MEMORANDUM DECISION

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FILED
Dec 05 2023, 8:45 am
CLERK
Indiana Supreme Court
Court of Appeals
and Tax Court

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IN THE COURT OF APPEALS OF INDIANA

Joseph Marcel Odom,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 5, 2023

Court of Appeals Case No. 23A-CR-293

Appeal from the Tippecanoe Circuit Court

The Honorable Sean M. Persin, Judge

Trial Court Cause No. 79C01-2109-F2-27

Memorandum Decision by Judge Crone
Judges Riley and Mathias concur.

Crone, Judge.

Case Summary

[1] A jury found Joseph Marcel Odom guilty of level 2 felony conspiracy to commit dealing in methamphetamine, level 6 felony obstruction of justice, and class B misdemeanor false informing, and Odom admitted to being a habitual offender. The trial court sentenced Odom to twenty-eight years. On appeal, Odom argues that the trial court abused its discretion in instructing the jury on conspiracy, that his obstruction conviction is not supported by sufficient evidence, and that his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

[2] On August 31, 2021, Odom brought methamphetamine to Mark Bowman's house in Lafayette. Alexis Stone and Marquise McDowell were also there. Odom reached in his pocket and "broke a piece [of methamphetamine] out and put it on the table" for everyone to share. Tr. Vol. 2 at 207. Odom also gave Bowman "less than a gram" of methamphetamine "for later[.]" *Id*. at 202, 206. Everyone smoked Odom's methamphetamine, got into Bowman's Mercedes, and picked up Jayda Schroeder in another part of town. Bowman was in the driver's seat, Stone was in the front passenger's seat, and Schroeder was between Odom and McDowell in the back seat.

[3] A Lafayette police officer was following the Mercedes and determined that its license plate was registered to another vehicle. The officer activated his vehicle's emergency lights to initiate a traffic stop. Stone saw the lights, said, "[G]uys

there's a cop car right there[,]" and "started freaking out[.]" *Id*. at 171, 172. Odom threw "[b]ags of meth" onto Stone's lap, and he and the others told her to "stick [them] down [her] pants[,]" which she did. *Id*. at 172, 173. Bowman parked his vehicle. The officer approached and asked if the passengers "had any identification on them." *Id*. at 147. They did not. Odom said that his name was Jeremy Blaser, which is his brother's name.

[4] Everyone was ordered out of the Mercedes, and a police canine alerted to the presence of illegal drugs inside the car. A "small bag" of methamphetamine was found on the "front passenger floorboard." *Id*. at 155. An officer asked Stone if she had "anything[,]" and she told him that she "had dope in [her] pants" that had been "thrown in [her] lap." *Id*. at 173, 174. Stone retrieved two bags of methamphetamine from her pants, and another bag fell out of her pants after she was placed in a police car. The four bags contained a total of 19.55 grams of methamphetamine, and Odom's DNA was found on two of the bags. Bowman was found to be in possession of the methamphetamine that Odom had given him earlier.

[5] The State charged Odom, Bowman, and Stone with multiple offenses as codefendants. The State charged Odom with level 2 felony conspiracy to commit dealing in methamphetamine, level 2 felony dealing in methamphetamine, level 4 felony conspiracy to commit possession of methamphetamine, level 4 felony possession of methamphetamine, level 6 felony obstruction of justice, and class B misdemeanor false informing. The State also alleged that Odom was a habitual offender. Bowman pled guilty to

one offense, and Stone pled guilty to two. Odom's trial was held in December 2022. The jury acquitted Odom of the dealing charge and found him guilty of the remaining charges. Odom admitted to being a habitual offender. The trial court entered judgment of conviction only on the conspiracy to commit dealing, obstruction, and false informing verdicts. The court sentenced Odom to twenty years on the conspiracy conviction and imposed an eight-year habitual offender enhancement. The court also imposed concurrent terms of two years for obstruction and 180 days for false informing, for an aggregate sentence of twenty-eight years, with twenty-five years executed and three years suspended to probation. Odom now appeals his conspiracy and obstruction convictions and also challenges his sentence.

