

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

James Andrew Fair, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

April 28, 2023

Court of Appeals Case No.
22A-CR-1589

Appeal from the Hendricks
Superior Court

The Honorable Rhett M. Stuard,
Judge

Trial Court Cause No.
32D02-2110-F2-25

Memorandum Decision by Judge Mathias
Judges Bradford and Kenworthy concur.

Mathias, Judge.

[1] James Andrew Fair appeals his thirty-two-year aggregate sentence. Fair argues that his consecutive sentences for possession of methamphetamine and possession of cocaine and the fifteen-year habitual offender sentence enhancement are inappropriate in light of the nature of the offenses and his character.

[2] We affirm.¹

Facts and Procedural History

[3] On September 30, 2021, Corporal Kyle Shaefer of the Hendricks County Sheriff's Department heard an "unusual" and "loud" engine and saw a black Ford Mustang traveling seventy-eight miles per hour in a forty-five mile-per-hour zone. Tr. Vol. 2, pp. 151-52, 183-84. Officer Shaefer also observed the vehicle weaving in its travel lane, drifting over a fog line, and abruptly stopping. Officer Shaefer initiated a traffic stop, approached the driver's side of the car, and identified Fair as the driver and the vehicle's sole occupant. *Id.* at 153. After observing that Fair's eyes were "bloodshot, watery and glassy" and also smelling the odor of alcohol, Officer Schaefer asked Fair to exit the vehicle. *Id.* at 154. Fair admitted that he had consumed alcohol that evening, but he would

¹ We held oral argument on April 13, 2022, at Hamilton Southeastern High School in Fishers, Indiana. We extend our sincere gratitude to the administration and staff at the high school for their hospitality, and particularly thank Principal Reggie Simmons, Assistant Principal Paige Vinson, and Social Studies Department Chair Janet Chandler. We also commend counsel for the quality of their written and oral advocacy.

not exit the car. *Id.* at 189-90. Instead, Fair took off in the vehicle, and a high-speed chase of speeds up to 100 miles per hour ensued.

- [4] Officer Schaefer and Hendricks County Sheriff's Deputy Cody Rusher followed Fair, who continued to flee until he reached a dead end in an apartment complex in Marion County. *Id.* at 192. At that point, Fair exited his vehicle and began to run on foot. Officer Schaefer, K-9 Officer Dekes, and Officer Rusher chased Fair through yards at the apartment complex. *Id.* An Indianapolis Metropolitan Police Department ("IMPD") officer also joined the pursuit. The IMPD officer saw Fair throw a gun into an adjacent yard. Tr. Vol. 3, pp. 4. K-9 Officer Dekes ended the pursuit when he caught Fair by the hand, which allowed Officer Schaefer to take Fair into custody. Tr. Vol. 2, p. 196.
- [5] During an ensuing search incident to arrest, the officers found a gun magazine, a scale, and cash. *Id.* at 237. Additionally, in the vehicle the officers found a backpack containing marijuana, methamphetamine, cocaine, and ammunition. *Id.* at 130. They also found another scale in Fair's vehicle. *Id.*
- [6] The officers transported Fair to a nearby hospital for a blood draw. *Id.* Test results showed that Fair's blood contained marijuana and methamphetamine at the time of the offense. *Id.* An officer searched Fair again after he had arrived at the Hendricks County Jail. During that search, a bag of a white, powdery substance, later identified as thirteen grams of cocaine, fell from Fair's

underwear. Tr. Vol. 3, p. 47. Fair asked the officer to dispose of the cocaine. *Id.* at 48.

