

## 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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Charles R. Alexander II,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

Charles R. Alexander II,  
*Appellant-Defendant,*

v.

May 17, 2022

Court of Appeals Case No.  
21A-CR-2364

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven P. Meyer,  
Judge

Trial Court Cause No.  
79D02-2007-F5-125

Court of Appeals Case No.  
21A-CR-2365

Appeal from the Tippecanoe  
Superior Court

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State of Indiana,  
*Appellee-Plaintiff.*

The Honorable Steven P. Meyer,  
Judge  
Trial Court Cause No.  
79D02-2104-F4-16

**Weissmann, Judge.**

- [1] Charles R. Alexander II challenges his six-year sentence for unlawful possession of a firearm by a serious violent felon. He also challenges his separate four-year sentence for possession of a narcotic, enhanced by three years based on his admission that he is a habitual offender. He claims both sentences are inappropriate in light of the nature of the offenses and his character. We disagree and affirm.

## Facts

- [2] Lafayette police found Alexander either unconscious or asleep in a parked car with heroin in his lap and a syringe nearby. The State charged Alexander in case number 79D02-2007-F5-125 (Case 125) with both Level 5 and Level 6 felony possession of a narcotic drug and with Level 6 felony possession of a syringe. The State also alleged Alexander was a habitual offender.
- [3] Several months later, while Case 125 was still pending, Alexander encountered new legal difficulties. Police investigating a domestic disturbance stopped

Alexander and found him in possession of marijuana and pills. A gun was also found nearby. The State charged Alexander in case number 79D02-2104-F4-16 (Case 16) with Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 5 carrying a handgun while having been convicted of a felony within the past 15 years, Level 6 possession of a controlled substance, Class A misdemeanor carrying a handgun without a license, and Class B misdemeanor possession of marijuana.

[4] Under a plea agreement resolving both cases, Alexander pleaded guilty in Case 125 to possession of a narcotic drug and admitted he was a habitual offender. He also pleaded guilty in Case 16 to unlawful possession of a firearm by a serious violent felon. In exchange for his pleas, the State agreed to dismiss all remaining charges. The plea agreement further called for concurrent sentences in the two cases.

[5] The trial court accepted the plea agreement. During the joint sentencing, the court found as aggravating circumstances Alexander's criminal history, his unsuccessful probation history, his unlikely future success in Community Corrections or probation, the repetitive nature of his offenses, and the failure of prior rehabilitative attempts. As mitigating circumstances, the trial court found that Alexander "pled guilty (diminished by the benefits he received through the Plea Agreement) . . . [and] he has mental health issues . . . [and] significant substance abuse issues (diminished by prior unsuccessful attempts of (sic) treatment)." Case 125 App. Vol. II, p. 63; Case 16 App. Vol. II, p. 56. The trial

court also found Alexander's family support and expression of remorse as mitigating circumstances. *Id.*

- [6] The court sentenced Alexander in Case 125 to four years imprisonment for possession of a narcotic drug, enhanced by three years imprisonment for his habitual offender status. The trial court ordered Alexander to serve five years of that sentence in the Indiana Department of Correction. In Case 16, the trial court sentenced Alexander to six years imprisonment and ordered that the sentences in both cases be served concurrently. Alexander appeals both sentences.<sup>1</sup>

## Discussion and Decision

- [7] Alexander claims his sentences were inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and his character. We conclude that the trial court was, if anything, lenient, and his sentences are not inappropriate.

### I. Standard of Review

- [8] This 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

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<sup>1</sup> Alexander filed separate appeals of the sentences imposed in Case 125 and in Case 16. As the two cases were consolidated for sentencing, one joint appeal was proper. *See* Ind. Appellate Rule 38(A) (“When two (2) or more actions have been consolidated for trial or hearing in the trial court or Administrative Agency, they shall remain consolidated on appeal.”). If Alexander believed the cases should be severed, he had a duty to move for severance. *See id.* No such motion was filed. As Alexander’s arguments in each appeal are largely identical, we will address them jointly.

inappropriate in light of the nature of the offense and the character of the offender.” App. R. 7(B). This review entails “substantial deference” to the trial court because the “principal role of [our] review is to attempt to leaven the outliers, and not to achieve a perceived correct sentence.” *Scott v. State*, 162 N.E.3d 578, 584 (Ind. Ct. App. 2021) (quoting *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014)).

