MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Charles William Winkelman,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 12, 2021

Court of Appeals Case No. 20A-CR-2235

Appeal from the Dearborn Superior Court

The Honorable Jonathan N. Cleary, Judge

Trial Court Cause No. 15D01-2008-F6-377

Kirsch, Judge.

[1] Following a bifurcated jury trial, Charles William Winkelman ("Winkelman") was convicted of Level 6 felony unlawful possession of a syringe[1] and was adjudicated a habitual offender[2]. He was sentenced to five years in the Indiana Department of Conviction ("DOC"). Winkelman appeals his conviction for Level 6 felony unlawful possession of a syringe and his five-year executed sentence in the DOC. He raises the following issues for our review:

> I. Whether the evidence was sufficient to sustain his conviction for Level 6 felony unlawful possession of a syringe; and
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> II. Whether his sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts and Procedural History

[3] In August of 2020, Winkelman was living in a trailer located on the property of his parents' residence in Dearborn County, Indiana. *Supp. Tr. Vol. 2* at 163. Winkelman did not live in his parents' home, but his mother, father, sister, and two nephews lived in the residence. *Id.* At some point around 2:00 to 3:00 a.m. on August 28, 2020, Winkelman came into his parent's residence while his mother and father were trying to sleep, which caused a disturbance. *Id.* at 165-66. Winkelman's father called 911 because Winkelman was "out of control . . .

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[1] *See* Ind. Code § 16-42-19-18.

[2] *See* Ind. Code § 35-50-2-8.

on something," was "paranoid, . . . stating that somebody had been getting into his phone, and messing with his phone, remotely," and was "sweating severely, just all the paranoia." *Id.* at 164-65.

[4] Deputy Brian Weigel ("Deputy Weigel") of the Dearborn County Sheriff's Office, who had investigated numerous cases that involved people who were under the influence of drugs, was one of the officers who responded to the 911 call. *Id.* at 173-74. He observed that Winkelman appeared to be acting in an agitated and paranoid manner, and based on his training and experience, Deputy Weigel concluded that Winkelman's behavior was consistent with methamphetamine use. *Id.* at 175, 181. Winkelman's father told the responding officers that, in the late morning or early afternoon of August 27, 2020, he had witnessed Winkelman throw away a "needle." *Id.* at 165, 169. Winkelman's father observed Winkelman push the syringe against the dumpster "to bend the needle," put the syringe in a soda can, and place the can containing the syringe in a trash bag near the dumpster. *Id.* at 165, 167-69. Winkelman's father indicated that no one in the residence suffered from a medical condition that would require them to give themselves an injection and that Winkelman did not suffer from such a medical condition that would require the medical use of a syringe to administer medication. *Id.* at 166.

[5] Another Dearborn County Sheriff's Office deputy found the trash bag where Winkelman's father said the syringe would be, and Deputy Weigel located the syringe in the trash bag "in the driveway near a dumpster inside of a Coke can, a pop can" where Winkelman's father said it would be. *Id.* at 166, 182, 188-92;

State's Exs. 1-4. Deputy Weigel recovered the syringe and secured it in a plastic container because, based on his experience as a law enforcement officer, it was the type of syringe that he knew to be used to inject controlled substances such as methamphetamine. *Supp. Tr. Vol. 2.* at 198-99, 206; *State's Ex. 5*. Deputy Weigel then told Winkelman that he had located a syringe and placed Winkelman under arrest[3]; Winkelman said, "Dad watched me throw that fucking thing in a pop can." *Supp. Tr. Vol. 2* at 199; *State's Ex. 7A* at 1:41, 2:19-21.

[6] Deputy Weigel proceeded to transport Winkelman to the law enforcement center in Martinsburg. *Supp. Tr. Vol. 2* at 199. As Deputy Weigel drove Winkelman to the law enforcement center, Winkelman continued to speak even though Deputy Weigel was not asking him any questions. *Id.* at 199, 204-05; *State's Ex. 7A*. The audio-visual recording device in Deputy Weigel's vehicle captured Winkelman stating that he had thrown away the recovered syringe in the same manner he had done with syringes since he began "shooting dope." *State's Ex. 7A* at 8:04-31. Winkelman also stated, "I knew when I threw that fucker in a pop can, crushed it, I should have burned it." *Id.* at 19:01-05. He later said, "I'm high, I guess." *Id.* at 24:35.

[3] Winkelman consented to searches of his person, the trailer where he was living, and his vehicle, and law enforcement did not locate any other illegal substances, drug paraphernalia, or contraband. *Supp. Tr. Vol. 2* at 207-09.

