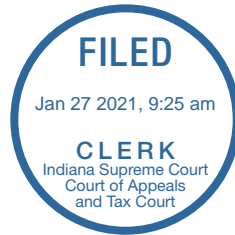


MEMORANDUM DECISION

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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IN THE COURT OF APPEALS OF INDIANA

Whitney D. Mitchell,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 27, 2021

Court of Appeals Case No.
20A-CR-1383

Appeal from the Bartholomew
Circuit Court

The Honorable G. Thomas Gray,
Senior Judge

Trial Court Cause No.
03C01-1906-F6-3472

Mathias, Judge.

- [1] Whitney Mitchell pleaded guilty in Bartholomew Circuit Court to Level 6 felony unlawful possession of a syringe, and the court imposed a one and one-

half year sentence to be executed in the Department of Correction (DOC).

Mitchell appeals, arguing that the sentence is inappropriate in light of the nature of the offense and her character.

[2] We affirm.

Facts and Procedural History

[3] In July 2018, Mitchell pleaded guilty to Class A misdemeanor conversion. As a result, the court sentenced her to one year of probation and ordered her to complete thirty-two hours of community service. In April 2019, the State filed a petition to revoke Mitchell's probation because she had failed to report for appointments, report her address, complete community service, or pay fees. Two weeks later, the probation department conducted an in-home visit at Mitchell's reported address.

[4] During that visit, officers searched Mitchell's shared bedroom where they found a small scale, three capped syringes, a small plastic bag containing white drug residue, several spoons containing drug residue, and two glass smoking devices. Officers also found Mitchell's purse, which contained "two more syringes" as well as a spoon with "white residue, and a small cotton ball." Appellant's Conf. App. p. 12. Mitchell reported that she last used drugs "about two days ago," and an officer "observed the signs of track marks on both [of her] arms." *Id.* at 11. She was placed under arrest.

[5] The State charged Mitchell with one count of Level 6 felony unlawful possession of a syringe, one count of Class C misdemeanor possession of

paraphernalia, and it also amended its prior petition to revoke Mitchell's probation based on the reported drug use and new offenses. Mitchell ultimately entered into an agreement according to which she pleaded guilty to the Level 6 felony in exchange for dismissal of the misdemeanor count.

[6] At Mitchell's April 24, 2020 change-of-plea hearing, the court accepted Mitchell's guilty plea. Also during that hearing, the court learned that Mitchell's mother was attempting to secure placement for Mitchell in Amethyst House, a local outpatient drug-treatment center. The court authorized Mitchell's release to Amethyst House "dependent on when a bed is available and when transportation can be arranged," Tr. p. 26, and set the matter for sentencing.

[7] After the hearing, but prior to sentencing, Mitchell learned that she was not "approved for inclusion in the Amethyst House program," prompting Mitchell's counsel to request that she be considered for the Women Recovering with a Purpose (WRAP) drug-treatment program, a partnership between Bartholomew County Court Services and Centerstone. Appellant's Conf. App. p. 19. The court granted that request.

[8] At the June 4 sentencing hearing, the court noted that Mitchell had "been interviewed by Centerstone and they would accept [her] into the WRAP program." Tr. p. 31. The trial court asked Mitchell, "Is that something you wish the [c]ourt to consider?" *Id.* She responded, "Not at this time," *id.*, and instead requested "Community Corrections placement that way I could seek treatment

outside of here and continue my sobriety and be with my family,” *id.* at 35. The court observed that Mitchell “violated probation before; she doesn’t want the [c]ourt’s assistance in helping her get off of this stuff and she thinks she’s going to do it on her own.” *Id.* at 38. Thus, the trial court found Mitchell was not a good candidate for probation and imposed a fully executed one and one-half year sentence. Mitchell now appeals.

Discussion and Decision

[9] Mitchell argues that her one and one-half year sentence is inappropriate under [Indiana Appellate Rule 7\(B\)](#), which provides the standard by which we exercise our constitutional authority to review and revise sentences. Under this rule, we modify a sentence when we find that “the sentence is inappropriate in light of the nature of the offense and the character of the offender.” [App. R. 7\(B\)](#).

Making this determination “turns on our sense of 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). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” [Livingston v. State](#), 113 N.E.3d 611, 612 (Ind. 2018) (*per curiam*).

