

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Mark D. Altenhof
Elkhart, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana
Erica S. Sullivan
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Emmanuel R.K. Collier,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 15, 2023

Court of Appeals Case No.
22A-CR-2958

Appeal from the Elkhart Superior
Court

The Honorable Kristine Osterday,
Judge

Trial Court Cause No.
20D01-2204-F6-000529

Memorandum Decision by Judge May
Judges Mathias and Bradford concur.

May, Judge.

[1] Emmanuel R.K. Collier appeals following his convictions of Level 6 felony possession of methamphetamine¹ and Class C misdemeanor possession of paraphernalia.² He argues the State did not present sufficient evidence to prove he committed possession of paraphernalia and his two-year sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

Facts and Procedural History

[2] On April 27, 2022, Corporal Crisha Bishop and Officer Cody Vicary of the Elkhart Police Department were patrolling together when they were dispatched to the area of 1801 Morton Avenue in response to a call to police about Collier. The caller advised police that Collier entered her garage to retrieve his belongings despite not being allowed on her property. The caller further stated she believed Collier had a warrant for his arrest and provided a description of what Collier was wearing, the direction he was heading, and that he was riding a bike. Corporal Bishop confirmed Collier had a warrant and proceeded toward the reported location. Corporal Bishop and Officer Vicary quickly spotted a subject who matched the description provided by the caller and who later would be positively identified as Collier.

¹ Ind. Code § 35-48-4-8.3(b)(1).

² Ind. Code § 35-48-4-6.1.

[3] Corporal Bishop and Officer Vicary approached Collier, and Corporal Bishop asked Collier if his name was Emmanuel. Collier did not answer, and Corporal Bishop asked him two more times if his name was Emmanuel. Corporal Bishop observed a knife holstered to Collier's right side and asked if Collier had any more weapons on him. Collier said no, and Corporal Bishop grabbed Collier's right hand and said she was going to remove the knife from Collier. Corporal Bishop was unable to remove the knife due to the way it was affixed to Collier's pants, so she began to put Collier in handcuffs for her and Officer Vicary's safety. Corporal Bishop secured Collier's right hand in a cuff but was unable to get Collier's left arm into the cuff. Corporal Bishop then ordered Collier to get off his bike. Officer Vicary was on Collier's left side holding his left arm and Corporal Bishop was on Collier's right side holding his right arm. This awkward positioning caused Collier to stumble as he dismounted his bike. When Collier finally got off his bike, Officer Vicary "felt Collier pulling away" and tackled him to the ground to detain him. (Tr. Vol. II at 138.)

[4] While Collier was on the ground, Corporal Bishop observed a small plastic container in Collier's left hand. Collier moved his left hand underneath his body and slipped the container into his pants. Corporal Bishop eventually cuffed Collier's left hand. Other officers, including Corporal Brandon Stevens, responded to the scene after Corporal Bishop requested backup for a "resisting fighting subject." (*Id.* at 154.) The officers searched Collier and recovered the plastic container observed by Corporal Bishop, as well as a clear glass pipe. The clear plastic container contained several small baggies that held a "crystal like

substance.” (*Id.* at 107.) Based on her training and years of experience, Corporal Bishop believed the residue in the glass pipe to be methamphetamine. The clear plastic container containing a crystalline substance was sent to the Indiana State Laboratory for testing, which revealed the substance was methamphetamine. The glass pipe was not sent to the laboratory for testing.

[5] On April 29, 2022, the State charged Collier with Level 6 felony possession of methamphetamine, Class A misdemeanor resisting law enforcement,³ and Class C misdemeanor possession of paraphernalia. A jury trial commenced on October 4, 2022. The jury found Collier not guilty of Class A misdemeanor resisting law enforcement and guilty of Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia, and the trial court entered convictions accordingly.

[6] On November 2, 2022, the Probation Department filed a pre-sentence investigation report. On November 21, 2022, the trial court held a sentencing hearing and found the following aggravating circumstances: Collier’s recent violation of the conditions of his probation, his criminal history, sanctions imposed in other cases have been unsuccessful in keeping him from engaging in further criminal activity, his failure to take advantage of treatment programs, and his Indiana Risk Assessment System (IRAS) score indicated a high risk to reoffend. (*Id.* at 202-203.) The trial court did not identify any mitigating

³ Ind. Code § 35-44.1-3-1(a)(1).

circumstances. The trial court sentenced Collier to two years for Level 6 felony possession of methamphetamine and sixty days for Class C misdemeanor possession of paraphernalia to be served concurrently for an aggregate term of two years. The trial court ordered Collier to serve his sentence in the present case consecutive to his sentences from cause numbers 20D01-2103-F6-244, 20D01-2104-F6-401, and 20D01-2203-CM-441.

Discussion and Decision

1. Sufficiency of Evidence

[7] Collier contends the State did not present sufficient evidence that he committed Class C misdemeanor possession of paraphernalia. When reviewing sufficiency of evidence claims, we will

neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Dowell v. State, 206 N.E.3d 1167, 1170 (Ind. Ct. App. 2023) (quoting *Powell v. State*, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted)).

[8] To convict a person of Class C misdemeanor possession of paraphernalia, the State must prove beyond a reasonable doubt that the defendant “knowingly or intentionally possess[ed] an instrument, device, or other object” that the

defendant “intended [to use] for introducing a controlled substance into [their] body[.]” Ind. Code § 35-48-4-8.3(b)(1). Collier contends the State failed to prove beyond a reasonable doubt that he intended to use the pipe to introduce methamphetamine into his body because the State failed to test the substance in the pipe.

