

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Tanya M. Johnson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

February 28, 2023

Court of Appeals Case No.  
22A-CR-2418

Appeal from the Parke Circuit  
Court

The Honorable Samuel A. Swaim,  
Judge

Trial Court Cause Nos.  
61C01-2203-F6-60, 61C01-1801-  
F4-14

**Memorandum Decision by Chief Judge Altice**  
Judges Riley and Pyle concur.

**Altice, Chief Judge.**

## **Case Summary**

[1] Tanya M. Johnson appeals the 300-day executed sentence that was imposed following her conviction for trespass, a Class A misdemeanor. Johnson claims that the trial court abused its discretion in sentencing her because it did not identify various mitigating circumstances that were supported by the record. Johnson also argues that her sentence is inappropriate when considering the nature of the offense and her character in accordance with Ind. Appellate Rule 7(B).

[2] We affirm.

## **Facts and Procedural History**

[3] In February 2019, Johnson pled guilty to burglary, a Level 4 felony, and was sentenced to 513 days executed and to 1,667 days of probation. Four months later, Johnson pled guilty to a new charge of possession of methamphetamine, and she admitted violating her probation on the prior burglary conviction. Thereafter, the trial court sentenced Johnson to an executed one-year jail term on the methamphetamine offense and continued her probation on the burglary conviction.

[4] In November 2021, Johnson admitted to violating probation a second time when she tested positive for methamphetamine and for failing to attend self-

help meetings in accordance with the probation order. As a result, the trial court reinstated 373 days of the previously suspended sentence on the burglary conviction and continued her probation.

[5] In February 2022, the State filed a third probation violation alleging that Johnson again tested positive for methamphetamine and failed to contact a drug treatment facility as instructed by her probation officer. Prior to the disposition of the third probation violation, Johnson entered her nephew's vacant residence on March 24, 2022, without his consent or that of the personal representative of her brother's estate.<sup>1</sup> A neighbor contacted police when he smelled "something like burning wire" coming from the residence. *Appellant's Appendix Vol. II* at 78. The responding officer arrived to find that Johnson and another individual had started a trash fire inside the house. Johnson told the officer that she owned the house and explained that her brother had died and that his will, which had devised the residence to her nephew, was not valid. Johnson claimed that she was the rightful owner and that she was there to "clean out [her brother's] stuff." *Transcript* at 13. Johnson also stated that an attorney for the estate had given her permission to enter the residence.

[6] In response, the investigating officer contacted a representative from the estate's law firm who disputed Johnson's claim. The representative told the officer that Johnson did not have permission to be in the residence and that Johnson "had

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<sup>1</sup> Johnson's brother died in May 2019, and he had devised his residence to his son (Johnson's nephew) under his will.

no contractual or legal interest in the house.” *Appellant’s Appendix Vol. II* at 78. Johnson was arrested and charged with residential entry, a Level 6 felony, and false informing, a Class B misdemeanor. In August 2022, Johnson pled guilty to the lesser included offense of trespass as a Class A misdemeanor and admitted violating her probation on the burglary charge for a third time by committing new criminal offenses.

[7] At the sentencing hearing on September 27, 2022, Johnson testified that she was college educated and had been gainfully employed until she suffered a back injury fifteen years ago and was placed on disability. Johnson also claimed that she began abusing narcotics that had been prescribed for her back injury and she continued to relapse periodically following the deaths of her son, parents, and two brothers.

[8] The evidence further showed that Johnson attended weekly Bible study sessions and adult education classes during her incarceration. An addiction recovery coach at the Wabash Valley Correctional Recovery Center (Wabash Valley) testified that Johnson was “very willing and open and honest” in seeking recovery and that Johnson “has a lot of traumatic [and grief] issues that . . . need addressed.” *Transcript Vol. II* at 31-33. Johnson indicated that she was ready to “turn it all around” because she had “lost so much to drugs and abuse and inconsistency.” *Id.* at 42-43.

[9] Prior to pronouncing Johnson’s sentence, the trial court stated:

Looking at your history, I mean you do have some prior misdemeanors, but really what we're talking about is the probation violation. . . . Probation has attempted to work with you. I know you testified that you needed help and not the DOC and I recognize that Probation has, according to their report, attempted to provide you help, which . . . would have been provided – or attempted immediately upon being placed on probation, but beyond that . . . your Probation Officer [has attempted to] give you incentives and sanctions to get you coerced into treatment and into self-help meetings and *you've been non-compliant with treatment. You've been non-compliant with self-help meetings.*

Although you just testified that you were working hard. You might have been working hard since the time that you've been in jail but you were not working hard when you were on probation. Then when you were talking about committing new offense[s], *you basically gave the same lie that you told the police to begin with, which is that you had permission to go there from some attorney that the police verified was not accurate. My position is you need to be held accountable for all the violations and ongoing new offenses that you committed.*

*Id.* at 59-60 (emphases added). The trial court sentenced Johnson to an executed term of 300 days on the trespass charge, revoked 1,294 days of the previously suspended sentence on the burglary conviction, and ordered the sentences to run consecutively.

[10] Johnson now appeals her 300-day sentence for trespass.

## **Discussion and Decision**

### **I. Abuse of Discretion**

[11] Johnson argues that the trial court abused its discretion in sentencing her because it did not identify her history of “pain, tragedy, and addiction,” her show of remorse, and the “plan to pursue full recovery,” as mitigating circumstances. *Appellant’s Brief* at 18. Notwithstanding Johnson’s claim, we note that a trial court is not required to identify or weigh aggravating and mitigating circumstances when imposing a sentence for misdemeanor convictions. *See Stephenson v. State*, 53 N.E.3d 557, 561 (Ind. Ct. App. 2016) (explaining that a trial court is not required to identify mitigating circumstances when imposing a sentence for a misdemeanor conviction because misdemeanor sentencing statutes do not provide for an advisory sentence but, instead, provide for a maximum allowable sentence). Thus, Johnson’s argument is without merit.

