover, we cannot say that any provision of the Indiana Code was rendered meaningless by recommending DOC-based treatment for a Level 4 felony offender struggling with addiction.[4]

Appellate Rule 7(B)

[17] Pursuant to Appellate Rule 7(B), 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." Because sentencing is principally a discretionary function, we reserve our authority for "exceptional cases." *Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018). As our Supreme Court has explained, deference to the trial court "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

[4] Taylor disputes the court's characterization of the sentence as a "treatment sentence," noting that those placed in a DOC program are still "treated as prisoners" and he "could be living side-by-side with those convicted of murder, rape, child molestation, and robbery." Br. of Appellant at 12-13. To the extent Taylor is asserting that his sentence is unduly punitive, we note that the sentence was authorized by statute. We otherwise address his contentions regarding the appropriateness of the sentence in the next section herein.

virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Moreover, in reviewing whether a sentence warrants revision, we may consider all penal aspects of the sentence, including the placement of the offender. *See Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Ultimately, the defendant bears the burden of persuading us that the sentence is inappropriate. *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021).

[18] As earlier noted, the sentencing range for a Level 4 felony is two years to twelve years with an advisory sentence of six years. I.C. § 35-50-2-5.5. Here, the court imposed a somewhat aggravated sentence, ordering five years in the DOC and three additional years suspended, with two of the years suspended to probation. The court also recommended placement in the RWI program, a "therapeutic community" to help Taylor overcome issues with addiction. Tr. Vol. 2 at 34.

[19] Although Taylor disputes his need for assistance overcoming addiction, the record is replete with evidence that supports placement in the DOC with the opportunity for treatment. Indeed, as to the nature of the offense, Taylor was convicted of dealing methamphetamine, a substance he abused. Moreover, the nature of the offense is that Taylor conspired with his then-girlfriend to deal methamphetamine, with Taylor encouraging the buyer to enjoy the substance.

[20] In asking us to revise his sentence, Taylor minimizes his role in the offense, asserting that King was more active and his "only role in the deal was at the very end," completing "the deal King had arranged." Br. of Appellant at 15. However, we disagree that the extent of Taylor's participation—*i.e.*, handing

drugs to the buyer—constitutes compelling evidence warranting revision of a sentence for drug dealing. Taylor also points out that, for unknown reasons, the State dismissed charges against King. According to Taylor, the dismissal of those charges indicates that his offense "is not so serious that it demands punishment." *Id.* For support, Taylor directs us to *Cardwell v. State*, wherein our Supreme Court revised a sentence of thirty-four years, noting that there was a "stark" disparity between that lengthy sentence and another defendant's sentence of only one-and-one-half years. 895 N.E.2d 1219, 1226 (Ind. 2008). Notably, *Cardwell* involved disparate sentences for similar criminal conduct. *See id.* Here, however, there has been no determination that King is culpable. Regardless, we cannot say that the dismissal of those charges affects the nature of a Level 4 felony—a serious offense, as reflected in the sentencing range.

[21] As to the character of the offender, there is every indication that Taylor is a helpful caregiver to his elderly grandfather and capable of contributing to the community. Indeed, Taylor reported previously being on both the school board and the town board and being a part of a successful local rental home business. Nonetheless, this is not Taylor's first criminal offense or first felony conviction. Moreover, although Taylor acknowledged that he had a problem and took responsibility for his actions, at times he seemed to minimize the impact of his decisions. For example, when referring to the instant offense, Taylor stated that he "was at the wrong place at the wrong time when it happened[.]" *Id.* at 21.

[22] While we recognize that this is Taylor's first sentence involving incarceration in the DOC, Taylor has had prior opportunities to reform his behavior without

success, leading to the imposition of a more serious sentence. All in all, Taylor has not persuaded us that his sentence is inappropriate under Appellate Rule 7(B). We therefore decline to disturb the sentence imposed by the trial court.

Conclusion

[23] We cannot say that the trial court abused its sentencing discretion. Moreover, the sentence selected by the court, with DOC placement, is not inappropriate.

[24] Affirmed.

Crone, J., and Pyle, J., concur.