Discussion and Decision

Section 1 – The trial court did not abuse its discretion in instructing the jury on conspiracy to commit dealing in methamphetamine.

[6] Odom first contends that the trial court erred in instructing the jury on conspiracy to commit dealing in methamphetamine. "The manner of instructing a jury is left to the sound discretion of the trial court." *Quiroz v. State*, 963 N.E.2d 37, 41 (Ind. Ct. App. 2012), *trans. denied*. "Jury instructions must be considered as a whole and in reference to each other, and even an erroneous instruction will not constitute reversible error if the instructions, taken as a whole, do not misstate the law or otherwise mislead the jury." *Id*.

[7] Indiana Code Section 35-41-5-2(a) provides in pertinent part that "[a] person conspires to commit a felony when, with intent to commit the felony, the person agrees with another person to commit the felony. A conspiracy to commit a felony is a felony of the same level as the underlying felony." Indiana Code Section 35-48-4-1.1 defines level 2 felony dealing in methamphetamine in pertinent part as the possession with intent to deliver or finance the delivery of at least ten grams of methamphetamine, pure or adulterated. "'Delivery' means: (1) an actual or constructive transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship; or (2) the organizing or supervising of an activity described in subdivision (1)." Ind. Code § 35-48-1-11.

[8] "Well-settled Indiana law provides that the conspiracy to commit a felony is a distinct offense from the contemplated felony." *Owens v. State*, 929 N.E.2d 754, 756 (Ind. 2010). "The crime of conspiracy to commit a felony has three elements: '1) the intent to commit a felony, 2) an agreement with another person to commit a felony, and 3) an overt act, performed by either the defendant or the person with whom the defendant has entered into the agreement.'" *Id*. (quoting *Jester v. State*, 724 N.E.2d 235, 239 (Ind. 2000)). "A conspiracy 'is complete upon the agreement and the performance of an overt act in furtherance of the agreement.'" *Id*. (quoting *Smith v. State*, 655 N.E.2d 532, 540 (Ind. Ct. App. 1995), *trans. denied*). "The overt act need not rise to the level of a 'substantial step' required for an attempt to commit the felony." *Id*. at 756-57. "A defendant may therefore be convicted of a conspiracy to commit a

felony without committing the felony and without even an attempt to commit it." *Id*. at 757.

[9] The trial court's final instruction regarding conspiracy to commit dealing in methamphetamine provides,

> The crime of Conspiracy is defined by law as follows:
>
> A person conspires to commit a felony when, with intent to commit the felony, he agrees with another person to commit the felony. The State must allege and prove that either the person or the person with whom he agreed performed an overt act in furtherance of the agreement.
>
> Before you may convict the Defendant on Count 1, the State must have proved each of the following beyond a reasonable doubt:
>
> 1. The Defendant, Joseph Marcel Odom,
> 2. agreed with another person, Alexis Marie Stone and/or Mark Loral Bowman, to commit the crime of Dealing in Methamphetamine At Least Ten Grams,
> 3. with the intent to commit the crime, and
> 4. Joseph Marcel Odom, Alexis Marie Stone or Mark Loral Bowman performed an overt act in furtherance of that agreement by:
>
> Bowman allowed others to possess and/or use drugs at his residence, including Odom and Stone; Bowman drove in his vehicle with Odom and Stone as passengers; Bowman, Odom and/or Stone possessed methamphetamine in Bowman's vehicle; Bowman, Odom and/or Stone intended said methamphetamine to be delivered to other persons; Bowman, Odom and/or Stone concealed methamphetamine when stopped by police, to prevent police from finding the contraband; and the amount of

> methamphetamine involved included amounts of at least ten (10) grams.[1]
>
> If the State failed to prove each of these elements beyond a reasonable doubt, you must find the Defendant not guilty of Conspiracy to Commit Dealing Methamphetamine At Least Ten Grams, a Level 2 felony, charged in Count 1.

Appellant's App. at 49-50 (bolding and underlining omitted).

