MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jesse James Duckworth,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 11, 2022

Court of Appeals Case No. 21A-CR-2161

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2004-F2-137

Crone, Judge.

Case Summary

[1] Jesse James Duckworth was tried by jury in absentia and convicted of level 2 and level 3 felony dealing in methamphetamine. Following a sentencing hearing for which he was present, the trial court sentenced him to twenty-five years. On appeal, he argues that the trial court abused its discretion in trying him in absentia and denying him the opportunity to explain his absence, and that his sentence is inappropriate. Finding no abuse of discretion and that he has not met his burden to establish that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] On May 21, 2019, Huntington City Police Department Detective Eric Fluck and a confidential informant (the CI) arranged to purchase methamphetamine from Duckworth. Prior to the scheduled meeting between the CI and Duckworth, Detective Fluck searched the CI's person and car to check for "any type of contraband" and to "verify that there [was] nothing there." Tr. Vol. 2 at 148. Detective Fluck then provided the CI with $400. The CI drove to the arranged buy location, and Detective Fluck followed in another vehicle. Detective Fluck maintained a "direct line of sight" to the CI's car, and he watched as Duckworth approached the CI and entered the car for "a very short period of time." *Id.* at 155-56. The CI then drove to a predetermined meeting place and gave Detective Fluck a package that contained 14.16 grams of methamphetamine.

[3] The following day, the CI arranged another drug deal with Duckworth to purchase "2 balls," which is seven grams of methamphetamine. *Id*. at 170. Detective Fluck searched the CI and provided him with $200. Following his meeting with Duckworth, the CI gave Detective Fluck a baggie that contained 7.10 grams of methamphetamine.

[4] In April 2020, the State charged Duckworth with level 2 felony dealing in methamphetamine and level 3 felony dealing in methamphetamine. Duckworth appeared with counsel for a pretrial conference on September 8, 2020, and requested that the trial court set the matter for jury trial. During the conference, the trial court set the matter for a two-day jury trial beginning on April 22, 2021, at 8:00 a.m. Duckworth appeared for the final pretrial conference on March 23, 2021. The trial court reaffirmed that the jury trial was set to begin on April 22, and he ordered Duckworth to submit to a drug screen before leaving the courthouse. Duckworth fled the courthouse without submitting to the screen, and the trial court issued a warrant for his arrest.

[5] Duckworth's counsel appeared for trial on the morning of April 22, 2021. Duckworth did not appear. Duckworth's counsel informed the trial court that he had not heard from and had not had contact with Duckworth since the final pretrial conference. The trial court noted that Duckworth was present when the trial date was scheduled and proceeded with the jury trial in Duckworth's absence. At the conclusion of trial, the jury found Duckworth guilty as charged.

[6] Duckworth was finally arrested on August 2, 2021. The trial court held a hearing during which Duckworth stated that he had not been present at the jury trial because his counsel "wouldn't do nothin'" for him. Tr. Vol. 3 at 111. A sentencing hearing was held on September 7, 2021. The trial court sentenced Duckworth to concurrent terms of twenty-five years for the level 2 felony and thirteen years for the level 3 felony, for an aggregate executed sentence of twenty-five years. This appeal ensued.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in trying Duckworth in absentia.

[7] Duckworth first argues that the trial court abused its discretion by trying him in absentia and then not providing him with an opportunity to explain his absence. We disagree.

[8] Both the United States and Indiana Constitutions afford defendants in a criminal proceeding the right to be present at all stages of their trial. U.S. Const. amend. VI; Ind. Const. art. 1, § 13. However, a defendant may be tried in absentia if the trial court determines that the defendant knowingly and voluntarily waived that right. *Jackson v. State*, 868 N.E.2d 494, 498 (Ind. 2007). "The trial court may presume a defendant voluntarily, knowingly and intelligently waived his right to be present and try the defendant in absentia upon a showing that the defendant knew the scheduled trial date but failed to appear." *Brown v. State*, 839 N.E.2d 225, 227 (Ind. Ct. App. 2005)*, trans. denied*

(2006). Indeed, the "best evidence" that a defendant knowingly and voluntarily waived his right to be present at trial is the defendant's presence in court on the date the matter is set for trial. *Id*. (citation omitted).

[9] Duckworth concedes that he was present in court when his trial date was set and that he nevertheless failed to appear at his jury trial. Therefore, the trial court was well within its discretion to presume that Duckworth knowingly and voluntarily waived his right to be tried in person. *See id*. Duckworth correctly points out that a defendant who has been tried in absentia must be afforded an opportunity to "explain his absence and thereby rebut the initial presumption of waiver." *Id*. "As a reviewing court, we consider the entire record to determine whether the defendant voluntarily, knowingly, and intelligently waived his right to be present at trial." *Id.* at 228. A defendant's explanation of his absence is a part of the evidence available to a reviewing court in determining whether it was error to try him in absentia. *Id*.

