MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Victoria Bailey Casanova
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Blake E. Brown,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 22, 2022

Court of Appeals Case No. 21A-CR-1644

Appeal from the Franklin Circuit Court

The Honorable Clay Matthew Kellerman, Judge

Trial Court Cause No. 24C02-2106-F6-544

Altice, Judge.

Case Summary

[1] Blake Brown pled guilty to unlawful possession of a syringe, a Level 6 felony, and possession of paraphernalia, a Class C misdemeanor. The trial court sentenced him to thirty months in the Franklin County Security Center (FCSC), with eight months suspended to probation. On appeal, Brown contends that his sentence is inappropriate in light of the nature of the offense and his character.

[2] We affirm.

Facts & Procedural History

[3] At his initial hearing on June 29, 2021, Brown pled guilty as charged, without the representation of counsel or the benefit of a plea agreement. The trial court accepted his plea and entered convictions for Level 6 felony unlawful possession of a syringe (Count I) and Class C misdemeanor possession of paraphernalia (Count II). The trial court then sentenced Brown on Count I to thirty months in the FCSC, with eight of those months suspended to probation. The trial court imposed a concurrent term of sixty days in the FCSC on Count II. Brown now appeals and argues that his sentence was inappropriate. Additional information will be provided below.

Discussion & Decision

[4] Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana's flexible sentencing scheme allows trial courts to tailor a

sentence to the circumstances presented, and deference to the trial court "prevail[s] 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). The question is not whether another sentence would be more appropriate; rather, the test is whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018).

[5] In determining whether a sentence is inappropriate, we may consider all aspects of the penal consequences imposed by the trial court, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Our role is to "leaven the outliers," which means we exercise our authority in "exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). Brown bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[6] The advisory sentence is the starting point to determine the appropriateness of a sentence. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The sentencing range for a Level 6 felony is six months to two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). For a Class C misdemeanor, a person may be imprisoned for not more than sixty days. Here, the trial court imposed the maximum terms of imprisonment but ordered the terms to be served concurrently and, on Count I, suspended eight

months of the thirty-month sentence. Brown asks that we revise his sentence on Count I to the advisory sentence of one year.

[7] 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). As Brown recognizes, the transcript contains only a basic recitation of the factual basis underlying the plea and, thus, offers no insight into the details of his crime. While included in his appendix, Brown contests the State's reliance on the probable cause affidavit to show that the offense was more egregious than the average possession of a syringe and paraphernalia. Brown argues that the probable cause affidavit was not admitted at the sentencing hearing. Regardless, we observe that it is not State's burden to demonstrate that the sentence is appropriate in light of the nature of the offense; it is Brown's burden to show the contrary. By providing us no details or circumstances of his offense, he has failed to meet his burden.

[8] Turning to his character, we recognize that Brown pled guilty at the initial hearing without the benefit of a plea agreement. A review of the hearing, however, reveals that Brown lacked remorse and, more importantly, made no suggestion that he wanted to change the course of his life and seek treatment. The record reflects that Brown has a serious drug problem, including regular use of Fentanyl, and a related and significant criminal history. The pretrial report provided by the probation department indicates, without additional detail, that he has thirteen prior convictions in Indiana and Kentucky, ten of them drug related, and has violated probation four times. At the hearing,

Brown acknowledged the accuracy of this criminal history but claimed that only one or two of his convictions were felonies, not four as indicated on the report. We do not find Brown's character deserving of a revised sentence.

[9] In sum, this is not an exceptional case calling for sentencing revision. We reject Brown's request for imposition of the advisory sentence and affirm the partially suspended sentence imposed by the trial court.

[10] Judgment affirmed.

Bailey, J. and Mathias, J, concur.