

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 Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

David L. Joley
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

James T. Whitehead
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Danora Jackson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 17, 2023

Court of Appeals Case No.
22A-CR-2333

Appeal from the Allen County
Superior Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause No.
02D05-2110-F6-1351
02D05-2111-F6-1491

Memorandum Decision by Judge Kenworthy
Judges Robb and Crone concur.

Kenworthy, Judge.

Case Summary

[1] Danora Jackson pleaded guilty to Level 6 felony possession of cocaine¹ and Level 6 felony forgery.² The trial court took the guilty plea under advisement and allowed Jackson to participate in Drug Court. The trial court later revoked Jackson's Drug Court placement after she committed three violations. Subsequently, the trial court sentenced Jackson to one year for each offense, ordering her to serve the sentences consecutively in the Indiana Department of Correction ("DOC").

[2] Jackson now appeals the sentence the trial court imposed after revoking her placement in Drug Court. Jackson implicitly raises whether the trial court abused its discretion by relying on an improper aggravator when it ordered her to serve her sentences consecutively. She also argues a two-year executed sentence is inappropriate given the nature of the offenses and the character of the offender. Concluding the trial court did not abuse its discretion and Jackson's sentence was not inappropriate, we affirm.

¹ Ind. Code § 35-48-4-6 (2014).

² I.C. § 35-43-5-2 (2021).

Facts and Procedural History

- [3] On October 6, 2021, a police officer ran Jackson's license plate number and saw Jackson had an active warrant for failure to appear on an earlier cause. The officer found cocaine in Jackson's car and the State charged her with Level 6 felony possession of cocaine. In a separate cause, on November 15, 2021, the State filed an information alleging Jackson committed Level 6 felony forgery on or about November 8, 2021. The probable cause affidavit associated with the charge identified an offense date of April 28, 2021.
- [4] At a consolidated plea hearing in December 2021, Jackson pleaded guilty to Level 6 felony possession of cocaine and Level 6 felony forgery. She admitted to committing possession of cocaine on October 6, 2021, and forgery on November 8, 2021. *Tr. Vol. 1* at 9, 11. Jackson signed a Drug Court participation agreement, under which sentencing for the offenses was held in abeyance. The State agreed to dismiss all Jackson's charges if she completed the program, and the court agreed to grant that motion. *Appellant's App. Vol. 2* at 47. The trial court took the pleas under advisement and placed Jackson in Drug Court.
- [5] During her Drug Court participation, Jackson failed to attend a mandatory case management appointment on April 28, 2022; was unsuccessfully discharged from Rose Home on May 1, 2022; and failed to appear in court as ordered on May 2, 2022. The State petitioned to terminate Jackson's Drug Court participation and impose sentences on her pending convictions. Jackson admitted to the alleged Drug Court violations, and the trial court terminated

her participation. The court set the matter for sentencing and ordered a presentence investigation report.

- [6] At the sentencing hearing in September 2022, the court asked Jackson if the presentence investigation report required any correction. The presentence investigation report stated the forgery occurred on November 8, 2021, and therefore Jackson must serve her sentences for possession of cocaine and forgery consecutively under Indiana Code Section 35-50-1-2(e) because she was on bond for the possession of cocaine charge when she committed forgery. *Appellant's App. Vol. 2* at 50, 51. When asked, Jackson did not identify any error in need of correction. *Tr. Vol. 1* at 19–20. The trial court found the following as aggravators: (1) Jackson was on bond for an unrelated felony at the time she committed forgery and (2) Jackson had failed her rehabilitation efforts in Drug Court. The court found the following as mitigators: (1) Jackson's guilty pleas and (2) Jackson's lack of a criminal record. The trial court sentenced Jackson to an aggregate term of two years to be executed in the DOC. Jackson now appeals.

Discussion and Decision

- [7] Jackson frames the issue on appeal as whether her two-year executed sentence is inappropriate in part because the trial court found an improper aggravator. However, an improper aggravator claim is separate and distinct from an inappropriate sentence claim. When a trial court gives improper reasons in its sentencing statement, the standard of review is abuse of discretion. *Anglemyer v.*

State, 868 N.E.2d 482, 490–91 (Ind. 2007), *clarified on reh’g*. This Court—and practitioners—must analyze abuse of discretion and inappropriate sentence claims separately. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008).

