

## MEMORANDUM DECISION

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## IN THE COURT OF APPEALS OF INDIANA

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Joshua T. Trammell,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

August 30, 2023

Court of Appeals Case No.  
23A-CR-700

Appeal from the Franklin Circuit  
Court

The Honorable J. Steven Cox,  
Judge

Trial Court Cause No.  
24C01-2108-F4-000713

**Memorandum Decision by Judge May**  
Chief Judge Altice and Judge Foley concur.

**May, Judge.**

[1] Joshua T. Trammell appeals his thirty-two-year sentence for his conviction of Level 4 felony operating a vehicle under the influence of a controlled substance causing death<sup>1</sup> and a habitual offender enhancement.<sup>2</sup> Trammell argues his sentence is inappropriate in light of the nature of the offense and his character. We affirm.

## Facts and Procedural History

[2] On July 7, 2023, police responded to a two-vehicle crash on U.S. 52 in Franklin County. When police arrived, they observed a 2014 Kia Soul was “off the side of the roadway, fully engulfed in flames” and a 2001 Chevy Silverado was turned over on its side on the roadway, “with a trailer that had detached nearby.” (App. Vol. 2 at 116.) The driver of the Kia Soul, identified as Jenni Fasbinder, was pronounced dead at the scene.

[3] The driver of the Silverado truck, identified as Trammell, was transported to the hospital by ambulance with injuries to his head and face. Because of the extent of Trammell’s injuries, officers were unable to conduct standard field sobriety tests at the scene. While at the hospital, Trammell’s preliminary breath test revealed no alcohol in his blood. A licensed phlebologist drew Trammell’s blood “to be submitted for analysis to detect the presence of alcohol and/or

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<sup>1</sup> Ind. Code § 9-30-5-5(a)(2).

<sup>2</sup> Ind. Code § 35-50-2-8(d).

illegal controlled substances.” (*Id.* at 118.) The toxicology “analysis determined the presence of both amphetamine and methamphetamine in Trammell’s blood” (*id.*), both of which are Schedule II controlled substances.

[4] Trammell “claimed that the other vehicle crossed left-of-center, which caused the collision. His claim was not supported by what [Deputy Jason Lovins] observed at the scene.” (*Id.* at 118.) “Based on the relative positioning of the vehicles, it appeared that the Silverado operated by Trammell had crossed left of center into the opposite lane of travel, causing a head-on collision with the Soul.” (*Id.*) After road crews turned the Silverado upright, debris was found where the vehicle had been on its side. “Among the debris were two hypodermic needles, . . . common for intravenous drug use[,]” and a cooler containing unopened alcoholic beverages. (*Id.*)

[5] On August 11, 2021, the State charged Trammell with Level 4 felony operating a vehicle under the influence of a controlled substance causing death, Level 4 felony causing death when operating a motor vehicle while intoxicated,<sup>3</sup> Level 5 felony reckless homicide,<sup>4</sup> and Level 6 felony possession of a syringe,<sup>5</sup> and also alleged he was a habitual offender. On August 18, 2021, the trial court held Trammell’s initial hearing and set his bond at \$8,000.00. On January 30,

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<sup>3</sup> Ind. Code § 9-30-5-5(a)(3).

<sup>4</sup> Ind. Code § 35-42-1-5.

<sup>5</sup> Ind. Code § 16-42-19-18(a)(2).

2023, Trammell pled guilty, without plea agreement, to Level 4 felony operating a vehicle under the influence of a controlled substance causing death and the habitual offender enhancement. The State asked the court to dismiss the remaining charges because they “do not carry the possibility of additional potential penalties.” (*Id.* at 92.)

[6] On March 1, 2023, the trial court held a sentencing hearing. As an aggravator, the trial court identified Trammell’s extensive criminal history, and as mitigators, the trial court found Trammell was remorseful, he accepted responsibility, he has a moderate risk of reoffending, he has the support of his friends and family, and his incarceration would be a hardship on his family. Based thereon, the court sentenced Trammell to twelve years in the Department of Correction (“DOC”) for Level 4 felony operating a vehicle under the influence of a controlled substance causing death. The court then enhanced the sentence by twenty years for Trammell being a habitual offender. The court further ordered “the Defendant shall be eligible to participate in the Recovery While Incarcerated (RWI) Program. If the Defendant successfully completes the RWI Program, he shall be permitted to Petition the Court for modification of the sentence herein, but the Court will not be bound to grant the modification.” (*Id.* at 126.)

