

## 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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### ATTORNEY FOR APPELLANT

Linda L. Harris  
Kentland, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Robert M. Yoke  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Toure G. Wright,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 19, 2022

Court of Appeals Case No.  
21A-CR-2641

Appeal from the Newton Superior  
Court

The Honorable Daniel J. Molter,  
Judge

Trial Court Cause No.  
56D01-2012-F2-1177

**Pyle, Judge.**

## Statement of the Case

[1] Toure Wright (“Wright”) appeals the six-year advisory sentence imposed after he pleaded guilty, pursuant to a plea agreement, to Level 4 felony possession of a narcotic drug.<sup>1</sup> His sole argument is that his sentence is inappropriate in light of the nature of the offense and his character. Concluding that Wright’s sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

## Issue

Whether Wright’s sentence is inappropriate.

## Facts

[3] At approximately 9:30 p.m. on October 7, 2020, Newton County Sheriff’s Department Deputy Wallace (“Deputy Wallace”) stopped Wright for driving southbound in the northbound lane of Highway 41. As he approached the vehicle, Deputy Wallace immediately smelled the strong odor of alcohol as well as an overwhelming odor of raw marijuana. During a search of Wright’s vehicle, Deputy Wallace found several sealed baggies containing a total of 135 pills, a scale, individual small plastic baggies, a grinder, a smoking device, and a

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<sup>1</sup> IND. CODE § 35-48-4-6.

green leafy substance. Deputy Wallace also found an individually packaged substance in the front pocket of Wright's pants.

[4] In December 2020, the State charged Wright with the following five counts: (1) Level 2 felony dealing in a Schedule I controlled substance, which the charging information specifically identified as twenty-eight grams of methylenedioxymethamphetamine ("MDMA"); (2) Level 6 felony maintaining a common nuisance; (3) Class A misdemeanor possession of a controlled substance, which the charging information specifically identified as MDMA; (4) Class A misdemeanor dealing in marijuana; and (5) Class B misdemeanor possession of marijuana.

[5] In August 2021, the State filed an additional information charging Wright with Level 4 felony possession of a controlled substance, which the charging information specifically identified as at least ten grams but less than twenty-eight grams of MDMA. That same day, Wright pleaded guilty, pursuant to a plea agreement, to the Level 4 felony possession of a controlled substance charge. In exchange for Wright's guilty plea, the State dismissed the remaining five counts. The plea agreement further provided that the parties would argue sentencing.

[6] In November 2021, the trial court held Wright's sentencing hearing. Wright's pre-sentence investigation report revealed that Wright had two prior convictions, one felony conviction in Illinois for attempted armed robbery and one misdemeanor conviction in Illinois for shoplifting.

[7] Also at the sentencing hearing, Wright testified that he had ended up driving the wrong way on Highway 41 because he had not been familiar with the area, it had been “pitch black” that night, and he had not been wearing his glasses. (Tr. Vol. 2 at 15). Wright also testified that he took MDMA for narcolepsy; however, he admitted that he did not have a prescription for the controlled substance. In addition, Wright testified that his military veteran father was suffering from colon cancer and that his mother worked twelve hours a day at his parents’ shop at River Oaks Mall. Wright further testified that he lived with his parents and helped his mother with the shop. In addition, Wright testified that he cared for his forty-year-old developmentally disabled sister and his eighty-six-year-old grandmother, who lived together on the south side of Chicago. In addition, Wright testified that he had a three-year-old daughter who visited him every weekend.

[8] At the end of the sentencing hearing, the trial court stated as follows:

This creates a difficult case because [defense counsel] makes a very persuasive argument on that [Wright’s sentence] affects everyone else[.] But having these serious drugs and a lot of marijuana and all that kind of stuff – that really does bother me[.] [W]hen I look at the totality – and there’s some serious crimes charged here, an F2, even though it was pled down to a 4, he’s going to have to serve some time because of the seriousness. But I really do – I want to make it minimum. So what I’m going to do is say a six-year sentence with . . . four of it suspended[.]

(Tr. Vol. 2 at 25-26).

[9] Wright now appeals his sentence.

## Decision

- [10] Wright argues that his advisory sentence with time suspended to probation is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). "A defendant who receives an advisory sentence has a particularly heavy burden to prove it inappropriate under Appellate Rule 7(B)." *Kincaid v. State*, 171 N.E.3d 1036, 1042 (Ind. Ct. App. 2021), *trans. denied*. Whether we regard a sentence as inappropriate turns on 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).
- [11] When 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. *Childress*, 848 N.E.2d at 1081. Here, Wright was convicted of a Level 4 felony. The sentencing range for a Level 4 felony is between two (2) to twelve (12) years, and the advisory sentence is six (6) years. IND. CODE § 35-50-2-5.5. The trial court sentenced Wright to the advisory sentence of six years, with two years executed and four years suspended to probation.

[12] Regarding the nature of the offense, we note that when Wright was stopped for driving the wrong way on the highway, Wright possessed a significant amount of MDMA, a Schedule I controlled substance. Wright did not possess a prescription for the MDMA. In addition, a search of Wright's vehicle revealed a scale, individual small plastic baggies, a grinder, a smoking device, and a green leafy substance. Deputy Wallace also found an individually packaged substance in the front pocket of Wright's pants.

[13] Regarding Wright's character, we note that Wright has a criminal history that includes one felony conviction and one misdemeanor conviction. Wright's criminal history reflects poorly on his character for the purposes of sentencing. *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).

[14] While Wright argues that his incarceration will be a hardship on members of his family, the trial court took that fact into consideration. The trial court balanced the familial hardship against the seriousness of the crime and Wright's character. Given the fact that the trial court did not impose a fully executed term of imprisonment and only the advisory sentence, we find that the sentence is not inappropriate. As a result, Wright has failed to meet his "particularly heavy burden" of persuading this Court that his six-year advisory sentence, which includes two years executed and four years suspended to probation, is inappropriate. *See Kincaid*, 171 N.E.3d at 1042 (holding that defendant's advisory sentence was not inappropriate).

[15] **Affirmed.**

Robb, J., and Weissmann, J., concur.