[8] Even though Jackson neither provided a separate analysis nor acknowledged the two different standards of review, we will briefly address the abuse of discretion claim. Based on the record, the trial court did not rely on an improper aggravator. The record supports the finding Jackson committed forgery while on bond for possession of cocaine. Jackson argues she committed forgery on April 28, 2021, and was not on bond for possession of cocaine until October 7, 2021. Although the probable cause affidavit states the forgery offense date as April 28, 2021, Jackson pleaded guilty to forgery and possession of cocaine as charged. In pleading guilty, she confirmed the forgery offense date was November 8, 2021:

[The Court:]	Okay, and this happened November 8, 2021, here in Allen County, Indiana?
--------------	--

[The Defendant:]	You said what date?
------------------	---------------------

[The Court:]	November 8, on or about November 8, 2021?
--------------	---

[The Defendant:]	Yeah.
------------------	-------

Tr. Vol. 1 at 11. The presentence investigation report also listed the forgery offense date as November 8, 2021, and stated Jackson must serve her sentences

consecutively under Indiana Code Section 35-50-1-2 because she was on bond when she committed forgery. Jackson did not make any changes to the presentence investigation report at the sentencing hearing when she was asked if the report required correction:

[The Court]: Are there any additions or corrections to make to the report?

[The Defendant]: No, everything is correct.

[The Court]: So, the report is correct and accurate?

[The Defendant]: Mmm-hmm (affirmative).

Tr. Vol. 1 at 19–20. Jackson had at least two opportunities to claim the date of the forgery was incorrect but did not do so on the record.

[9] Therefore, the trial court did not abuse its discretion when it found as an aggravator Jackson was on bond for possession of cocaine at the time Jackson committed forgery because it reasonably relied on the record.

[10] Moreover, the alleged offense date of November 8, 2021, became part of Jackson’s guilty plea, forming the factual basis of the plea. Jackson’s argument the offense occurred on a different date is essentially a challenge to the validity of her guilty plea. But a criminal defendant may not make such a challenge in a direct appeal. *Tumulty v. State*, 666 N.E.2d 394, 395–96 (Ind. 1996). Instead, such claims must be raised through post-conviction proceedings. Therefore, it

would be improper to examine the factual basis for Jackson’s plea in the context of this sentencing challenge.

[11] Next, Jackson expressly asserts the sentence was inappropriate. Indiana Appellate Rule 7(B) permits a criminal defendant to appeal a sentence and allows the reviewing court to “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.” “The principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “The burden is on the defendant to persuade us that his sentence is inappropriate.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007). Here, there is no outlier to be leavened, given the nature of Jackson’s offenses and her character.

1. Nature of the Offenses

[12] The advisory sentence “is the starting point the [l]egislature has selected as an appropriate sentence for the crime committed.” *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Accordingly, “the defendant bears a particularly heavy burden in persuading us that his sentence is inappropriate when the trial court imposes the advisory sentence.” *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011). The advisory sentence for a Level 6 felony is one year. I.C. § 35-50-2-7(b) (2019). Jackson argues the nature of the offenses did not warrant

one-year sentences, because both Level 6 felonies were nonviolent. Jackson's argument fails because the offenses are inherently nonviolent. She did not direct us to any specific circumstances meriting a sentence reduction. Nothing about the nature of each offense strikes us as remarkable enough to warrant deviating from the advisory sentence imposed.

2. Character of the Offender

[13] Our consideration of the offender's character begins with a broad consideration of defendant's qualities, life, and conduct. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Jackson argues although she was unsuccessful in Drug Court, she may have been successful completing probation. The record indicates Jackson would not be successful in a less restrictive setting. In Drug Court, Jackson had a chance to participate in a tailored, supportive program, where she could address her substance use and mental health issues. Yet Jackson failed to attend a case management appointment, was unsuccessfully discharged from Rose Home, and failed to appear in court as ordered following the discharge. Showing up to hearings and reporting to an officer are the most basic requirements of probation. Jackson's unsuccessful participation in Drug Court, in the words of the trial court, shows Jackson "didn't want to do it to begin with, so [she] really didn't give [herself] an opportunity to see what sobriety and recovery was all about[.]" *Tr. Vol. 1* at 23.

[14] Next, we turn to the defendant's criminal history, which we weigh "based on gravity, nature and number of prior offenses as they relate to the current offense." *Wooley v. State*, 716 N.E.2d 919, 929 n.4 (Ind. 1999). Jackson argues

it is significant she did not have any prior criminal history when she committed these crimes at the age of thirty. Although these 2021 offenses were Jackson's first, she committed three unrelated offenses within the year, two of which are felonies. The trial court's imposition of two consecutive one-year sentences is not inappropriate given Jackson's inability to complete Drug Court and her three unrelated convictions. Jackson's Indiana Risk Assessment System score indicated Jackson has a moderate risk of reoffending based, in part, on her substance abuse, criminal attitudes, and behavioral patterns. All in all, Jackson has failed to demonstrate the imposed sentence was inappropriate.

Conclusion

[15] We conclude Jackson's sentence was not inappropriate considering the nature of the offense and the character of the offender. Accordingly, we affirm.

[16] Affirmed.

Robb, J., and Crone, J., concur.