## Decision and Discussion

[7] Trammell contends his thirty-two-year sentence is inappropriate given the nature of his offense and his character. We evaluate inappropriate sentence

claims using a well-settled standard of review. Our Indiana Supreme Court has stated:

The Indiana Constitution authorizes appellate review and revision of a trial court’s sentencing decision. Ind. Const. art. 7, §§ 4, 6; *Serino v. State*, 798 N.E.2d 852, 856 (Ind. 2003). This authority is implemented through Indiana Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender. *Serino*, 798 N.E.2d at 856. The principal role of such review is to attempt to leaven the outliers. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). The burden is on the defendant to persuade the reviewing court that the sentence is inappropriate. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

*Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018) (per curiam).

[8] When considering the nature of the offense, we first look at the advisory sentence for the crime. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218 (Ind. 2007). Trammell pled guilty to a Level 4 felony.<sup>6</sup> Indiana Code section 35-50-2-5.5 states: “A person who commits a

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<sup>6</sup> Trammell briefly argues he is entitled to some mitigating weight for pleading guilty without a plea agreement. Trammell argues he received no benefit for having pled guilty, despite the substantial benefit the State received by not needing to proceed with trial. Trammell cites our Indiana Supreme Court, which stated “a defendant who pleads guilty deserves ‘some’ mitigating weight be given to the plea in return . . . .” *McElroy v. State*, 865 N.E.2d 584, 591 (Ind. 2007) (citation omitted). However, Trammell did not assert on appeal that the trial court abused its discretion by failing to find his guilty plea as a mitigating factor. Therefore, we conclude this issue, which is judged by a separate legal standard than inappropriate sentencing under Indiana Appellate Rule 7(B), has been waived for appellate review. See Ind. Appellate Rule 46(A)(8) (contentions in appellant’s brief must be supported by cogent reasoning and citations to relevant authority); *Price v. Review Bd. of Ind. Dept. of Workforce Dev.*, 2 N.E.3d 13, 16-17 (Ind. Ct. App. 2013) (waiving issue not

Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years.” Trammell also pled guilty to being a habitual offender. Indiana Code section 35-50-2-8(i) states: “The court shall sentence a person found to be a habitual offender to an additional fixed term that is between: (1) six (6) and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony . . . .” Thus, the trial court imposed the maximum sentence statutorily allowed for the Level 4 felony and habitual offender enhancement.

[9] The State argues:

The nature of Trammel[1]’s offense warrants his maximum sentence. While pulling a trailer and with methamphetamine and/or amphetamine in his system and hypodermic needles and a cooler of unopened alcoholic beverages in his car, Trammel[1] caused a head-on collision and then attempted to blame the accident on the other driver (App. Vol. II 29).

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Trammel[1] was convicted of operating while intoxicated on two occasions in the past (App. Vol. II 100-01). That Trammel[1] killed an innocent person because he failed to take steps to remedy his drug and alcohol issues even after repeatedly facing

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properly raised). Waiver notwithstanding, Trammell cannot demonstrate the trial court overlooked a “significant” mitigator when his decision to plead guilty was pragmatic. *See Primmer v. State*, 857 N.E.2d 11, 16 (Ind. Ct. App. 2006) (a plea may “be considered less significant if there was substantial admissible evidence of the defendant’s guilt”), *trans. denied*.

consequences for driving under the effects of inebriating substances justifies his maximum sentence.

(Appellee’s Br. at 8-9.) We agree. As the trial court stated at sentencing: “At some point it’s just apparent to a community that it’s dangerous for some people to live among us and you’re one of them, and you’ve been one of them.” (Tr. Vol. 2 at 73.) We cannot say Trammell’s sentence is inappropriate based his offense. *See, e.g., Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002) (maximum sentence is justified if the case is “among the very worst offenses and a defendant among the very worst offenders”).