[10] Odom argues that the first alleged overt act "stands alone as the only mention of activities occurring inside of Bowman's house. That clause is a misstatement of the law and misleads the jury to believe mere possession or use of methamphetamine was sufficient for dealing." Appellant's Br. at 16. But this argument disregards that Odom was acquitted of dealing in methamphetamine, which establishes that the jury was not misled by the instruction.[2] Accordingly, we find no abuse of discretion.

Section 2 – Odom's conviction for obstruction of justice is supported by sufficient evidence.

[11] Next, Odom asserts that his conviction for obstruction of justice is not supported by sufficient evidence. In reviewing a challenge to the sufficiency of the evidence, we neither reweigh the evidence nor judge the credibility of

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[1] These overt acts mirror those alleged in the charging information. Appellant's App. Vol. 2 at 18.

[2] Notably, Odom does not challenge the sufficiency of the evidence supporting his conspiracy conviction, which is premised on the jury finding beyond a reasonable doubt that he and Bowman and/or Stone agreed to deal at least ten grams of methamphetamine and that one of them performed at least one of the alleged overt acts in furtherance of the agreement.

witnesses. *Anderson v. State*, 37 N.E.3d 972, 973 (Ind. Ct. App. 2015), *trans. denied*. We respect the jury's exclusive province to weigh conflicting evidence, and we consider only the evidence most favorable to its verdict. *Id*. It is not necessary that the evidence overcome every reasonable hypothesis of innocence. *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011). We must affirm if the evidence and the reasonable inferences drawn therefrom could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Anderson*, 37 N.E.3d at 974.

[12] Indiana Code Section 35-44.1-2-2(a)(3) provides that a person who "alters, damages, or removes any record, document, or thing, with intent to prevent it from being produced or used as evidence in any legal proceeding or administrative or criminal investigation" commits level 6 felony obstruction of justice. At trial, the State argued that Odom obstructed justice by "remov[ing]" methamphetamine "from his person and transferr[ing] it to another person with intent to conceal it. And with the intention to keep it from being used." Tr. Vol. 3 at 28.

[13] Odom frames the issue as one of statutory interpretation and argues that he did not "remove" the methamphetamine for purposes of the obstruction statute because he "did not hand the substance to another person in the car who then threw it out of the window[,]" "put the substance into his mouth and chew or swallow it[,]" or "take the substance from the scene of the crime and dispose it

into a trash can." Appellant's Br. at 20 (citing obstruction cases).[3] "When interpreting a statute, the words and phrases shall be taken according to their plain meaning." *State v. C.D.*, 177 N.E.3d 832, 835 (Ind. Ct. App. 2021), *trans. denied* (2022). "Penal statutes must be construed strictly against the State, with any ambiguities resolved in favor of the defendant. Criminal statutes should not be enlarged by construction beyond their fair meaning; yet, they should not be so narrowly construed as to exclude cases they fairly encompass." *Id*. (citation and alteration omitted). We think that the plain meaning of "remove" encompasses Odom's conduct here: he tossed the methamphetamine from the back seat to the front seat onto Stone's lap and told her to stick it down her pants, and he did so with the intent to prevent it being produced or used as evidence in a legal proceeding or criminal investigation. That he did not swallow the methamphetamine or tell Stone to toss it out the car window is irrelevant. Accordingly, we affirm his conviction for obstruction of justice.

Section 3 – Odom has failed to establish that his sentence is inappropriate in light of the nature of the offenses and his character.

[14] Finally, Odom asks us to reduce his sentence pursuant to Indiana Appellate Rule 7(B), which "The Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the

[3] Odom's suggestion that he did not throw methamphetamine onto Stone's lap is an invitation to reweigh evidence and judge witness credibility, which we may not do.

sentence is inappropriate in light of the nature of the offense and the character of the offender." Smith has the burden of establishing that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although Appellate Rule 7(B) requires us to consider both the nature of the offense and the character of the offender, the appellant is not required to prove that each of those prongs independently renders his sentence inappropriate.[4] *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016); *see also Moon v. State*, 110 N.E.3d 1156, 1163-64 (Ind. Ct. App. 2018) (Crone, J., concurring in part and concurring in result in part) (quotation marks omitted) (disagreeing with majority's statement that Rule 7(B) "plainly requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of the offenses and his character."). Rather, the two prongs are separate inquiries that we ultimately balance to determine whether a sentence is inappropriate. *Connor*, 58 N.E.3d at 218.

