

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Tonja R. Garr,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

May 20, 2021

Court of Appeals Case No.  
21A-CR-136

Appeal from the Allen Superior  
Court

The Honorable Frances C. Gull,  
Judge

Trial Court Cause No.  
02D05-1908-F6-1072

**Crone, Judge.**

## Case Summary

- [1] Tonja R. Garr appeals the two-year aggregate sentence imposed by the trial court following her convictions for level 6 felony possession of methamphetamine and class C misdemeanor possession of paraphernalia. She contends that her sentence is inappropriate in light of the nature of her offenses and her character. Concluding that she has not met her burden to demonstrate that her sentence is inappropriate, we affirm.

## Facts and Procedural History

- [2] On August 24, 2019, Garr was driving a borrowed vehicle, and another individual was with her as a front-seat passenger. A police officer on patrol ran the vehicle's registration and discovered that the vehicle's owner had an active warrant for his arrest. After Garr parked at a Dollar General Store, the officer approached the vehicle and asked Garr if the owner was present, and she replied that he was at home. Garr's only identification was an Indiana ID card, and she did not have a valid driver's license. The officer observed an open beer bottle in the front center console of the vehicle. The officer informed Garr that she would need to have someone with a valid driver's license come and retrieve the vehicle. The officer then asked Garr if he could search the vehicle, and Garr consented to a search. During the search, the officer found two pipes for smoking narcotics that were stained with white residue, and two plastic bags and a small glass jar that contained a white substance later determined to be 0.3 grams of methamphetamine. Garr admitted to the officer that the methamphetamine in the glass jar belonged to her.

[3] The State charged Garr with level 6 felony possession of methamphetamine and class C misdemeanor possession of paraphernalia. On October 21, 2019, Garr entered into a plea agreement with the State in which she agreed to plead guilty to both crimes in exchange for participation in the Allen County Drug Court program. In December 2020, the State filed a petition to terminate Garr’s participation in the Drug Court program after she tested positive for methamphetamine and amphetamine and submitted a diluted urine screen. Following a hearing, the trial court terminated Garr’s participation in the program and sentenced her to concurrent terms of two years for the level 6 felony and sixty days for the class C misdemeanor, for an aggregate executed sentence of two years, to be served consecutive to Garr’s sentence in another cause. This appeal ensued.

### **Discussion and Decision**

[4] Garr asks that we reduce her sentence pursuant to Indiana Appellate Rule 7(B), which states that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” “Sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “Such deference 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 virtuous traits or persistent examples

of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). In conducting our review, our principal role is to leaven the outliers. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016). “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.” *McFall v. State*, 71 N.E.3d 383, 390 (Ind. Ct. App. 2017). The defendant bears the burden of persuading this Court that her sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[5] As for the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a level 6 felony is between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7.<sup>1</sup> A person who commits a class C misdemeanor shall be imprisoned for a fixed term of not more than sixty days. Ind. Code § 35-50-3-4. Here, the trial court imposed an aggregate sentence of two years, which is eight months below the maximum possible sentence for Garr’s offenses.

[6] Garr’s sole assertion regarding why the nature of her offenses warrants sentence reduction is that her crimes involved “a small quantity of drugs for personal use

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<sup>1</sup> Garr misstates the sentencing range for a level 6 felony as well as the applicable statute in her appellate brief on appeal.

and paraphernalia to ingest those drugs.” Appellant’s Br. at 23. However, as the State points out, the small quantity of drugs that Garr possessed is already accounted for in the lower class of felony for which she was charged, and therefore the small quantity is not “compelling evidence portraying in a positive light the nature of the offenses.” *Stephenson*, 29 N.E.3d at 122. Moreover, additional circumstances surrounding Garr’s offenses cannot be overlooked. She was operating a vehicle without a valid license and with an open container of alcohol.<sup>2</sup> Garr has not met her burden to demonstrate that her sentence is inappropriate in light of the nature of her offenses.

[7] Regarding Garr’s character, on appellate review, analysis of the character of the offender involves a broad consideration of a defendant’s qualities as shown by her life and conduct. *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019). One relevant fact is the defendant’s criminal history, and “[t]he significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017) (citation omitted), *trans. denied*. By the time fifty-two-year-old Garr committed the current offenses, she had amassed fourteen prior misdemeanor convictions and ten prior felony convictions, including prior convictions for dealing in methamphetamine, possession of methamphetamine, possession of paraphernalia, and possession of chemical reagents or precursors with intent to manufacture. She was on probation for possession of

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<sup>2</sup> The presentence investigation report indicates that Garr’s driver’s license is suspended because she has been deemed a habitual traffic violator. Appellant’s App. Vol. 2 at 71.

paraphernalia and theft when she committed the current crimes, and she has had her probation revoked on at least four prior occasions, and suspended sentences revoked on at least two occasions. Despite several attempts at rehabilitation, Garr appears both unwilling and unable to curb her illegal drug use and criminal behavior. Based on the foregoing, Garr has not persuaded us that her character warrants a sentence reduction. Accordingly, we affirm the sentence imposed by the trial court.

[8] Affirmed.

Riley, J., and Mathias, J., concur.