- [7] The State charged Fair with Level 2 felony dealing in cocaine, two counts of Level 3 felony possession of cocaine, Level 4 felony possession of cocaine, Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 5 felony possession of methamphetamine, Level 6 felony dealing in marijuana, Level 6 felony resisting law enforcement, Class A misdemeanor carrying a handgun without a license, Class A misdemeanor operating a vehicle while intoxicated endangering a person, and Class C misdemeanor operating a vehicle with a schedule I or II controlled substance or its metabolite. The State also alleged Fair to be a habitual offender.
- [8] On April 21, 2022, a jury found Fair guilty of Level 3 felony possession of cocaine, Level 5 felony possession of methamphetamine, Level 6 felony resisting law enforcement, Class A misdemeanor operating a vehicle while intoxicated endangering a person, and Class C misdemeanor operating vehicle with a schedule I or II controlled substance or its metabolite. Fair then admitted to being a habitual offender. Tr. Vol. 2, pp. 12-13; Tr. Vol. 3, p. 126.
- [9] Following a sentencing hearing, the trial court found Fair's extensive criminal history, including his adjudication as a delinquent and a pending Marion

County criminal case as aggravating factors.² Fair’s Indiana Risk Assessment score, as shown in the Pre-Sentence Investigation Report, also indicated he is at a very high risk for re-offending. Appellant’s App. Vol. 2, p. 146. The trial court found it “particularly disturbing” that Fair fled from law enforcement in a high-speed chase, which put himself, the officers, and other citizens in danger. Tr. Vol. 3, p. 150. The court also noted Fair’s failure to complete prior court-ordered treatment, his unsteady employment, his undiagnosed mental health issues, and lack of support from his family as aggravating factors. The court found no mitigating factors. The Court then sentenced Fair to a thirty-two-year aggregate sentence.

[10] Fair now appeals.

Discussion and Decision

[11] Fair asserts that his thirty-two-year aggregate sentence is inappropriate in light of the nature of the offenses and his character. Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2020). When conducting this review, we generally defer to the sentence imposed by the trial court. *Id.* at 1222. The defendant

² Fair’s pending charges in Marion County are for dealing in and possession of cocaine, dealing in and possession of a schedule I controlled substance, possession of a machine gun, dealing in and possession of marijuana, domestic battery, and pointing a firearm.

bears the burden of persuading this Court that the sentence was inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1090 (Ind. 2006). This determination 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.” *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020).

[12] Our role in this review is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. We will not modify the trial court’s sentence unless the defendant produces compelling evidence portraying in a positive light the nature of the offense and the defendant’s character. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Sentence modification under Rule 7(B) is reserved for “rare and exceptional” cases. *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[13] We initially observe that Fair did not receive the maximum possible sentences for possession of methamphetamine and possession of cocaine and the court did not order him to serve the maximum habitual offender enhancement. The court imposed a twelve-year sentence for the Level 3 felony possession of cocaine conviction. For Fair’s Level 5 felony possession of methamphetamine conviction, the trial court imposed a two- and one-half-year sentence. A person who commits a Level 5 felony may be sentenced to one year to six years, with

an advisory sentence of three years.³ [I.C. § 35-50-2-6](#). The court ordered consecutive terms of imprisonment for his possession convictions and his resisting law enforcement conviction. The trial court was authorized to enhance Fair’s Level 3 felony sentence in a range between six to twenty years. *See* [I.C. § 35-50-2-8\(i\)](#). The trial court then imposed a fifteen-year habitual criminal enhancement, which when added to the seventeen years imposed for Fair’s felony convictions resulted in an aggregate sentence of thirty-two years.

[14] Fair argues that his sentence is inappropriate for two reasons. First, he claims that his sentence is inappropriate because the trial court imposed consecutive sentences for his simultaneous possession of methamphetamine and cocaine. He also claims that his fifteen-year habitual offender sentence enhancement is inappropriate because his criminal behavior can be attributed to his substance abuse issues.

