

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Justin R. Wall
Wall Legal Services
Huntington, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Ellen H. Meilaender
Supervising Deputy Attorney
General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert L. Hiner,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

April 25, 2023

Court of Appeals Case No.
22A-CR-2932

Appeal from the Huntington
Superior Court

The Honorable Jennifer E.
Newton, Judge

Trial Court Cause No.
35D01-2012-F6-408

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Robert L. Hiner (“Hiner”) appeals, following a jury trial, his convictions for Level 6 felony possession of methamphetamine¹ and Class C misdemeanor possession of paraphernalia² and the sentence imposed. Hiner argues that: (1) the trial court erred when it allowed him to be tried in absentia; and (2) his sentence is inappropriate. Concluding that the trial court did not err and that Hiner’s sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether the trial court erred when it allowed Hiner to be tried in absentia.
2. Whether Hiner’s sentence is inappropriate.

Facts

[3] In August 2020, officers obtained and executed a search warrant for Hiner’s house. While searching Hiner’s bedroom, officers found Hiner’s state identification card, business cards, and a plastic bag containing

¹ IND. CODE § 35-48-4-6.1.

² I.C. § 35-48-4-8.3.

methamphetamine in a dresser drawer. Officers also found a cigarette box in Hiner's bedroom that contained another bag of methamphetamine and a glass smoking device with burnt residue. Officers also found a cardboard box containing a silicone smoking device in Hiner's bedroom.

[4] In December 2020, the State charged Hiner with Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. In April 2021, the trial court held a pre-trial conference hearing. At the hearing, Hiner, who was physically present, requested that the trial court set a jury trial date. The trial court set a two-day jury trial for August 26-27, 2021. On July 27, 2021, the trial court held a final pre-trial conference hearing. Hiner appeared at this hearing. At this hearing, the trial court confirmed the jury trial dates of August 26-27, 2021.

[5] On August 3, 2021, the trial court held another hearing. At this hearing, Hiner's attorney informed the trial court that he had had no contact with Hiner since the July 27, 2021 hearing. The trial court noted that Hiner had failed to appear, but it did not change the dates for Hiner's jury trial.

[6] The trial court held a two-day jury trial on August 26-27, 2021 and noted that Hiner had failed to appear. At the start of the jury trial, Hiner's attorney requested that the trial court continue Hiner's jury trial. Hiner's attorney informed the trial court that he did not know the reason for Hiner's absence, but that Hiner "ha[d] a constitutional right to be here." (Tr. Vol. 2 at 76). Hiner's counsel asked the trial court to continue the jury trial until "Hiner can be

present and participate[.]” (Tr. Vol. 2 at 76). In response, the State argued that the jury trial should not be continued. The State noted that Hiner had been at the final pretrial conference. The State further argued that Hiner had been advised that his jury trial “was scheduled for today’s date, and he chose to not be here.” (Tr. Vol. 2 at 77). The trial court noted that Hiner had been present at the April 13, 2021 hearing and the July 27, 2021 hearing where the dates for his jury trial had been set and confirmed. The trial court denied Hiner’s attorney’s motion to continue. The jury heard the facts as set forth above. At the conclusion of the jury trial, the jury found Hiner guilty on both counts.

[7] Approximately fifteen months later, on November 9, 2022, officers arrested Hiner. The trial court held a sentencing hearing later in November 2022. Hiner did not participate in the allocution and did not explain to the trial court why he had failed to appear at his jury trial. The trial court found as an aggravating circumstance Hiner’s prior criminal history. This history included a felony theft conviction, multiple misdemeanor convictions, and the fact that Hiner had his probation revoked in a different case. The trial court also found as an aggravating circumstance the fact that Hiner had committed a new offense while he was on bond. The trial court also noted that Hiner had absconded for the last fifteen months and had been charged with new offenses when he had been found and arrested. The trial court noted that it “ha[d] no reason to believe that [Hiner] w[ould] follow anything that [it] orders[.]” (Tr. Vol. 3 at 77).

- [8] At the conclusion of the sentencing hearing, the trial court sentenced Hiner to two (2) years for his Level 6 felony possession of methamphetamine conviction and sixty (60) days for his Class C misdemeanor possession of paraphernalia conviction. The trial court ordered that Hiner serve his sentences concurrently to each other at the Indiana Department of Correction (“the DOC”).
- [9] Hiner now appeals.