[7] That same day, the State charged Winkelman with unlawful possession of a syringe, a Level 6 felony. *Appellant's App. Vol. 2* at 12. On September 14, 2020, the charging information was amended to include an allegation that Winkelman was a habitual offender. *Id.* at 33-35. Following a jury trial on October 13, 2020, the jury found Winkelman guilty as charged. *Id.* at 160-62, 165-66.

[8] The trial court ordered Winkelman to complete a presentence investigation ("PSI") for sentencing purposes, but he refused to participate in completing the PSI. *Id.* at 160; *Sent. Tr. Vol. 2* at 4-5. Nonetheless, the probation department was able to assemble his criminal history. *Appellant's Conf. App. Vol. 2* at 168-72. On November 5, 2020, the trial court held the sentencing hearing. *Appellant's App. Vol. 2* at 10. At the sentencing hearing, Winkelman's mother and father testified that Winkelman suffered from mental health issues, and his sister testified that he had been diagnosed with bipolar disorder and schizophrenia. *Sent. Tr. Vol. 2* at 10-11, 13, 16. His father and sister also described him as having some difficulty with reading and writing. *Id.* at 12, 17. His family described him as a hard worker and requested that the trial court help Winkelman find treatment for his mental health and substance abuse issues as opposed to incarceration. *Id.* at 8-9, 13-14, 17. On November 5, 2020, the trial court sentenced Winkelman to the DOC for two years for unlawful possession

of a syringe and three years for the habitual offender enhancement[4] for a total sentence of five years. *Appellant's App. Vol. 2* at 178-83. Winkelman now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[9] Winkelman argues that the evidence was insufficient to support his conviction for unlawful possession of a syringe. When reviewing a claim of insufficient evidence to sustain a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016). It is the fact-finder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We will affirm the conviction unless no reasonable fact-finder could have found the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Drane v. State*, 867 N.E.2d 144, 147 (Ind. 2007).

[10] To convict Winkelman of Level 6 felony unlawful possession of a syringe, the State was required to prove beyond a reasonable doubt that Winkelman

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[4] Winkelman does not challenge the sufficiency of the evidence underlying the habitual offender enhancement.

possessed a hypodermic syringe or needle or an instrument adapted for the use of a controlled substance or legend drug by injection into a human being with intent: (1) to violate Indiana Code chapter 16-42-19; or (2) to commit an offense described in Indiana Code chapter 35-48-4. Ind. Code § 16-42-19-18.

[11] Winkelman does not dispute that he had possessed a syringe when he disposed of the syringe into a soda can on August 27, 2020, which law enforcement recovered when they responded to the 911 call on August 28, 2020. *See Appellant's Br.* at 10. Thus, Winkelman argues only that the State failed to prove the element of intent to violate either Indiana Code chapter 16-42-19 or an offense described in Indiana Code chapter 35-48-4 beyond a reasonable doubt. Intent to introduce a legend drug or controlled substance into one's body may be inferred from circumstantial evidence. *See Berkhardt v. State*, 82 N.E. 3d 313, 316-17 (Ind. Ct. App. 2017) (reviewing case law concerning evidence of intent).

[12] Winkelman maintains that there was no evidence that he had used the syringe to commit a legend drug offense or a controlled substance offense, or that he had any future plan to use the syringe with the intent to violate either Indiana Code chapter 16-42-19 or an offense described in Indiana Code chapter 35-48-4 because the needle was bent. Pursuant to the language of Indiana Code section 16-42-19-18, the State was not required to prove that Winkelman specifically intended to inject himself with a legend drug or controlled substance; rather, it had to prove only that he possessed the syringe with the intent to commit a

violation of Indiana Code chapter 16-42-19 or a controlled substance offense under Indiana Code chapter 35-48-4.

[13] Winkelman points to language in *Berkhardt*, in which another panel of this court reversed a conviction for unlawful possession of a syringe for lack of intent to use the syringe to inject illegal drugs, stating that "[w]e have long rejected the argument that the intent element can be inferred from unexplained possession of a syringe." 82 N.E.3d at 317. Winkelman overlooks that in *Berkhardt* we also reviewed our case law regarding sufficient evidence of unlawful intent and observed, "Cases in which courts have found sufficient evidence of unlawful intent generally include evidence of prior narcotics convictions; admissions to drug use; the presence of illegal drugs or drug residue on the paraphernalia; track marks on the defendant's arms or hands; or withdrawal symptoms showing recent drug use." 82 N.E.3d at 317.

