

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Stacy E. Lock,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 18, 2021

Court of Appeals Case No.
20A-CR-1635

Appeal from the Whitley Circuit
Court

The Honorable Matthew J.
Rentschler, Judge

Trial Court Cause No.
92C01-1902-F4-2

May, Judge.

[1] Stacy E. Lock appeals her fourteen-year sentence for two counts of Level 4 felony dealing in methamphetamine,¹ two counts of Level 6 felony possession of methamphetamine,² and being a habitual offender.³ Lock alleges her sentence is inappropriate in light of the nature of her offense and her character. Because of Lock's extensive criminal history and her multiple failures to cooperate with probation restrictions, we affirm.

Facts and Procedural History

[2] On November 12, 2018, Lock sold 3.5 grams of methamphetamine to an acquaintance from jail who happened to be a confidential informant. On November 19, 2018, Lock again sold 3.5 grams of methamphetamine to that same confidential informant. The State charged Lock with two counts of Level 4 felony dealing in methamphetamine and two counts of Level 6 felony possession of methamphetamine. The State added an allegation that Lock was a habitual offender. Sixteen months later, Lock pled guilty as charged without a plea agreement.

[3] Following a sentencing hearing, the court found a mitigator in Lock's acceptance of responsibility and aggravators in Lock's criminal history, her history of probation violations, and her history of substance abuse. The court

¹ Ind. Code § 35-48-4-1.1(a)(1) & (c)(1).

² Ind Code § 35-48-4-6.1(a).

³ Ind. Code § 35-50-2-8.

imposed eight years for each Level 4 felony dealing count, imposed two years for each Level 2 felony possession count, and ordered those four sentences served concurrently. The court then enhanced her sentence by six years due to the habitual offender finding for an aggregate sentence of fourteen years.

Discussion and Decision

[4] Lock argues her fourteen-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.” *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider the aggravators and mitigators found by the trial court and also any other factors appearing in the record. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. Our determination of appropriateness “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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The appellant must demonstrate her sentence is inappropriate. *Baumholser*, 62 N.E.3d at 418.

[5] When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Lock received an eight-year sentence for each of her Level 4 felonies, which is closer to the advisory sentence than the maximum sentence for a Level 4 felony. *See* Ind. Code § 35-50-2-5.5 (“A person who commits a Level 4 felony shall be

imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years.”). Lock received a two-year sentence for each of her Level 6 felony convictions, which is between the advisory sentence and the maximum sentence. *See* Ind. Code § 35-50-2-7 (“A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being (1) one year.”). For the habitual offender finding, the court imposed a six-year enhancement, which is the smallest enhancement possible for a habitual offender who committed a Level 4 felony. *See* Ind. Code § 35-50-2-8(i)(1) (“The court shall sentence a person found to be a habitual offender to an additional fixed term that is between: (1) six (6) years and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony . . .”).

- [6] Lock acknowledges “she was facing in [sic] upwards of thirty-two (32) years” when she pled guilty to the charges, (Br. of Appellant at 11), such that “she received a sentence [that] was far less than the maximum allowable by law.” (*Id.*) Nevertheless, she asserts her sentence is “a substantial executed prison sentence for delivering 3.5 grams of methamphetamine to a confidential informant on two separate occasions.” (*Id.*) She argues she should receive treatment for her drug addiction “as opposed to a harsh prison sentence to rehabilitate her back to society quickly.” (*Id.* at 12.) While we agree with Lock that her crimes were not worse than the typical Level 4 felony drug dealing offense, we cannot find her 14-year sentence inappropriate because her criminal

history and her history of probation violation demonstrate the sentence is not inappropriate based on her character.

[7] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.* Lock's criminal history includes eight prior felony convictions and eleven prior misdemeanor convictions.⁴ Lock has been placed on probation eight times, and she failed six of those times to follow the rules required to remain on probation.⁵ In fact, she was on probation when she committed the current crimes. In light of those facts, we cannot find inappropriate a fourteen-year sentence for a Level 4 felony enhanced by a habitual offender finding. *See, e.g., Heyen v. State*, 936 N.E.2d 294, 305-06 (Ind. Ct. App. 2010) (twenty-four-year sentence not inappropriate for Class B felony sale of methamphetamine conviction, when enhanced by habitual offender

⁴ Between 1996 and the present, under eleven separate cause numbers, Lock has been convicted of Class A misdemeanor theft, Class D felony possession of marijuana, Class A misdemeanor possession of paraphernalia, Class C felony forgery, Class D felony possession of marijuana, Class A misdemeanor possession of paraphernalia, Class C misdemeanor purchase of excess ephedrine or pseudoephedrine, Class D felony possession of methamphetamine, Class D felony possession of a controlled substance, Class D felony maintaining a common nuisance, Class A misdemeanor possession of paraphernalia, Class D felony maintaining a common nuisance, Class D felony possession of a controlled substance, Class A misdemeanor possession of a synthetic drug, Class A misdemeanor driving while suspended, Class A misdemeanor possession of paraphernalia, Class A misdemeanor possession of marijuana, Class B misdemeanor false informing, and Class C misdemeanor possession of paraphernalia.

⁵ At least two of those revocations were for drug use.

finding, because defendant's prior convictions included drug crimes), *trans. denied*.

- [8] Lock also asserts her “criminal history is just another symptom of her addiction just like it was the motive behind her commission of the instant offenses.” (Br. of Appellant at 11.) Accordingly, she “seeks resentencing that provides for a shorter period of incarceration and a lengthy period of probation so as to avail herself of treatment for her substance abuse issues which appear to be the motivating factor behind her criminal ways.” (*Id.* at 13.) However, the court explicitly found at the sentencing hearing that “[t]he argument can be made for some people that probation is all we need to do in this case and for you you’ve shown that is not a workable solution” (Tr. Vol. II at 16.) Further, “[p]lacement on probation or in a community corrections program is a matter of grace and not a right.” *Johnson v. State*, 62 N.E.3d 1224, 1229 (Ind. Ct. App. 2016). Lock’s repeated violations of probation lead us to reject her assertion that her sentence is inappropriate because it fails to provide her access to probation. *See, e.g., Weiss v. State*, 848 N.E.2d 1070, 1073 (Ind. 2006) (affirming as not inappropriate a forty-year executed sentence when defendant’s “repeated contacts with the criminal justice system have had no impact on persuading him to reform”).

Conclusion

[9] In light of Lock's extensive criminal history and repeated failure to take advantage of opportunities to serve her sentences on probation, we hold Lock's fourteen-year executed sentence is not inappropriate. Accordingly, we affirm.

[10] Affirmed.

Kirsch, J., and Bradford, C.J., concur.