Decision

- [10] Hiner argues that: (1) the trial court erred when it allowed him to be tried in absentia; and (2) his sentence is inappropriate. We address each of his arguments in turn.

1. Jury Trial in Absentia

- [11] Hiner first argues that the trial court erred when it allowed him to be tried in absentia. Generally, a criminal defendant has a right to be present at all stages of the trial. *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007) (citing *Lampkins v. State*, 682 N.E.2d 1268, 1273 (Ind. 1997)). However, a defendant may waive this right and be tried in absentia if the trial court determines that the defendant knowingly and voluntarily waived that right. *Id.* “The trial court may presume a defendant voluntarily, knowingly, and intelligently waived his right to be present and try the defendant in absentia upon a showing that the defendant knew the scheduled trial date but failed to appear.” *Soliz v. State*, 832 N.E.2d 1022, 1029 (Ind. Ct. App. 2005), *trans. denied*. “The best evidence of this knowledge is the defendant’s presence in court on the day the matter is set for

trial.” *Id.* (citing *Fennell v. State*, 492 N.E.2d 297, 299 (Ind. 1986)). A defendant who has been tried in absentia must be afforded an opportunity to explain his absence and thereby rebut the initial presumption of waiver. *Id.* “This does not require a sua sponte inquiry; rather, the defendant cannot be prevented from offering an explanation.” *Id.* (citing *Hudson v. State*, 462 N.E. 2d 1077, 1081 (Ind. Ct. App. 1984). As a reviewing court, we consider the entire record to determine whether the defendant voluntarily, knowingly, and intelligently waived his right to be present at trial. *Id.*

[12] Hiner concedes that he had been present when the dates for his jury trial had been set and also concedes that he was not present at his two-day jury trial. Hiner only argues that the trial court did not give him “the opportunity to explain his absence.” (Hiner’s Br. 15).

[13] Our review of the record reveals that Hiner neither attempted to offer nor did the trial court prevent him from offering an explanation for his absence from his jury trial. Hiner had been present at his April 13 and July 27 hearings where the dates for his jury trial had been set. Hiner then failed to appear at his jury trial. After he had been arrested fifteen months later, Hiner never provided any explanation as to why he had failed to appear at his jury trial. Further, the trial court was not required to inquire into Hiner’s justifications for failing to appear at his jury trial. *See Soliz*, 832 N.E.2d at 1029. As a result, we hold that Hiner had made a voluntary, knowing, and intelligent waiver of his right to be present at his jury trial.

2. Inappropriate Sentence

[14] Hiner also argues that his two-year sentence is inappropriate. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived correct result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008) (internal quotation marks omitted). 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.” *Id.* at 1224. “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh’g denied*.

[15] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. A person who commits a Level 6 felony “shall be imprisoned for a fix term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year.” IND. CODE § 35-50-2-7(b). A person who

commits a Class C misdemeanor “shall be imprisoned for a fixed term of not more than sixty (60) days[.]” I.C. § 35-50-3-4. A jury convicted Hiner of Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia. Here, the trial court sentenced Hiner to an aggregate sentence of two years for his Level 6 felony and Class C misdemeanor convictions. Specifically, the trial court ordered Hiner to serve a two-year sentence for his Level 6 felony conviction and a sixty-day sentence for his Class C misdemeanor conviction. The trial court ordered that Hiner serve his sentences concurrently at the DOC. This is lower than the maximum sentence permitted by statute.

[16] Turning first to the nature of the offense, we note that officers had found two bags of methamphetamine and two smoking devices in Hiner’s bedroom. Hiner argues that he had committed “victimless crimes” with no property damage or physical violence. (Hiner’s Br. 18). While not the worst offenses, we are not convinced that such an argument merits any reduction to his sentence.

[17] Turning to Hiner’s character, we note that he has a prior felony conviction for theft, multiple misdemeanor convictions, and has had his probation revoked in the past. Further, we note that Hiner failed to appear at his jury trial and had been missing for fifteen months before police arrested him. Furthermore, Hiner had violated the terms of his bond in this case and had new pending charges against him at the time of sentencing. Hiner has clearly shown that attempts at rehabilitation have failed and the trial court stated as much at sentencing.

[18] Hiner has not persuaded this Court that his aggregate two-year sentence for his Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia convictions is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[19] Affirmed.

Altice, C.J., and Riley, J., concur.