

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

Jacob Bailey,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 15, 2021
Court of Appeals Case No.
21A-CR-1071

Appeal from the
Henry Circuit Court

The Honorable
Kit C. Dean Crane, Judge

Trial Court Cause No.
33C02-2010-F6-412

Vaidik, Judge.

Case Summary

- [1] Jacob T. Bailey appeals his two-and-a-half-year sentence for Level 6 felony possession of a narcotic drug, Class A misdemeanor possession of a controlled substance, and Class A misdemeanor resisting law enforcement. We affirm.

Facts and Procedural History

- [2] In October 2020, Bailey’s mother called law enforcement to help remove Bailey from her home in Henry County. Bailey, who was out on bond in another case and had five active arrest warrants, ran from the police when they arrived. After a brief pursuit, the police apprehended Bailey and arrested him. A search revealed Bailey had on his person a coin purse containing twelve pills—ten hydrocodone, one trazadone, and one alprazolam. Bailey did not have a valid prescription for the pills.
- [3] The State charged Bailey with Level 6 felony possession of a narcotic drug, Class A misdemeanor possession of a controlled substance, and Class A misdemeanor resisting law enforcement. Thereafter, Bailey and the State entered into a plea agreement under which Bailey would plead guilty to all

three counts and the State would dismiss all counts from an earlier, unrelated case.¹ Sentencing was left to the discretion of the trial court.

[4] At the sentencing hearing, Bailey argued for a mostly suspended sentence, noting he suffers from mental-health and substance-abuse issues and provides for his three children. The State emphasized Bailey’s criminal history—five felonies and eleven misdemeanors—and argued he is “not a good candidate for probation or home detention” because his probation had been revoked at least three times. Tr. Vol. II p. 42. The trial court found two aggravating factors: Bailey had “in the past violated conditions of probation” and has a history of criminal activity. *Id.* at 45. The court found no mitigators. The court sentenced Bailey to two-and-a-half years for the Level 6 felony and twenty-two days for each of the two misdemeanors, to be served concurrently, for a total sentence of two-and-a-half years.

[5] Bailey now appeals.

Discussion and Decision

[6] Bailey contends his sentence is inappropriate in light of the nature of the offenses and his character. An appellate court may revise a sentence if, after “due consideration of the trial court’s decision, the Court finds that the sentence

¹ In April 2020, the State charged Bailey with Level 6 felony domestic battery, Class A misdemeanor interference with the reporting of a crime, and Class A misdemeanor criminal trespass. *See* Cause No. 33C02-2004-F6-159.

is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). A court’s job under Rule 7(B) is not to reach a “correct” result in each case but to “leaven the outliers.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). We generally defer to the trial court in sentencing matters, so the defendant must persuade us that the sentence is inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[7] A person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two-and-a-half years, with an advisory term of one year. Ind. Code § 35-50-2-7(b). A person who commits a Class A misdemeanor shall be sentenced to not more than one year. I.C. § 35-50-3-2. Here, the trial court sentenced Bailey to the maximum two-and-a-half years for the Level 6 felony, and twenty-two days for each Class A misdemeanor, to run concurrently, for a total sentence of two-and-a-half years.

[8] Bailey argues his sentence should be reduced because he merely “possessed twelve pills,” which is “not the worst possession offense such that the maximum sentence is warranted.” Appellant’s Br. pp. 9, 10. While we agree the nature of the offenses is not particularly egregious, Bailey’s criminal history alone supports his sentence. Since 2011, Bailey has been convicted of five felonies—intimidation to a law-enforcement officer (2016), operating a vehicle

while intoxicated (2017), domestic battery and residential entry (2019), and possession of methamphetamine (2020)—and eleven misdemeanors, most of which are drug or alcohol related. His probation has been revoked three times, and he was out on bond when he committed the current offenses. Although Bailey points to more positive aspects of his character—he earned his GED, was gainfully employed before being arrested, has three minor children, and suffers from mental illness—these do not outweigh his extensive criminal activity throughout the last decade.

[9] For these reasons, Bailey has not convinced us his sentence is inappropriate.

[10] Affirmed.

Kirsch, J., and May, J., concur.