[14] Here, the facts most favorable to the verdict show that Winkelman was "out of control . . . on something" and was acting paranoid when law enforcement responded to the scene. *Supp. Tr. Vol. 2* at 164, 173-74. Deputy Weigel had investigated many cases involving people who had consumed drugs and – based on his training and experience – testified that Winkelman's behavior was consistent with methamphetamine use. *Id.* at 173-75, 181. Pursuant to Indiana Code section 35-48-4-6.1, the possession of methamphetamine is unlawful. Ind. Code § 35-48-4-6.1 ("A person who, without a valid prescription or order of a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated)

commits possession of methamphetamine . . . .") In addition to his behavior, Winkelman admitted "I'm high, I guess" while Deputy Weigel was transporting Winkelman to the law enforcement center in Martinsburg. *State's Ex. 7A* at 24:35. Winkelman also acknowledged that he had disposed of the recovered syringe in the manner he had always done since he began "shooting dope." *Id.* at 8:04-31. Deputy Weigel also testified that dope is a "slang term for methamphetamine." *Supp. Tr. Vol. 2* at 207. While Winkelman contends that a search of his person, trailer, and vehicle revealed neither the presence of illegal drugs or other drug paraphernalia nor was the recovered syringe tested for the presence of illegal substances or DNA, this argument overlooks Winkelman's own statements acknowledging that the syringe was his, his history of drug use, and that he was high. *Id.* at 207-09; *State's Ex. 7A* at 1:41, 2:19-21, 8:04-31, 19:01-05, 24:35. Winkelman's argument to the contrary invites us to reweigh the evidence and judge the credibility of witnesses in violation of our standard of review. *See Jackson*, 50 N.E. 3d at 770.

[15] Based on the foregoing, the jury could have reasonably concluded that the State's evidence was sufficient to show that Winkelman possessed the syringe with the intent to commit a controlled substance offense pursuant to Indiana Code chapter 35-48-4. Therefore, the evidence was sufficient to sustain Winkelman's conviction for unlawful possession of a syringe.

II. Inappropriate Sentence

[16] 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 Weaver's offense 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.*

[17] Winkelman argues that his fully executed five-year sentence is inappropriate and should be reduced to a "more appropriate" sentence. *Appellant's Br.* at 14. Winkelman was convicted of Level 6 felony unlawful possession of a syringe. *Appellant's App. Vol. 2* at 178. The sentencing range for a Level 6 felony is six

months to two and one-half years with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Winkelman received a sentence of two years for his conviction of Level 6 felony unlawful possession of a syringe. *Appellant's App. Vol. 2* at 178, 182. He was also adjudicated a habitual offender. *Id.* at 178. Because the underlying conviction was for a Level 6 felony, the sentencing range for the habitual offender is a nonsuspendible term of between two years and six years. Ind. Code § 35-50-2-8(i). Winkelman received a sentence of three years for the habitual offender enhancement. *Id.* at 178, 182. Thus, the maximum sentence to which Winkelman could have been sentenced was eight and one-half years. Winkelman received an aggregate sentence of five years, which was three and one-half years less than the maximum sentence.

[18] 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.*

[19] Winkelman argues that his offense demonstrated "significant restraint and regard and did not include any conduct exceeding the statutory elements." *Appellant's Br.* at 12. The evidence showed that Winkelman placed the syringe

inside of a soda can and then placed that can in a plastic trash bag. *Supp. Tr. Vol. 2* at 165, 167-69, 173-74, 182, 188-92; *State's Exs. 1-4, 7A*. Winkelman also burst into his parents' residence in the early morning hours of August 28, 2020, while they were trying to sleep in an agitated and paranoid manner and was "out of control" and appeared to be "on something" before law enforcement was called and observed Winkelman in that same agitated and paranoid state. *Supp. Tr. Vol. 2* at 164, 173-75, 181. Winkelman later acknowledged that he had possessed the syringe by disposing of it as he always had since he began "shooting dope" and that he was high. *State's Ex. 7A* at 1:41, 2:19-21, 8:04-31, 19:01-05, 24:35. We cannot say that Winkelman's offense was inappropriate in light of the nature of the offense.

[20] 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). Winkelman acknowledges his extensive criminal history but contends that his family's request to get him treatment rather than incarceration and his family's description of him as a productive person and a hard worker merit a downward revision of his sentence.