[10] When conducting this review, we generally defer to the sentence imposed by the trial court. [Conley v. State](#), 972 N.E.2d 864, 876 (Ind. 2012). Indeed, our role is 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*, 895 N.E.2d at 1225. Thus, deference to the sentence imposed by the trial court will prevail unless the defendant produces compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[11] Here, Mitchell pleaded guilty to Level 6 felony unlawful possession of a syringe, which carries a sentencing range of six months to two and one-half years, with an advisory sentence of one year. *Ind. Code § 35-50-2-7(b)*. The trial court sentenced Mitchell to one and one-half years, six months above the advisory sentence. She asserts that “neither the nature of the offenses nor [her] character supported the imposition of an aggravated” executed sentence. Appellant’s Br. at 17. We disagree.

[12] To the nature of the offense, Mitchell contends that “[t]here is nothing about [her] unlawful possession of a syringe offense that would classify as egregious.” Appellant’s Br. at 12. But this contention ignores the fact that Mitchell was on probation at the time she committed the offense. So, while it is true that “[t]he syringes were found in a search of a bedroom,” *id.* at 12, that search was a condition of Mitchell’s probation. And by unlawfully possessing syringes, Mitchell explicitly violated the terms of her probation. Further, an officer who assisted with the search learned that Mitchell had used drugs “about two days ago,” Appellant’s Conf. App. p. 11, and Mitchell later confirmed that she

planned to use the recovered syringes to inject heroin, Tr. p. 20. Thus, the circumstances surrounding Mitchell's offense reveal that she had been violating the terms of her probation and, had she not been caught, planned to commit additional violations. For these reasons, Mitchell has not established that her sentence is inappropriate based on the nature of the offense. And our consideration of her character does not alter this conclusion.

[13] Turning to Mitchell's character, she first points to her limited criminal history, noting that she "has no previous felony charges or convictions." Appellant's Br. at 13. This is true. But it is well settled that any criminal offense reflects poorly on a defendant's character. *See, e.g., Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). And here, Mitchell's criminal behavior—both detected and undetected—is telling. Her presentence investigation report reveals that she was twice arrested for illegally consuming alcohol underage, the latter of which was resolved by guilty plea; and she has a conviction for misdemeanor conversion. Appellant's Conf. App. p. 24. Further, though we acknowledge that she "has no previous drug offenses," Appellant's Br. at 14, Mitchell, who was thirty-four years old at the time of sentencing, admitted that she began using marijuana "around the age of 15" and turned to methamphetamine and heroin "[a]bout five years ago." Tr. pp. 35–36. Thus, she had committed undetected "drug offenses" for years. These circumstances do not portray Mitchell's character in a positive light.

[14] Mitchell also contends that her guilty plea reflects positively on her character, asserting that she "did not receive a substantial benefit." Appellant's Br. at 14.

But the State dismissed a Class C misdemeanor charge, which could have increased her sentence by an additional sixty days, [I.C. § 35-50-3-4](#), and resulted in another conviction on her criminal record. We thus agree with the State that “Mitchell’s guilty plea was pragmatic in light of the evidence and the benefit she received.” Appellee’s Br. at 10. Simply put, Mitchell has failed to establish that her sentence is inappropriate based on her character.

[15] Finally, Mitchell makes a separate argument that her placement is inappropriate, arguing that she “should have been offered the chance for outpatient treatment by the trial court.” Appellant’s Br. at 16. That argument also fails. The inquiry under [Rule 7\(B\)](#) is not whether another sentence or placement is more appropriate, but rather whether the sentence or placement imposed is inappropriate. [Livingston](#), 113 N.E.3d at 613; [Sanders v. State](#), 71 N.E.3d 839, 844 (Ind. Ct. App. 2017), *trans. denied*. And here, Mitchell has failed to establish that placement in the DOC is inappropriate.

[16] Mitchell was accepted into a drug-treatment program; it just was not the program she wanted. Prior to sentencing, Mitchell’s counsel requested that she be considered for placement in the WRAP program. The court granted that request and, at the time of sentencing, Mitchell had been offered placement into the program. But at her sentencing hearing, Mitchell explicitly indicated that she did not want the court to consider placing her in WRAP “at this time.” Tr. p. 31. Instead, she informed the court that she wanted “Community Corrections placement that way I could seek treatment outside of here.” *Id.* at 35. Yet, Mitchell had not been accepted into any other treatment facility, *id.* at

37–38, and the court found that Mitchell was not “a good candidate for probation,” *id.* at 38. This conclusion is supported by Mitchell’s prior unsuccessful attempts at probation. In short, Mitchell had the opportunity to receive treatment, and she has not established that her placement in DOC is inappropriate.

Conclusion

[17] Mitchell has not carried her burden of persuading us that her one and one-half year executed sentence is inappropriate based on the nature of the offense or her character. We thus affirm.

Altice, J. and Weissmann, J. concur.