[10] Duckworth contends that after he was subsequently arrested and brought before the trial court for a hearing, the trial court abused its discretion because he "was never given the opportunity" to explain his absence from the trial and to "rebut the initial presumption of waiver." Appellant's Br. at 15. First, we reject Duckworth's implication that the trial court had the affirmative duty to request or invite an explanation from him regarding his absence from trial. It is well settled that the trial court is not required to engage in a sua sponte inquiry; rather, the defendant cannot be prevented from offering an explanation. *Soliz v. State*, 832 N.E.2d 1022, 1029 (Ind. Ct. App. 2005)*, trans. denied*. Moreover,

contrary to Duckworth's assertion, the trial court did inquire about his absence, and Duckworth had the opportunity to explain. The record reveals that during the post-arrest hearing, Duckworth volunteered that he did not appear at his trial simply because, in his opinion, his attorney "wouldn't do nothin' for" him. Tr. Vol. 3 at 111. He offered no further explanation to the trial court for his absence, and he offers no further explanation for his absence to this Court. Under the circumstances, we cannot say that Duckworth was prevented from providing an explanation for his absence at trial, nor has he rebutted the presumption of a knowing and voluntary waiver already established by his knowledge of the trial date and failure to appear. The trial court did not abuse its discretion.

Section 2 – Duckworth has not met his burden to show that his sentence is inappropriate.

[11] Duckworth next claims that his twenty-five-year aggregate sentence is inappropriate pursuant to Indiana Appellate Rule 7(B), which states that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail 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). In conducting our review, "[w]e do not look to determine if the sentence was appropriate; instead, we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Ultimately, whether a sentence should be deemed inappropriate "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*, 895 N.E.2d at 1224. The appellant bears the burden of persuading this Court that his sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[12] Regarding the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The jury found Duckworth guilty of level 2 felony dealing in methamphetamine and level 3 felony dealing in methamphetamine. The sentencing range for a level 2 felony is between ten and thirty years, with the advisory sentence being seventeen and one-half years. Ind. Code § 35-50-2-4.5. The sentencing range for a level 3 felony is between three and sixteen years, with the advisory sentence being nine years. Ind. Code § 35-50-2-5. The trial court imposed a twenty-five-year sentence for the level 2 felony and a thirteen-year sentence for the level 3 felony, but ordered those terms served concurrently. Thus, although each individual sentence was above the advisory sentence for those offenses, the aggregate

executed twenty-five-year sentence imposed by the trial court was far below the maximum allowable sentence.

[13] Still, Duckworth argues that the nature of his offenses warrants a sentence revision because, while he did twice sell methamphetamine to a confidential informant, his offenses were "victimless crimes as the confidential informant did not ingest the illegal substances" and "no physical violence was involved and no property damage" occurred. Appellant's Br. at 18. Be that as it may, the amounts sold by Duckworth were not insignificant (14.16 grams and 7.10 grams respectively), and the amounts were well in excess of the base amounts necessary to sustain his convictions on each count.[1] Thus, we disagree with Duckworth that the nature of his offenses warrants sentence revision.

[14] Regardless, we need look no further than Duckworth's character to affirm the sentence imposed by the trial court. "The character of the offender is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). This assessment includes consideration of the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Duckworth has a lengthy and troubling juvenile and adult criminal history, including a juvenile adjudication for child molesting as well as several adult misdemeanor convictions and two convictions for class D felony theft. He also

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[1] To support a conviction for level 2 felony dealing in methamphetamine, the amount of the drug involved must be at least ten grams. Ind. Code § 35-48-4-1.1(e). To support a conviction for level 3 felony dealing in methamphetamine, the amount of the drug involved must be at least five grams but less than ten grams. Ind. Code § 35-48-4-1.1(d).

violated his probation on at least two occasions, resulting in revocation of probation.

[15] More significantly, Duckworth's behavior during the pendency of the current case reflects very poorly on his character. After he was finally arrested and awaiting sentencing, he made a jailhouse phone call to his girlfriend encouraging her to sell the "two to three thousand dollars worth of sh*t" that he left her and telling her to be careful or she would "end up in the boat" that he was in. Sent. Ex. 1. In a second jailhouse phone call, Duckworth informed his girlfriend that an individual known as "Crackhead" would be visiting her and that Crackhead should pay her "between $140 and $150." *Id*. Duckworth's behavior indicates a continued disdain for the rule of law despite his convictions. Moreover, as already noted above, Duckworth fled the courthouse after being ordered to submit to a drug screen, and he subsequently failed to appear for his trial. Nothing about Duckworth's character persuades us to reduce his sentence. He has not met his burden to demonstrate that his sentence is inappropriate, and we therefore affirm it.

[16] Affirmed.

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