[15] When reviewing a sentence, our principal role is to leaven the outliers rather than necessarily achieve what is perceived as the correct result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "[A]ppellate review should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Id*. "We do not look to determine if the sentence was appropriate;

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[4] We disagree with the State's assertion to the contrary. *See* Appellee's Br. at 23 ("Ultimately, the burden is on the defendant to persuade a reviewing court that his sentence is inappropriate under both prongs.").

instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. "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). As we assess the nature of the offense and character of the offender, "we may look to any factors appearing in the record." *Boling v. State*, 982 N.E.2d 1055, 1060 (Ind. Ct. App. 2013). 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. We reserve our authority to revise a sentence under Appellate Rule 7(B) for "exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) (per curiam).

[16] Regarding the nature of the offense, we note that "the advisory sentence is the starting point the Legislature selected as appropriate for the crime committed." *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014).[5] The advisory sentence for Odom's level 2 felony conviction is seventeen and a half years, with a

[5] Odom improperly cites a case regarding the long-outmoded presumptive sentencing scheme. *See* Appellant's Br. at 22 (citing *Corbin v. State*, 840 N.E.2d 424, 432 (Ind. Ct. App. 2006)).

minimum of ten years and a maximum of thirty years. Ind. Code § 35-50-2-4.5. The range for the applicable habitual offender enhancement, which Odom fails to mention in his brief, is between eight and twenty years. Ind. Code § 35-50-2-8(i). Thus, Odom received a base sentence only slightly above the advisory for his most serious conviction and the minimum possible habitual offender enhancement, as well as concurrent terms for the lesser offenses.

[17] Odom claims that "[t]he nature of the offense is that [he] has a substance abuse problem and not that he is a drug dealer." Appellant's Br. at 23-24. But the State points out that Odom conspired to deal almost twenty grams of methamphetamine, which is nearly twice the ten-gram threshold required to render him eligible for a level 2 felony conviction. *See* Ind. Code § 35-48-4-1.1(e)(1). Moreover, Odom encouraged Stone to hide the drugs in her pants and gave police a false name to avoid detection. Nothing about the nature of the offense merits a reduced sentence.

[18] Odom's character fares no better. An offender's character is shown by his "life and conduct." *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019) (citation omitted). We assess a defendant's character by engaging in a broad consideration of his qualities. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct.

App. 2021).[6] "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct. App. 2021) (quoting *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007)). "Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing." *Id*.

[19] Odom's history of illegal conduct is significant, including juvenile adjudications for trespass, possession of drug paraphernalia, and theft. In 2008, then-seventeen-year-old Odom was waived into adult court, where he was ultimately convicted of theft and resisting law enforcement. In the ensuing years, Odom accumulated numerous misdemeanor and felony convictions, including false informing (multiple times), minor consuming alcohol, domestic battery, operating a motor vehicle without ever having received a license (multiple times), operating while intoxicated, receiving stolen property, failure to return to lawful detention, possession of a synthetic drug/lookalike substance, unlawful possession of a legend drug, and possession of a controlled substance. This is Odom's third time to be adjudged a habitual offender, and he has failed to appear for at least six court dates. He has been found in violation of probation six times and had two alleged violations pending at the time of

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[6] Odom quotes *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017), for the proposition that "[t]he 'character of the offender' portion of the [Appellate Rule 7(B)] standard refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances.'" Appellant's Br. at 24. For the reasons given in *Turkette v. State*, 151 N.E.3d 782, 787 n.5 (Ind. Ct. App. 2020), *trans. denied*, this statement does not "accurately represent[] appellate review under Rule 7(B)."

sentencing. Odom notes that he participated in substance abuse treatment during his recent stint in the county jail and that the trial court found him "likeable" at sentencing, Tr. Vol. 3 at 73, but he has failed to establish that his sentence is inappropriate in light of his demonstrably poor character. Consequently, we affirm.

[20] Affirmed.

Riley, J., and Mathias, J., concur.