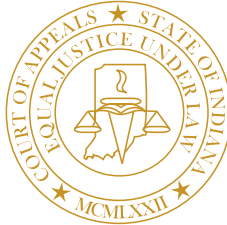


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE Court of Appeals of Indiana

Brady Alan Michel,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 26, 2025

Court of Appeals Case No.
24A-CR-1373

Appeal from the Vigo Superior Court
The Honorable Charles D. Johnson, Judge
Trial Court Cause No.
84D01-2309-F6-3304

Memorandum Decision by Judge Bailey
Judges Vaidik and DeBoer concur.

Bailey, Judge.

Case Summary

- [1] Brady Alan Michel challenges his sentence following his conviction for escape, as a Level 6 felony.¹ He raises the sole issue of whether his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

- [2] On December 6, 2019, Michel was charged with Level 6 felony possession of methamphetamine² and Level 6 felony unlawful possession of a syringe³ in Cause Number 84D01-1912-F6-4684 (“F6-4684”). On June 30, 2021, Michel pleaded guilty to the methamphetamine possession charge and was sentenced to two and one-half years, all suspended to probation. On July 28, 2021, the State filed a notice alleging Michel had violated his probation. While that probation violation action was pending, on December 29, 2021, Michel was charged with Level 6 felony theft⁴ and Class B misdemeanor false informing⁵ in Cause Number 84D01-2112-F6-4338 (“F6-4338”). The State subsequently filed two amended notices of probation violation in F6-4684, and, on February 1,

¹ Ind. Code § 35-44.1-3-4(d).

² I.C. § 35-48-4-6.1(a).

³ I.C. § 16-42-19-18(a), (b).

⁴ I.C. § 35-43-4-2(a)(1).

⁵ I.C. § 35-44.1-2-3(d)(1).

2022, the trial court issued a warrant for Michel's arrest. On March 23, 2022, Michel failed to appear at a hearing in F6-4338, and the trial court issued an arrest warrant in that case, too.

[3] The warrants in F6-4338 and F6-4684 were served on April 1, 2022. On May 16, 2022, Michel's probation in F6-4684 was revoked, and he was placed in the Vigo County Community Corrections ("VCCC") work release program. Michel was subsequently released to the same VCCC program as a condition of pre-trial release in F6-4338. Michel resided at work release from June 13, 2022, until he absconded on June 30, 2022.

[4] On July 5, 2022, Michel was charged in Cause Number 84D01-2207-F5-2377 ("F5-2377") with Level 6 felony failure to return to lawful detention for absconding from work release. A warrant was issued, and Michel was subsequently arrested. On July 12, 2023, he admitted that he had violated the terms of his probation in F6-4684, and his probation was revoked in that case. Michel also pleaded guilty to Level 6 felony theft in F6-4338 and Level 6 felony failure to return to lawful detention in F5-2377. On July 12, for all three cases,⁶ the trial court imposed an aggregate sentence of three and one-half years, which it allowed Michel to serve as a direct placement in the dual diagnosis work release program through VCCC. The court ordered that, upon successful

⁶ The sentencing order also noted that, pursuant to a plea agreement, charges in another case (84D01-2210-F6-3968) were dismissed.

completion of the dual diagnosis program, the balance of Michel's sentence, if any, would be suspended to formal probation.

- [5] Michel entered the dual diagnosis work release program on July 19, 2023. By that point, he had been in custody since the warrant in F5-2377 was served on October 26, 2022. On August 30, 2023, "while scheduled out for a job search," Michel removed his GPS monitor, which triggered an alert to VCCC Control. App. v. II at 14. Michel subsequently failed to report to or contact VCCC, which was a "violation of Rule #108, Escape." *Id.* As a result, on September 8, 2023, the State charged Michel with Level 6 felony escape in the instant case ("F6-3304"), and the court issued a warrant for his arrest.
- [6] The State subsequently filed a petition to revoke Michel's direct placement at work release in F6-4338 and F5-2377. The trial court found Michel had violated the terms of work release and revoked the entirety of his aggregate three-and-one-half-year sentence.⁷ However, the court noted that if Michel successfully completed the Purposeful Incarceration program, he could request a modification of his sentence to the dual diagnosis work release program.
- [7] On April 3, 2024, Michel pled guilty to Level 6 felony escape in the instant case, F6-3304, with the terms of the plea left open to argument by the parties. On April 4, a pre-sentence investigation report was filed with the court. The

⁷ Michel unsuccessfully appealed his revocation from community corrections placement in F6-4338 and F5-2377. See *Michel v. State*, No. 24A-CR-646 (Ind. Ct. App. Sept. 3, 2024) (mem.).

report showed that Michel has been convicted of four felonies: unlawful manufacturing or delivery, or possession with intent to manufacture or deliver a narcotic schedule I or II drug (Wyoming), possession of methamphetamine (Indiana), failure to return to lawful detention (Indiana), and escape (present offense). Michel had been sentenced to five years of probation for his felony in Wyoming, during which time he had “fled to Terre Haute,” Indiana. App. v. II at 69. As a result of his convictions, Michel has been sentenced to probation, work release, and county jail. While Michel has been on community supervision, the State has sought to have his probations revoked four times. The report also showed that Michel, age thirty, has been arrested and/or charged with criminal offenses eleven times in Indiana and Wyoming.