## II. Inappropriate Sentence

[12] Johnson argues that the 300-day executed sentence is inappropriate when considering the nature of the offense and her character pursuant to App. R. 7(B). Specifically, Johnson contends that incarceration was not warranted because she “accepted full responsibility” for the offense, witnesses at the sentencing hearing testified as to her good character, and she has made “significant improvements toward improving her life” by attending weekly educational classes, bible sessions, and completing her homework assignments while incarcerated. *Appellant’s Brief* at 10, 12.

[13] Whether a sentence is inappropriate 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. *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The defendant has the burden of persuading us that the sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). More particularly, the defendant must show that her sentence is inappropriate with “compelling evidence portraying in a positive light the nature of the offense[s] (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).

[14] In determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Johnson was convicted of trespass, a Class A misdemeanor, and Ind. Code § 35-50-5-2 sets forth a one-year maximum sentence, rather than an advisory sentence for that level of offense. The trial court ordered Johnson to serve 300 days with credit for 150 days served.

[15] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Although Johnson claims that her sentence must be revised because no one was injured, we have previously held that the absence of physical injury or violence during the

commission of a crime does not necessarily allow for a reduced sentence. *See, e.g., Wolf v. State*, 793 N.E.2d 328, 331 (Ind. Ct. App. 2003) (observing that the nature of the defendant’s crime—driving at a high rate of speed on a busy street while intoxicated—did not support a reduced sentence even though no one was injured).

[16] In this case, Johnson entered her nephew’s residence without permission. She and another individual started a trash fire inside the house, and Johnson lied to police about her presence in the house—first asserting that she owned the property—and then falsely claiming that an estate lawyer had given her permission to be inside. Indeed, the trial court specifically commented about Johnson’s lies during the sentencing hearing, and such untruths conveyed to a police officer may be relevant in sentencing. *See, e.g., Washington v. State*, 902 N.E.2d 280, 292 (Ind. Ct. App. 2009) (rejecting the defendant’s inappropriate sentence argument when it was established that the defendant had lied to police about drugs that were found in his coat), *trans. denied*. In short, Johnson has failed to paint the nature of her offense in a positive light.

[17] Turning to Johnson’s character, we note that “character is found in what we learn of the offender’s life and conduct.” *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant’s character by engaging in a broad consideration of her qualities. *Madden*, 162 N.E.3d at 564. When assessing the character of an offender, one relevant factor is the offender’s criminal history. *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020), *trans. denied*. The significance of a criminal history in assessing a defendant’s



character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Even a minor criminal history is a poor reflection of a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*. Also, a defendant's commission of criminal offenses while on probation is a substantial consideration in our assessment of character. *Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008), *trans. denied*.

[18] Johnson has prior felony and misdemeanor convictions that include theft, burglary, possession of methamphetamine, and check deception. Johnson has violated her probation several times and was on probation when she committed the instant offense. The trial court had previously shown Johnson leniency when it returned her to probation on two occasions. Johnson, however, continued to abuse drugs and commit additional crimes. These factors reflect poorly on Johnson's character. *See Moss*, 13 N.E.3d at 448; *Rich*, 890 N.E.2d at 54. And notwithstanding testimony from Johnson's mentor at Wabash Valley who highlighted Johnson's academic dedication and her willingness to work through her trauma and grief, Johnson's criminal history and multiple probation violations do not demonstrate good character that warrants a sentence reduction. *See, e.g., Terpstra v. State*, 138 N.E.3d 278, 289 (Ind. Ct. App. 2019) (the defendant's commission of a new criminal offense while on probation demonstrated that the trial court's prior leniency had failed to change the defendant's behavior), *trans. denied*; *see also Kovats v. State*, 982 N.E.2d 409,

417 (Ind. Ct. App. 2013) (observing that the defendant did not possess a “stellar character” in light of her criminal history and multiple probation violations).

[19] Johnson further maintains, however, that her sentence must be revised because her drug addiction and life trauma caused her to commit the offense. As she points out, we have—on at least one occasion—revised a defendant’s sentence when testimony and other evidence strongly suggested that the defendant’s mental health was significantly declining. *See, e.g., Smith v. State*, 154 N.E.3d 838, 840 (Ind. Ct. App. 2020) (revising the sixty-five-year-old defendant’s 180-day executed sentence to twenty days for resisting law enforcement where the defendant—who was of advanced age—testified to “strange beliefs,” exhibited paranoid behavior, and incoherently rambled to the police officers during his commission of the offense).

[20] Here, Johnson’s lies to the police, including her assertion that her deceased brother’s will was invalid and her false claims that she owned the residence suggests that her actions were motivated by something other than addiction, such as entitlement or anger. Put another way, Johnson’s addiction was not the “underlying source of [her] criminal behavior.” *Cf. Hubbert v. State*, 163 N.E.3d 958, 959-60 (Ind. Ct. App. 2021) (revising an eighteen-year executed sentence for dealing in methamphetamine to four years executed and to probation, where the defendant had only two prior convictions that related only to *possession* of illegal substances, was considered a low risk to reoffend, and the probation office recommended that any probation time be served in community corrections with substance abuse evaluation and treatment), *trans. denied*.

[21] In sum, Johnson has not shown that her 300-day sentence is inappropriate in light of either the nature of her offense or her character.

[22] Judgment affirmed.

Riley, J. and Pyle, J., concur.