MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Brendon J. White,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

July 12, 2022

Court of Appeals Case No. 21A-CR-2695

Appeal from the Ohio Circuit Court

The Honorable Kimberly A. Schmaltz, Magistrate

Trial Court Cause No. 58C01-2105-F6-30

Najam, Judge.

Statement of the Case

[1] Brendon J. White appeals his two and one-half-year sentence following his conviction for resisting law enforcement, as a Level 6 felony, and operating with a schedule I or II controlled substance in a person's blood, as a Class C misdemeanor. White raises one issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] On April 27, 2021, near dusk, Officer Jacob Lusby with the Aurora Police Department saw a Chevrolet Blazer "straddl[e] the white line of the center turn lane[.]" Tr. Vol. 2 at 69. When Officer Lusby maneuvered his police cruiser behind the Blazer, the driver of the vehicle, later determined to be White, made several abrupt lane changes. Officer Lusby activated his emergency lights and attempted to initiate a traffic stop because he believed the driver was intoxicated. White tapped his brakes but did not stop or "slow down at all." *Id.* at 70. The officer activated his emergency siren, "to make sure that [White] knew that [the officer] was behind him[,]" but White continued to drive through the city of Aurora, "ran through stop signs" with "complete disregard for the general motoring public[,]" and crossed the county line from Dearborn County into Ohio County. *Id.* Before crossing into Ohio County, White "pass[ed] numerous cars in no passing zones[,]" and reached speeds of "around ninety miles per hour[.]" *Id.* at 71. Officer Lusby discontinued the pursuit at

the Dearborn County line and notified the Ohio County Sheriff's Department that White had entered Ohio County.

[4] Ohio County Deputy Sheriff Robert Scheffler encountered the Blazer and began to pursue it. White then "took off at a high rate of speed." *Id.* at 100. Deputy Scheffler activated his emergency lights and siren, and he accelerated his cruiser to eighty miles per hour "to catch up" to White. *Id.* When Deputy Scheffler caught up with White, White was traveling sixty-four miles per hour in a forty-five mile-per-hour speed zone. At one point during the chase, White brought his vehicle to a complete stop, and Deputy Scheffler stopped his cruiser behind White. However, as the deputy took off his seatbelt and opened his door, White "took off" from the deputy. *Id.* at 101. Deputy Scheffler continued his pursuit as White reached speeds of ninety-four miles per hour, failed to stop at a stop sign, drove between twenty and fifty miles per hour on a gravel road, and forced other vehicles to leave the road to avoid him.

[5] White eventually drove out of Ohio County and into Switzerland County, where Switzerland County Sheriff's deputies had deployed stop sticks. White swerved to avoid the stop sticks, "went through a yard, came to a two[-]foot ditch that the vehicle could[not] navigate[, and] came to a complete stop." *Id.* at 103. Deputy Scheffler stopped his cruiser behind White's Blazer. This time, White exited the vehicle with his hands held up but then turned and ran away. Officers chased White on foot for approximately one-quarter of a mile. A Switzerland County Sheriff's deputy apprehended White after White experienced difficulties breathing and "laid down [on the ground] and gave

up." *Id.* at 104. An Indiana State Trooper asked White if he was okay and if he had consumed any drugs, and White stated that he had consumed methamphetamine.

[6] White was transported to a local hospital. Deputy Scheffler and Officer Lusby also traveled to the hospital, and they encountered White in the emergency room. White apologized to Deputy Scheffler "for running," and White told Officer Lusby that he did not stop because he "had a warrant" and "did[not] have a valid driver's license." *Id.* at 90, 109. White's blood was then drawn for analysis, and his test results confirmed that he had methamphetamine in his system.

[7] The State charged White with resisting law enforcement, as a Level 6 felony; possession of marijuana, as a Class B misdemeanor; reckless driving, as a Class C misdemeanor; and operating with a schedule I or II controlled substance in a person's blood, as a Class C misdemeanor. The State dismissed the possession of marijuana and reckless driving charges prior to trial.

