MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Logan M. Peters,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 1, 2021

Court of Appeals Case No. 21A-CR-1118

Appeal from the Brown Circuit Court

The Honorable Mary Wertz, Judge

Trial Court Cause No. 07C01-2009-F6-337

Darden, Senior Judge.

Statement of the Case

[1] Logan M. Peters appeals from his sentence of 820 days executed in the Indiana Department of Correction after pleading guilty to one count of Level 6 felony unlawful possession of a syringe[1] (sentencing range of six months to three years), and one count of Class A misdemeanor operating a motor vehicle while intoxicated endangering a person[2] (sentencing range of up to one year), contending that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History[3]

[2] On September 29, 2020, motorists in Nashville, Indiana observed Peters driving his vehicle in a reckless and erratic manner on State Road 46 West. Several motorists had called the police, later informing responding officers that Peters had been driving his 2015 Toyota Camry "in excess of 100 mph . . .passing multiple vehicles at a time, driving down the center of the roadway, passing in

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[1] Ind. Code § 16-42-19-18(a) (2015).

[2] Ind. Code § 9-30-5-2 (2001).

[3] Included in the recitation of the facts supporting Peters' convictions are facts that were included in the probable cause affidavit, which the pre-sentence investigation (PSI) report incorporated. The PSI was before the court at sentencing. Here, the plea bargain did not foreclose "the possibility of the trial court using enhancements from the underlying charges that were dismissed." *See Bethea v. State*, 983 N.E.2d 1134, 1145 (Ind. 2013). "[I]f a plea bargain lacks such language, we hold it is not necessary for a trial court to turn a blind eye to the facts of the incident that brought the defendant before them." *Id.* Consequently, we consider all of the facts that were before the trial court, including those in the probable cause affidavit, and not just those in the guilty plea hearing transcript.

no passing zones, and running oncoming vehicles off the roadway." Appellant's App. Vol. 2, p. 14.

[3] When officers located Peters' car it was parked crookedly in front of a Speedway gas station. Two of the motorists who had reported Peters' erratic and dangerous driving behavior approached him as he walked out of the gas station. After they confronted him about his driving behavior, he responded by laughing and walking away.

[4] In the process of walking away, Peters walked past a police cruiser. The officer inside the cruiser activated his emergency lights and used his air horn and siren to gain Peters' attention, but he continued to walk away. The officer then drove his vehicle alongside Peters with the emergency lights activated. The officer commanded him to stop, but Peters continued to walk away. Next, the officer got out of his vehicle and again ordered Peters to stop walking. Peters walked approximately ten additional feet before finally stopping.

[5] When Peters spoke to the officers, he acted erratically, flailing his arms and taking off his shirt. Officers suspected that Peters was under the influence of substances and requested that he take a certified drug test. After Peters refused, the officers prepared paperwork to apply for a search warrant. During that time, Peters became more irate and "started yelling at the top of his lungs." *Id.* at 15. He continued that behavior even after officers informed him that if he continued, he could be charged with disorderly conduct. He was then placed in a police vehicle.

[6] Prior to having Peters' car towed away at the request of the manager of the Speedway gas station, officers conducted an inventory search during which they discovered a hypodermic needle in the glove box. A short time later, Peters had his blood drawn at a local hospital pursuant to the search warrant before being taken to the Brown County Sheriff's Office. While at the sheriff's office, Peters again became irate, struck himself repeatedly, and verbally threatened the officer.

[7] The State charged Peters with one count of unlawful possession of a syringe as a Level 6 felony, one count of operating a vehicle while intoxicated endangering a person as a Class A misdemeanor, one count of operating a vehicle while intoxicated as a Class C misdemeanor, and disorderly conduct as a Class B misdemeanor. The State later amended the charging information to add one count of Class C misdemeanor operating a vehicle with a controlled substance or metabolite in the blood.

[8] On April 23, 2021, Peters entered into a plea agreement with the State, agreeing to plead guilty to one count of unlawful possession of a syringe, as a Level 6 felony; and operating a vehicle while intoxicated with endangerment, as a Class A misdemeanor. In exchange, the State agreed to dismiss the remaining counts and to abstain from filing an habitual offender enhancement. The plea agreement left sentencing open to the trial court's discretion.