## II. Appropriateness of Sentences

- [9] Alexander claims the sentences in both cases were too harsh. As to the nature of the offenses, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Holloway v. State*, 950 N.E.2d 803, 806 (Ind. Ct. App. 2011). Considering Case 125 first, the sentence for possession of a narcotic drug, a Level 5 felony, ranges from one to six years, with an advisory sentence of three years. Ind. Code § 35-50-2-6(b). The habitual offender enhancement increases that sentence by two to six years. Ind. Code § 35-50-2-8(i)(2).
- [10] The trial court imposed a sentence one year above the three-year advisory level for possession of a narcotic drug, suspended two years of that sentence to probation, and enhanced that sentence by three years due to the habitual offender finding. The result is that Alexander will serve five years in the Indiana Department of Correction and two years on probation.
- [11] Turning to Case 16, unlawful possession of a firearm by a serious violent felon, a Level 4 felony, carries a penalty ranging from two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. The trial court imposed

the advisory sentence and ordered it served concurrent with the sentence in Case 125. Alexander's aggregate sentence translates to six years in prison and one year on probation.

[12] Alexander contends neither the nature of the offenses nor his character supports the sentences imposed. As to the nature of the offense, he argues that his offenses are no worse than the standard offense for which the legislature designed the advisory sentence. *See Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013) (ruling that one factor used in “determining the appropriateness of a deviation from the advisory sentence is whether there is anything more or less egregious about the offense committed by the defendant that makes it different from the ‘typical’ offense accounted for by the legislature when it set the advisory sentence”). As to his character, Alexander asserts that his mental illnesses (bipolar disorder, anxiety, depression, and attention deficit hyperactive disorder) and his history of addiction justify leniency. He also notes the presentence investigation report recommended slightly more lenient sentences in both cases.

[13] Alexander has failed to establish that his sentence was inappropriate. As to the nature of the firearms offense, the trial court imposed the advisory sentence on that conviction. Thus, Alexander's argument that he deserves a sentence reduction just because the firearms offense was typical is unavailing. He received the advisory sentence, which is the sentence designed for the typical offense.

- [14] His sentence on the narcotics conviction was one year above the advisory level, but that was offset by the court’s suspension of two years to probation and its choice of a three-year habitual offender enhancement when six was allowed. In any case, Alexander’s narcotics offense was hardly “typical,” given that it was the latest in his nearly two decades of substance abuse and followed his participation multiple times in court-ordered treatment.
- [15] Alexander’s criminal history—6 felony and 14 misdemeanor convictions for mostly substance abuse offenses, as well as six probation revocations—reflects poorly on his character. For nearly 20 years, the courts have extended a helping hand to Alexander via diversion programs, modified or suspended sentences, and treatment for both his mental illnesses and substance abuse. But Alexander continued to flout court orders and engage in illegal activity. Even here, he received leniency through dismissals of several counts and concurrent sentences in exchange for his guilty pleas.
- [16] Given that Alexander’s criminal history alone would have justified maximum sentences on the two counts to which he pleaded guilty, his sentences at or near the advisory levels were not inappropriate. *See Hill v. State*, 157 N.E.3d 1225, 1231 (Ind. Ct. App. 2020) (concluding that defendant’s 13 felony convictions and 20 misdemeanor convictions over 22 years alone justified maximum sentence on Level 5 felony); *Smith v. State*, 839 N.E.2d 780, 788 (Ind. Ct. App. 2005) (ruling that criminal history consisting of 4 felony and many misdemeanor convictions over 20 years alone justified maximum 8-year sentence for Stalking, a Class C felony).

[17] We affirm the trial court's judgments.

Najam, J., and Vaidik, J., concur.