[8] Michel had become affiliated with the gang “The Dirty White Boys” and had been involved with that gang for a year. App. v. II at 70. Michel had not been employed since 2018 and, at one point, his only source of income came from “dealing drugs.” *Id.* Michel reported that he had been diagnosed with Crohn’s Disease when he was seventeen years old but was not receiving treatment for it. Michel reported a history of drug use and abuse. He also reported that he had been diagnosed with “Bipolar Disorder, ADD, ADHD, and Depression” in 2007, while living in Wyoming, and had seen a therapist for two years but then “just stopped going.” *Id.* at 71. Michel reported successfully completing intensive outpatient program classes in 2015.

[9] At his May 15, 2024, sentencing hearing, Michel testified that he had become addicted to drugs when he had started taking pain medication for his Crohn’s

Disease. The trial court took “judicial notice” of two previous court filings of certificates indicating that, in April 2024, Michel had voluntarily completed “moral recognition therapy” and a “relapse prevention” program during his incarceration. Tr. at 27. A social services supervisor from the Vigo County Health Department testified that she provided classes at the Vigo County Jail and that she had signed the certificates of completion for the two classes Michel had completed. Michel was also voluntarily taking a “Criminal and Addictive Thinking” class at the jail and was expected to complete the class in four weeks. *Id.* at 32. The social services supervisor believed that Michel would benefit from the work release dual diagnosis program “when he leaves the Department of Correction.” *Id.* at 35.

- [10] The trial court sentenced Michel to two years imprisonment in the Department of Correction and noted that, when Michel successfully completed the Purposeful Incarceration program, it would consider a motion for modification of his sentence to formal probation. This appeal ensued.

Discussion and Decision

- [11] Michel contends that his sentence is inappropriate in light of the nature of the offense and his character. [Article 7, Sections 4 and 6 of the Indiana Constitution](#) “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” [Anglemeyer v. State](#), 868 N.E.2d 482, 491 (Ind.) (alteration in original) (quotation and citation omitted), *clarified on reh’g on*

other grounds, 875 N.E.2d 218 (Ind. 2007). This appellate authority is implemented through [Indiana Appellate Rule 7\(B\)](#). *Id.*

[12] As our Supreme Court recently explained,

[Appellate Rule 7\(B\)](#) serves “to leaven the outliers, rather than to achieve a perceived ‘correct’ sentence,” [McCallister v. State](#), 91 N.E.3d 554, 566 (Ind. 2018), allowing revision of a sentence if the court finds the trial court’s decision to be inappropriate in consideration of the nature of the offense and the offender’s character, [Inman v. State](#), 4 N.E.3d 190, 203 (Ind. 2014) (quoting [App. R. 7\(B\)](#)). “Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate,” [Taylor v. State](#), 86 N.E.3d 157, 165 (Ind. 2017) (cleaned up), an act that is reserved for “exceptional” cases, [Gibson v. State](#), 43 N.E.3d 231, 241 (Ind. 2015). It is up to the defendant to “persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” [Childress \[v. State\]](#), 848 N.E.2d [1073,] 1080 [(Ind. 2006)]. The trial court’s sentence is afforded considerable deference and will stand unless [overcome by] “compelling evidence portraying in a positive light the nature of the offense (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).

[Cramer v. State](#), 240 N.E.3d 693, 698 (Ind. 2024).

[13] 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.” [Childress](#), 848 N.E.2d at 1081. For Michel’s Level 6 felony conviction, the sentencing range is between six months and two and one-half

years, with an advisory sentence of one year. [I.C. § 35-50-2-7\(b\)](#). By sentencing Michel to two years, the trial court imposed a sentence six months shorter than the maximum sentence and, thus, well within the sentencing range. Moreover, the trial court indicated that it would consider a modification to formal probation if Michel completes the Purposeful Incarceration program.

[14] When considering the nature of the offense, we look at the defendant's actions in comparison to the elements of the offense. [Cannon v. State](#), 99 N.E.3d 274, 280 (Ind. Ct. App. 2018), *trans. denied*. We focus “on the nature, extent and depravity of the offense ... and what it reveals about the defendant's character.” [Sorenson v. State](#), 133 N.E.3d 717, 729 (Ind. Ct. App. 2019) (internal quotation and citation omitted), *trans. denied*. Here, just a little over one month after beginning a court-ordered work release program as part of his sentence for theft and failure to return to lawful detention—the latter of which resulted from his absconding from work release after being revoked from probation—Michel removed his GPS monitor and absconded from work release, yet again. Moreover, Michel then remained at large for over one month. Nothing about the nature of Michel's offense warrants a revision of his sentence.

[15] Nor does Michel's character warrant a sentence reduction. He has an extensive criminal history, including four felony convictions in two different states. *See* [Prince v. State](#), 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted) (observing that even a minor criminal history reflects poorly on a defendant's character). Moreover, he has a history of probation violations, including absconding from community supervision. He has not been employed since

2018, during which time his only source of income has been from dealing drugs. He has been involved with a gang since approximately January 2023. And, although he very recently completed two therapeutic programs while incarcerated, he has a history of failing to obtain treatment for his physical and mental health conditions. In short, there is no evidence that Michel has “substantial virtuous traits or persistent examples of good character” that would support a sentence reduction. *Stephenson*, 29 N.E.3d at 122.

[16] Michel’s sentence is not inappropriate in light of the nature of his offense and his character.

[17] Affirmed.

Vaidik, J., and DeBoer, J., concur.

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