[8] On October 13 and 14, the trial court held a two-day jury trial. At the conclusion of the trial, the jury found White guilty of Level 6 felony resisting law enforcement and Class C misdemeanor operating with a schedule I or II controlled substance in a person's blood. At White's sentencing hearing, the court found as aggravating factors the nature and circumstances of White's offenses; White's criminal history; that White had received fifteen "write[-]ups" while incarcerated in the Indiana Department of Correction ("DOC"); and that

White was on probation when he committed the instant offenses. Appellant's App. Vol. 2 at 243. The trial court found as mitigating factors that White did not complete high school and had a history of mental health and substance abuse issues, but the court gave minimal weight to the mitigating factors. The court sentenced White to concurrent terms in the DOC of two and one-half years for the Level 6 felony and sixty days for the Class C misdemeanor. This appeal ensued.

Discussion and Decision

[9] White contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he 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." This Court has held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017), *trans. denied*. And the Indiana Supreme Court has explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[10] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] 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).

[11] In order to assess the appropriateness of a sentence, we first look to the statutory range established for the classification of the relevant offense. The sentencing range for a Level 6 felony is between six months and two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b) (2022). Indiana Code Section 35-50-3-4 provides for a fixed term of not more than sixty days for a Class C misdemeanor conviction. Here, the trial court imposed the maximum sentence for White's offenses.

[12] On appeal, White contends that his sentence is inappropriate in light of the nature of the offenses because, according to White, "there was no evidence that [he intended] to injure any other person"; he was "taken into custody peacefully when caught"; none of his actions were "brutal or vicious"; and his conduct was not among the "worst of the worst offenses." Appellant's Br. at 13. The nature of the offense is found in the details and circumstances of the offense and the defendant's participation therein. *Lindhorst v. State*, 90 N.E.3d 695, 703 (Ind. Ct. App. 2017). When reviewing a defendant's sentence that deviates from the advisory sentence, we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence. *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017), *trans. denied*.

[13] White, while under the influence of methamphetamine, resisted law enforcement when he fled from a police officer and a deputy sheriff and led the officers on a high-speed car chase that lasted more than twenty minutes, covered three counties, and reached speeds in excess of ninety miles per hour. As the court noted in its sentencing order,

> [t]he nature and circumstances of the current crimes . . . indicate that [White] has no regard for anyone's safety. He was driving in excess of 90 m.p.h. over roads through Ohio County which were narrow and sometimes even gravel. He ran through stop signs. There were other cars on the road. He did this while under the influence of [m]ethamphetamine. This put the entire

> community, [White], and the police officers attempting to stop him at a substantial risk of harm or injury.

Appellant's App. Vol. 2 at 243-44. Given the nature of his offenses, White's sentence is not inappropriate.

[14] White also contends that his sentence is inappropriate in light of his character. White asserts that his character does not place him among the worst of offenders; he is in need of substance abuse treatment and care; he had "a history as a productive member of society despite his mental, substance and legal trouble"; and "although he has a criminal history, it [consists] primarily [of] crimes involving obtaining money for illicit substances." Appellant's Br. at 14-15. However, White has not presented compelling evidence portraying his character in a good light. And White's criminal history reflects his poor character. White has had three juvenile adjudications. His adult criminal history includes convictions of Level D felony credit card fraud and theft and a conviction of Level B felony burglary. He has had three prior probation violations. And he was on probation when he committed the instant offenses. He had received fifteen write-ups during his prior incarcerations in the DOC and one additional write-up while housed at the county jail awaiting trial for his current offenses. White also argues that his mental health problems and substance abuse merit a reduction of his sentence. However, the court already noted these to be mitigating factors, albeit afforded minimal weight, when it made its sentencing decision.

[15] White's criminal history and failure to correct his behavior certainly justified the sentence imposed by the trial court. Therefore, we cannot say that his aggregate two and one-half-year sentence is inappropriate, and we affirm his sentence.

[16] Affirmed.

Bradford, C.J., and Bailey, J., concur.