[9] At the guilty plea hearing, Peters admitted consuming methamphetamine less than a day before operating a vehicle, and that his blood work confirmed the

presence of methamphetamine in his blood with "[281] nanograms of methamphetamine in his system." Tr. Vol. 2, p. 11. Peters also admitted that on the date of his offense, he was "driving fast on Highway 46," and that because of the level of methamphetamine in his blood, he was a danger to himself and others. *Id.* at 11-12. He also admitted that he possessed a syringe with the intent that it would be used for injecting a controlled substance or a narcotic drug.

[10] The court accepted the plea agreement and entered a judgment of conviction for one count of unlawful possession of a syringe and one count of operating a vehicle while intoxicated with endangerment. Next, the court ordered the preparation of a pre-sentence investigation report (PSI).

[11] The PSI reveals that Peters, who was thirty years old at the time of his offenses, was first referred to juvenile probation when he was thirteen years old on an informal adjustment for possession of marijuana. Thereafter, he was adjudicated a delinquent for offenses which, if committed by an adult, would have been operating a vehicle without a license, illegal consumption of alcohol, and criminal mischief. He violated the terms and conditions of his informal adjustment, probation, and home detention, and failed to appear in court. During that time as a juvenile, he was twice offered substance abuse evaluation and treatment, but failed to either participate in treatments or appear for appointments.

[12] As an adult, Peters has felony convictions for theft, burglary, and battery with a deadly weapon or serious bodily injury. He has two prior misdemeanor convictions for possession of marijuana and operating a vehicle with a controlled substance or its metabolite in the body. At the time of sentencing, Peters had pending charges in Monroe County for felony intimidation and operating a vehicle while intoxicated endangering a person. While on pre-trial release for the instant offenses, Peters was arrested for possession of methamphetamine. That charge also was pending at the time of sentencing here.

[13] In the past, Peters has violated the terms and conditions of his probation and home detention orders multiple times and has unsuccessful terminations from both. Peters was given the opportunity to participate in drug treatment court programs, but he violated his pre-drug treatment court release and failed to appear. He also refused to participate in any community corrections program, including work release and home detention. As a result of his past refusals and failures, he was therefore ineligible for placement in community corrections here.

[14] As for Peters history of substance abuse, he has constantly abused illegal substances since the age of thirteen. Peters admitted that he has inhaled, smoked, or consumed: amphetamines, cocaine, codeine, ecstasy, heroin, Hydrocodone, K2 and/or spice, LSD, marijuana, methadone, methamphetamine, morphine, OxyContin, Percocet, Valium, Vicodin, and Xanax.

[15] The court heard the arguments of counsel as well as Peters' own admission that his "criminal activity is related to" his substance abuse problem and that one of his convictions was "a crime of that sort." Tr. p. 26. After expressing concern about Peters' criminal history and past drug treatment program violations, and noting Peters' ability to "follow through has just not been shown," the court encouraged Peters to take advantage of the treatment programs in the DOC. *Id.* at 30.

[16] The court sentenced Peters to 820 days executed in the DOC for his convictions of unlawful possession of a syringe, and 365 days to be served concurrently for operating a vehicle while intoxicated endangering a person. Emphasizing Peters' need to participate in substance abuse programs, the court recommended that he take part in the DOC program Recovery While Incarcerated. The court also stated that a sentence modification would be considered upon Peters' successful completion of the program. The State dismissed the remaining charges. This appeal ensued.

Discussion and Decision

[17] Peters argues that his sentence is inappropriate in light of his character and the nature of his offenses, seeking relief under Indiana Appellate Rule 7(B). Although a trial court may have acted within its lawful discretion in imposing a particular sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Appellate Rule 7(B), which provides that a court "may 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." *Reid v. State,* 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

[18] 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. *Kunberger v. State*, 46 N.E.3d 966 (Ind. Ct. App. 2015); *Thompson v. State*, 5 N.E.3d 383 (Ind. Ct. App. 2014), *trans denied*. The advisory sentence for a Level 6 felony is one and one-half years, with a maximum sentence of three years and a minimum sentence of six months. Ind. Code § 35-50-2-7 (Ind. 2019). Peters received a sentence of 820 days, or more than two years, but less than the maximum sentence. A person may be sentenced for a Class A misdemeanor to a fixed term of no more than one year. Ind. Code § 35-50-3-2 (1977). Peters received a one-year sentence for that offense to be served concurrently with the sentence for the Level 6 felony.

