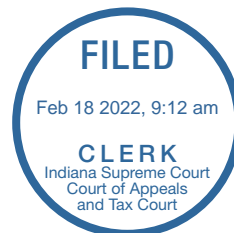


MEMORANDUM DECISION

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

Andre Monte Wade,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 18, 2022

Court of Appeals Case No.
21A-CR-1845

Appeal from the
Tippecanoe Superior Court

The Honorable
Randy J. Williams, Judge

Trial Court Cause No.
79D01-2009-F2-51

Molter, Judge.

- [1] Andre Monte Wade pleaded guilty to dealing in a substance represented to be a controlled substance as a Level 5 felony. He was sentenced to four years of

incarceration, with one and one-half years executed in the Indiana Department of Correction, one and one-half years in the Tippecanoe County Community Corrections, and one year suspended to probation. Wade appeals his sentence, arguing it is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

Facts and Procedural History

- [2] In the fall of 2020, law enforcement officers observed Wade completing a hand-to-hand transaction with another individual at a housing center in Lafayette, Indiana. Based on the officers' training and experience, they believed Wade was participating in a drug deal. So, when one of the officers saw Wade on a nearby street, he stopped him so they could talk. Wade explained to the officer that he had just left the housing center. While the two were talking, the officer could smell "spice," a synthetic drug, on Wade's person.
- [3] Wade admitted that the odor coming from his person was spice and stated he had the drug in his backpack. The officer then detained Wade and searched his backpack. In it, he found multiple plastic baggies, a digital scale, and a baggie containing spice. The officer also found three additional baggies of spice on Wade's person. In total, Wade possessed about thirteen grams of the drug. And when the officers spoke to Wade, he admitted to having sold about 2.5 grams of spice to the individual at the housing center. This drug deal took place near where minors were present, and the officers observed Wade speaking to one of them.

[4] The State charged Wade with dealing in a schedule I controlled substance as a Level 2 felony and possession of a controlled substance as a Level 6 felony. Several months later, Wade entered into a plea agreement with the State. As part of the agreement, his Level 2 felony was amended to a Level 5 felony. He pleaded guilty to this charge, and the State dismissed the other Level 6 felony charge. Wade’s sentencing was left open to the trial court’s discretion.

[5] The trial court accepted Wade’s guilty plea and entered a sentencing order in July 2021. It sentenced Wade to an aggregate sentence of four years, with one and one-half years in the Indiana Department of Correction; one and one-half years in the Tippecanoe County Community Corrections; and one year suspended to probation. At the sentencing hearing, the trial court identified several aggravating and mitigating factors. As mitigators, it noted that Wade pleaded guilty and had accepted responsibility. And, as aggravators, the trial court found that Wade’s criminal history included six petitions to revoke his probation (one of which was found to be true and three were still pending), Wade had a history of substance abuse, and previous attempts to rehabilitate Wade had failed. Wade now appeals.

Discussion and Decision

[6] The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2002). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be

inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[7] Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Id.* at 160. Thus, we generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).

[8] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 5 felony is a fixed term of imprisonment between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. So, Wade’s sentence was one year over the advisory sentence.

[9] Wade first argues his sentence is inappropriate in light of the nature of his offense. Analyzing the nature of the offense requires us to 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*.

[10] Here, we cannot say there is compelling evidence that a sentence one year above the advisory sentence reflects an inappropriate outlier sentence given the nature of the offense. Aspects of this offense making it atypical include that Wade admitted he sold spice to the individual at the housing center, this drug deal took place near where minors were present, and the officers observed Wade speaking to a minor.

[11] As to his character, Wade acknowledges his criminal history, but he argues it should not be used against him because he accepted responsibility for his misconduct by pleading guilty. The law is well-established that it is proper to consider a defendant’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Wade was twenty-nine years old at sentencing, and his criminal history goes back to at least when he was seventeen. Omitting the offense at issue here, his criminal history includes one prior felony conviction and two misdemeanor convictions for fraud and drug-related offenses, as well as six petitions to revoke his probation. We also note that Wade was convicted of another misdemeanor after the commission of the instant offense. Further, Wade has a history of substance abuse. He admitted to using spice “every other day” since he was at least twenty-six years old. Thus, he has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

[12] Although Wade pleaded guilty, we cannot say that he has shown “substantial virtuous traits or persistent examples of good character” such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Wade received a substantial benefit from the State amending his Level 2 felony charge to a Level 5 felony charge and dismissing his other Level 6 felony charge. Therefore, Wade has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

[13] Affirmed.

Robb, J., and Riley, J., concur.