[9] Intent to introduce a controlled substance into one’s body may be inferred from circumstantial evidence. *Sluder v. State*, 997 N.E.2d 1178, 1181 (Ind. Ct. App. 2013). A few examples of circumstantial evidence that may be used to infer intent include admissions of prior drug use, convictions of drug use, and possession of a controlled substance. *Perkins v. State*, 57 N.E.3d 861, 864-65 (Ind. Ct. App. 2016). “[W]hen determining whether the elements of an offense are proven beyond a reasonable doubt, a fact-finder may consider both the evidence *and the resulting reasonable inferences.*” *Thang v. State*, 10 N.E.3d 1256, 1260 (Ind. 2014) (italics in original).

[10] Here, the crystal-like substance found on Collier was sent to the Indiana State Laboratory for testing, which revealed the substance was methamphetamine. Although the residue in the glass pipe did not undergo testing, Corporal Bishop and Corporal Stevens both testified they believed it to be methamphetamine based on their training on identifying controlled substances and years of experience on the police force. Based on the laboratory test that proved Collier possessed methamphetamine and the officers’ testimonies regarding the residue and use of the glass pipe, the jury could make a reasonable inference that the purpose of the glass pipe was to introduce methamphetamine into Collier’s

body. Accordingly, the evidence was sufficient to prove Collier committed Class C misdemeanor possession of paraphernalia. *See, e.g., Leatherman v. State*, 101 N.E.3d 879, 885 (Ind. Ct. App. 2018) (evidence of possession of a controlled substance together with possession of paraphernalia that can be used to introduce the controlled substance into the body is sufficient circumstantial evidence of the intent to use the paraphernalia, despite no evidence of what was actually in the paraphernalia).

2. Inappropriateness of Sentence

[11] Collier also contends his two-year sentence for his convictions of Level 6 felony possession of methamphetamine and Class C misdemeanor possession of paraphernalia is inappropriate based on the nature of his crimes and his character. “Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorizes independent appellate review and revision of a sentence imposed by the trial court.” *Alvies v. State*, 905 N.E.2d 57, 64 (Ind. Ct. App. 2009). This appellate authority is implemented through Indiana Appellate Rule 7(B), which states that the “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.” We consider the aggravators and mitigators found by the trial court as well as any other factors we find in the record. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The appellant carries the burden of

proving his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[12] With regard to the nature of the offense, “the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed.” *Pierce v. State*, 949 N.E.2d 349, 352 (Ind. 2011). “A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term between six months and two and one-half years, with the advisory sentence being one year.” Ind. Code § 35-50-2-7. “A person who commits a Class C misdemeanor shall be imprisoned for a fixed term of not more than sixty days[.]” Ind. Code § 35-50-3-4. Here, the trial court imposed concurrent sentences and an aggregate term of two years. Collier’s sentence is above the advisory sentence for a Level 6 felony but below the maximum sentence he could have received for his two convictions.

[13] When analyzing a sentence that diverges 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.” *Murray v. State*, 182 N.E.3d 270, 278 (Ind. Ct. App. 2022) (quoting *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021)). There is nothing especially egregious about Collier’s crimes, though he was not very cooperative with Corporal Bishop and Officer Vicary when they arrived on the scene and tried to determine whether he was the suspect they sought. Corporal Bishop testified she became concerned for her safety “because [Collier] had knives [sic] on him [] but we were unknown [sic] if he had any more weapons on him as well due

to his evasive behavior of not wanting to identify who he was or be cooperative.” (Tr. Vol. II at 101.)

[14] For the character of the offender, we begin by considering the offender’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). A prior criminal conviction holds more or less significance depending on the “gravity, nature, and number of prior offenses in relation to the current offense.” *Id.* From 2005 through 2021, Collier collected thirteen convictions of various offenses including possession of marijuana, resisting arrest, operating a vehicle while intoxicated endangering a person, and domestic battery committed in the presence of a child less than sixteen years old. Aside from Collier’s criminal history, he also violated the terms of his probation four times. As the present case unfolded, Collier was involved in three incidents that gave rise to three separate causes, all while under the supervision of Community Corrections. This indicates Collier is not learning from that programming or less severe sanctions. Collier indicates he has struggled with substance abuse for most of his life. (Appellant’s Brief at 10.) However, Collier has not taken advantage of programming offered to him in the past,⁴ which also reflects poorly on his character. *See Phelps v. State*, 969 N.E.2d 1009, 1021 (Ind. Ct. App. 2012) (failure to take advantage of prior treatment opportunities reflects poorly on defendant’s character), *trans. denied*. In light of these factors that negatively reflect on Collier’s character, we cannot say his two-year sentence is

⁴ In 2012, Collier participated in a substance abuse treatment but did not complete the program.

inappropriate. *See, e.g., Weiss v. State*, 848 N.E.2d 1070, 1073 (Ind. 2006) (enhanced sentence not inappropriate when defendant has related criminal history and has not modified his behavior despite repeated contact with the criminal justice system).

Conclusion

[15] The State's evidence supported Collier's Class C misdemeanor conviction of possession of paraphernalia, and Collier's two-year sentence was not inappropriate based on the nature of the offenses and his character. Therefore, we affirm the trial court's judgment.

[16] Affirmed.

Mathias, J., and Bradford, J., concur.