[21] Here, as Winkelman acknowledges, the evidence showed that his criminal history was extensive. As also noted, Winkleman did not participate in the preparation of the court-ordered PSI but did not object to the contents of his criminal history that the probation department was able to compile without his

input. *Sent. Tr. Vol. 2* at 5; *Appellant's Conf. App. Vol. 2* at 173. Winkelman, who was thirty-six at the time of sentencing, had compiled an extensive criminal history that began with a 2002 juvenile adjudication that resulted in a 120-day suspended sentence for possession of a legend drug and possession of a controlled substance, which was later revoked when Winkelman violated his probation.[5] *Appellant's Conf. App. Vol. 2* at 168. The trial court adjudicated Winkelman as a habitual offender based on his 2012 conviction for battery on a law enforcement officer and possession of a controlled substance as Class D felonies, 2015 conviction for Level 6 felony possession of cocaine, and 2016 conviction for Level 6 felony unlawful possession of a syringe. *Id.* at 171; *Tr. Vol. 3* at 23-24, 26. Winkelman also had adult convictions for felonies and misdemeanors that included: theft, receiving stolen property, possession of a controlled substance, possession of paraphernalia, driving while suspended, public intoxication, disorderly conduct, criminal mischief, operating a vehicle as a habitual traffic violator, and resisting law enforcement.[6] *Appellant's Conf. App. Vol. 2* at 168-72. Winkelman has also had numerous criminal charges that were dismissed, subject to a diversion agreement, or otherwise not prosecuted, which reflects poorly on his character. *See Zavala v. State*, 138 N.E.3d 291, 301

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[5] The criminal history does not specify whether Winkelman was adjudicated a juvenile delinquent for both of the charged offenses or if it was for only one of the charged offenses. *Appellant's Conf. App. Vol. 2* at 168.

[6] Winkelman's criminal history also included charges in Ohio for: (1) possession of illegal drug paraphernalia, which resulted in two days' confinement with both days suspended and a six-month driver's license suspension; (2) driving while suspended, which resulted in a three-month driver's license suspension; and (3) possession of marijuana, which resulted in three years of community control and a six-month driver's license suspension. *Appellant's Conf. App Vol. 2* at 170.

(Ind. Ct. App. 2019) ("A record of arrests reflects on the defendant's character in part because such record reveals that subsequent antisocial behavior by the defendant has not been deterred even having been subject to police authority and having been made aware of its oversight."), *trans. denied.* Similar to his numerous arrests, Winkelman has violated his probation on multiple occasions, which shows that prior attempts at rehabilitation have been unsuccessful in deterring him from criminal activity. *Id.* After reviewing Winkelman's criminal history, the trial court observed that it "supports the eight and a half year sentence" that could have been imposed as the maximum for the unlawful possession of a syringe conviction and habitual offender enhancement. *Sent. Tr. Vol. 2* at 29. Winkelman has not shown that his sentence is inappropriate in light of his character.

[22] As to Winkelman's argument that his mental health issues warrant a downward revision of his sentence because "he had been previously diagnosed with bipolar and schizophrenia and had not recently received treatment for his condition," *see Appellant's Br.* at 13, Winkelman has waived this issue because he has failed to develop a cogent argument. *See* Ind. Appellate Rule 46(A)(8)(a) (argument section of appellant's brief "must contain the contentions of the appellant on the issues presented, supported by cogent reasoning"); *see also Jarman v. State*, 114 N.E.3d 911, 915 n.2 (Ind. Ct. App. 2018), *trans. denied*. Waiver notwithstanding, in reviewing whether a defendant's sentence is inappropriate because of mental illness, the defendant must "present evidence establishing that his mental illness had a nexus to his" crime. *Denham v. State*, 142 N.E.3d

514, 518 (Ind. Ct. App. 2020), *trans denied.* The sole evidence of Winkelman's mental illness was from his family members who testified at the sentencing hearing to those prior diagnoses. *Sent. Tr. Vol. 2* at 10-11, 13-14, 16-17. The trial court considered the requests of Winkelman's family to consider his mental health and need for mental health and substance abuse treatment, observing that it had not been presented any medical records to substantiate the family member's claims about Winkelman's mental health issues, and concluded that was "nothing concrete for this Court to use for future treatment recommendations." *Id.* at 27. Winkelman does not show, or even allege, that there was a nexus between his mental illness and his crime, and we cannot say Winkelman's mental health issues warrant downward revision of his sentence.

[23] Winkelman'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 v. State*, 29 N.E.3d 111, 122 (Ind. 2015). He 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.

[24] Affirmed.

May, J., and Vaidik, J., concur.