[15] First, we address Fair’s claim that his consecutive sentences for simultaneous possession of cocaine and methamphetamine are inappropriate because his offenses did not involve multiple victims or “the infliction of multiple harms against the same victim.” Appellant’s Br. at 12. In support of his argument, Fair directs our attention to prior cases where our appellate courts revised the appellants’ consecutive sentences for possession convictions and ordered the

³ Fair does not challenge his two and one-half-year maximum sentence for Level 6 felony resisting law enforcement. *See* [Ind. Code § 35-50-2-7](#).

trial courts to impose concurrent terms. See, e.g., *Eckelbarger v. State*, 51 N.E.3d 169 (Ind. 2016); *Gregory v. State*, 644 N.E.2d 543 (Ind. 1994); *Beno v. State*, 581 N.E.2d 922 (Ind. 1991); *Williams v. State*, 891 N.E.2d 621 (Ind. Ct. App. 2008). However, these cases are distinguishable from the instant case because in those cases the criminal convictions arose from State-sponsored offenses, namely, controlled buys. See *Eckelbarger*, 51 N.E.3d at 170 (quoting *Gregory*, 644 N.E.2d at 544) (observing that “[c]onsecutive sentences are not appropriate when the State sponsors a series of virtually identical offenses”). Here, neither the State nor any person acting on the State’s behalf participated in or encouraged Fair’s criminal activity.

[16] Turning to the nature of the offense, Fair asserts the offense was “not so depraved” to require a fifteen-year habitual offender enhancement to his seventeen-year sentence. Appellant’s Br. at 14. Although Fair admits that his high-speed chase posed a considerable danger to those involved, he still categorizes his offense as non-dangerous. *Id.* We do not agree. Fair was operating his vehicle under the influence of alcohol, marijuana, and methamphetamine during the high-speed chase. Fair drove at excessively high speeds on local roads and through an apartment complex, led the police through multiple counties, ran through dark backyards, and did all of that while armed. Fair and those around him are extremely fortunate that his offenses did not result in serious injury to bystanders, police officers, or himself. Fair also possessed a significant amount of cocaine. While no person was harmed as a

result of Fair’s offenses, our Supreme Court has observed that “distributing or possessing even small amounts of drugs threatens society.” *State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021). The nature of Fair’s offenses more than supports his aggregate thirty-two-year sentence.

[17] With respect to his character, Fair claims he is not dangerous but merely a person suffering from addiction and mental health issues. *Id.* at 16. In support of his argument, Fair relies on *Hollin v. State*, 877 N.E.2d 462 (Ind. 2007), to support his argument that, even with an extensive criminal history, the crimes he committed do not “demonstrate a character of such recalcitrance or depravity” that justifies the sentence. Appellant’s Br. at 14 (quoting *Hollin*, 877 N.E.2d at 465-66). But *Hollin* is distinguishable given Fair’s criminal history, which consists of multiple violent crimes, including dealing in sawed-off shotguns, domestic battery, possession of a machine gun, and pointing a firearm at another, while with one exception, the defendant’s criminal history in *Hollin* consisted of non-violent crimes. 877 N.E.2d at 465. And, unlike in *Hollin*, Fair possessed a gun during his crimes.

[18] Fair claims that court-ordered substance abuse treatment is more appropriate than incarceration. Appellant’s Br. at 15. Fair’s prior criminal history of drug-related offenses are similar to the offenses committed in this case. He has also violated probation and parole repeatedly, failed drug treatment programs, and committed conduct violations while incarcerated. Finally, the State notes that, after he was arrested, Fair attempted to convince a deputy to obstruct justice by

destroying evidence. In sum, Fair has not demonstrated that he has taken advantage of opportunities to rehabilitate himself or that he is able to lead a law-abiding life.⁴

Conclusion

[19] Fair has not met his burden of persuading our court that his thirty-two-year aggregate sentence is inappropriate in light of the nature of his offenses and his character.

[20] Affirmed.

Bradford, J., and Kenworthy, J., concur.

⁴ The trial court also ordered Fair to participate in the Indiana Department of Correction Recovery While Incarcerated (“RWI”) program. Tr. Vol. 3, p. 153. The trial court stated that, after serving the minimum nine-year sentence, and if Fair completed the RWI program, the court would consider a sentence modification. *Id.*