[10] Trammell also contends his sentence is inappropriate in light of his character. When assessing the defendant’s character, we first consider the defendant’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). “The significance of criminal history varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Id.* Trammell has an extensive criminal history spanning three decades and two states. Trammell has approximately fourteen felony convictions<sup>7</sup> and twenty misdemeanor

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<sup>7</sup> In 1996, Trammell was convicted of Class D felony battery resulting in bodily injury. In 2009, Trammell was convicted of Class D felony theft and Class D felony resisting law enforcement. In 2011, Trammell was convicted of Class D felony theft. In 2013, Trammell was convicted of two counts of Class D felony theft and Class D felony check fraud. In 2014, Trammell was convicted of two counts of Class D felony theft and Class D felony identity deception. In 2016, Trammell was convicted of Level 6 felony possession of a narcotic drug. In 2017, Trammell was convicted of Level 6 felony intimidation to commit a forcible felony. In 2020, Trammell was convicted of Level 6 felony operating a vehicle as a habitual traffic violator. In 2021, Trammell was convicted of Level 6 felony resisting law enforcement.

convictions<sup>8</sup> in Indiana. Trammell was adjudicated a juvenile delinquent four times, which include one status offense and what would be considered two felonies and one misdemeanor, if committed by an adult.<sup>9</sup>

[11] Trammell has had numerous other contacts with the criminal justice system, including approximately eleven probation revocation filings. Despite his repeated past failings at probation, Trammell requested that his entire sentence be suspended to probation. The trial court stated that “from a sentencing perspective he is not a good candidate for probation and it’s a waste of time and resource to continue putting somebody on probation who continues to either violate the terms of probation or commit new crimes while on probation.” (Tr. Vol. 2 at 69.) Trammell’s continued criminal behavior and repeated contacts with the justice system reflect poorly on his character. *See Weiss v. State*, 848 N.E.2d 1070, 1073 (Ind. 2006) (holding defendant’s sentence was not

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<sup>8</sup> In 1996, Trammell was convicted of Class C misdemeanor illegal possession of alcoholic beverage, Class B misdemeanor unlawful use of a police radio, Class C misdemeanor minor consuming alcohol, Class A misdemeanor conversion, Class A misdemeanor resisting law enforcement, and Class C misdemeanor minor consuming alcohol. In 2002, Trammell was convicted of Class A misdemeanor false informing. In 2004, Trammell was convicted of Class A misdemeanor battery resulting in bodily injury. In 2007, Trammell was convicted of Class A misdemeanor criminal mischief – pecuniary loss at least \$250 but less than \$2,500. In 2008, Trammell was convicted of Class B misdemeanor criminal mischief – damages or defaces property of another without consent and Class C misdemeanor operating a vehicle while intoxicated – first offense and no endangerment. In 2009, Trammell was convicted of Class C misdemeanor probation order violation, Class A misdemeanor intimidation, Class A misdemeanor operating a vehicle while intoxicated, and Class C misdemeanor operating a vehicle while intoxicated. In 2011, Trammell was convicted of two counts of Class A misdemeanor check deception. In 2013, Trammell was convicted of Class A misdemeanor knowing possession of a cellular telephone or device while incarcerated. In 2018, Trammell was convicted of Class A misdemeanor resisting law enforcement. In 2021, Trammell was convicted of Class A misdemeanor driving while suspended.

<sup>9</sup> The record includes four referrals for other acts that would be considered one felony and three misdemeanors if committed by an adult, but it is unclear if there were formal filings.



inappropriate because “[h]is repeated contacts with the criminal justice system have had no impact on persuading him to reform”). Therefore, even when we consider the mitigating factors found by the trial court, we cannot say that Trammell’s sentence is inappropriate in light of his character.

## Conclusion

[12] Trammell’s sentence was not inappropriate based on the nature of his offense and his character. Accordingly, we affirm Trammell’s thirty-two-year sentence for Level 4 felony operating a vehicle under the influence of a controlled substance causing death and being a habitual offender.

[13] Affirmed.

Altice, C.J., and Foley, J., concur.