[19] "Although the maximum possible sentences are generally most appropriate for the worst offenders, this rule is not an invitation to determine whether a worse offender could be imagined, as it is always possible to identify or hypothesize a significantly more despicable scenario, regardless of the nature of any particular offense and offender." *Kovats v. State*, 982 N.E.2d 409, 416 (Ind. Ct. App. 2013)

(citing *Simmons v. State*, 962 N.E.2d 86, 92 (Ind. Ct. App. 2011)). "By stating that maximum sentences are ordinarily appropriate for the worst offenders, we refer generally to the class of offenses and offenders that warrant the maximum punishment, and this encompasses a considerable variety of offenses and offenders." *Id.* at 92-93.

[20] The "nature of offense" compares the defendant's actions with the required showing to sustain a conviction under the charged offense, *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008), while the "character of the offender" permits for a broader consideration of the defendant's character. *Douglas v. State*, 878 N.E.2d 873, 881 (Ind. Ct. App. 2007).

[21] When considering a defendant's character for purposes of Appellate Rule 7(B) analysis, a defendant's criminal history is one factor. *Garcia v. State*, 47 N.E.3d 1249 (Ind. Ct. App. 2015), *trans. denied*. The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense. *Id.*

[22] As for the nature of the offenses, Peters, while under the influence of methamphetamine, drove his vehicle in excess of 100 miles per hour, passing other motorists on a highway, forcing other motorists off the highway, while in possession of a syringe intended for further drug use. When confronted by motorists, he simply laughed and walked away. After repeated attempts and orders and by officers to stop, Peters continued to walk away, before eventually stopping. Once Peters stopped walking, he began yelling and flailing his arms

and taking off his shirt. Peters continued his irate behavior while in transport. At the sheriff's office he screamed, threw things, struck himself, and threatened an officer. All of these antics and irrational behaviors show a disregard for the law and the safety of others and himself.

[23] He argues that his sentence is inappropriate because maximum sentences should be reserved for the worst offenders. He asserts that he is not the worst offender. We note that Peters, however, did not receive the maximum sentence for his Level 6 felony. While he did receive the maximum sentence for the Class A misdemeanor conviction, it was ordered to be served concurrently with the Level 6 felony. Peters did not receive the maximum sentence possible when he was sentenced to an aggregate sentence of 820 days in the DOC. Further, the remaining charges against him were dismissed.

[24] Peters claims that his sentence should be reduced because no injury was caused to others while he drove and during his tirade. The presence of injury to others elevates the class or level of the offense, therefore, the lack of injury does not justify a revision of Peters' sentence.

[25] Peters has not shown that his sentence is inappropriate in light of the nature of his offenses.

[26] As for Peters' character, one factor we can consider is his criminal history. *See Webb v. State*, 149 N.E.3d 1234, 1241 (Ind. Ct. App. 2020). Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). Here,

however, Peters' criminal history is not minor, and we have outlined that history above. He was arrested for another drug-related offense while still on pre-trial release awaiting a determination of the present offenses and had pending charges in Monroe County for felony intimidation and operating a vehicle while intoxicated endangering a person. By thirty years of age, Peters continues his pattern of criminal activity and anti-social behavior that began at the age of thirteen. Despite this frequent contact with the criminal justice system–beginning as a juvenile–and the police power of the State, he has not been deterred from committing the present offenses.

[27] Next, he argues on appeal that his criminal history has little relation with the present offenses. *See* Appellant's Br. p. 17. However, Peters admitted to the probation officer preparing his PSI report, that he had a problem with his abuse of illegal and prescription medication. His own father died from an overdose from drugs. Yet, Peters' response to that tragic event was to begin using drugs, including prescription drugs prescribed for his grandfather's cancer treatment. When offered substance abuse treatment, Peters rejected the help. Additionally, he admitted at his sentencing hearing that his "criminal activity is related to" his substance abuse problem and that one of his convictions was "a crime of that sort." Tr. p. 26.

[28] Here, the State abstained from filing an habitual offender count and dismissed the remaining charges against Peters after reaching a plea agreement with him. Further, the court, while acknowledging Peters' substance abuse problems and refusals of help, recommended that Peters, while incarcerated at the DOC,

participate in its Recovery While Incarcerated drug program. The court also stated a willingness to consider modification of Peters' sentence upon successful completion of the substance abuse program.

[29] Peters has failed to show that his sentence is inappropriate such that we should reduce his sentence.

Conclusion

[30] Based on the foregoing, we conclude that Peters has not shown that his sentence is inappropriate in light of the nature of the offenses and the character of the offender.

[31] Affirmed.

Vaidik, J., and Altice, J., concur.