MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Joshua Royal Stults,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 5, 2022

Court of Appeals Case No. 21A-CR-2062

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2106-F6-183

Molter, Judge.

[1] A jury convicted Joshua Royal Stults of several drug-related offenses, and the trial court sentenced him to an aggregate term of one year in the Indiana

Department of Correction. He appeals his conviction by challenging the sufficiency of the evidence, and he asks us to revise his sentence in light of the nature of the offense and his character. Finding no error, we affirm.

Facts and Procedural History

[2] One week after Stults was released from jail to serve probation for a narcotics possession conviction, a Huntington Police Department officer was dispatched for a house check. The officer found two syringes with broken needles, two joints that smelled of burnt marijuana, a spoon with a burnt spot (an indicator of drug use), and a cotton ball used for injecting drugs intravenously (known as a "bunny"). Subsequent testing of the spoon revealed fentanyl, and the two joints tested positive for marijuana.

[3] The State then charged Stults with possession of a narcotic drug as a Level 6 felony, possession of a hypodermic syringe as a Level 6 felony, possession of marijuana as a Class B misdemeanor, and possession of paraphernalia as a Class C misdemeanor. A jury convicted him on all counts. When sentencing him, the trial court found as aggravating factors his criminal history—including three probation revocation petitions and two petitions to revoke community corrections placement—and the fact that he was participating in community corrections monitoring when he committed the offenses at issue here. The court found no mitigators and sentenced Stults to the IDOC/HCJ for an aggregate sentence of one year. Stults now appeals.

Discussion and Decision

[4] Stults challenges the sufficiency of the evidence supporting his conviction, and he argues his sentence is inappropriate based on the nature of his offenses and his character. These arguments fail.

I. Sufficiency of the Evidence

[5] When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh [the] evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*, 137 S. Ct. 1082 (2017). Instead, "we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom." *Id.* (quotations omitted). "We will affirm the judgment if it is supported by substantial evidence of probative value even if there is some conflict in that evidence." *Id.* (quotations omitted); *see also McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018) (holding that, even though there was conflicting evidence, it was "beside the point" because that argument "misapprehend[s] our limited role as a reviewing court"). Further, "[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

A. Possession of a Hypodermic Syringe

[6] The State was required to prove beyond a reasonable doubt that Stults possessed a hypodermic syringe or needle or an instrument adapted for the use of a controlled substance or legend drug by injection into a human with the

intent: (1) to violate Indiana Code chapter 16-42-19; or (2) to commit an offense described in Indiana Code chapter 35-38-4. Ind. Code § 16-42-19-18. Stults only challenges the sufficiency of the evidence proving his intent, arguing there was no evidence that he intended to use the syringes to ingest drugs and that he had bent the needles, making it impossible to use them. This argument fails for two reasons.

[7] First, the State was not required to prove Stults intended to ingest the drugs. Instead, the State could obtain a conviction by proving he intended to violate Indiana Code chapter 16-42-19 or an offense in chapter 35-48-4, *id.*, including the prohibition on possessing narcotic drugs. Ind. Code § 35-48-4-6(1). In addition to the syringes, the search also uncovered a spoon with burnt fentanyl, a drug which would have been heated and then injected with a syringe. The jury could infer from this that Stults possessed the syringes in connection with his narcotics possession.

[8] Second, Stults's argument is a request to reweigh the evidence, which we cannot do. The jury did not have to credit his testimony that he made the syringes unusable by bending the syringe needles or that the last time he used heroin was before his most recent incarceration. Instead, they could infer recent use from the fact that the syringes were recently discovered along with other drug paraphernalia and Stults's statements that he had injected heroin for "a couple of years," Tr. Vol. 2 at 235–36, and the syringes were "probably last used for heroin." Appellant's App. Vol. 2 at 43.

[9] Because the jury could have reasonably concluded the State's evidence was sufficient to show Stults possessed the syringes with the intent to commit a controlled substance offense under Indiana Code section 35-38-4, we cannot set aside this conviction.[1]

B. Possession of a Narcotic Drug, Possession of Marijuana, and Possession of Paraphernalia

[10] Stults next argues there was insufficient evidence to support his conviction for possession of a narcotic drug, possession of marijuana, and possession of paraphernalia. To convict Stults of possession of a narcotic drug, the State was required to prove beyond a reasonable doubt that Stults knowingly or intentionally possessed a narcotic drug without a valid prescription. Ind. Code § 35-48-4-6. To convict Stults of marijuana possession, the State needed to prove Stults knowingly or intentionally possessed marijuana. Ind. Code § 35-48-4-11. Last, to convict Stults of possession of paraphernalia, the State was required to prove Stults knowingly or intentionally possessed an instrument, device, or other object with which he intended to introduce into his body a controlled substance. Ind. Code § 35-48-4-8.3. "A person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high

[1] In his argument section, Stults seems to suggest there was instructional error because the jury was not provided with a definition of "intent." Appellant's Br. at 14–16. He has waived this issue by failing (a) to object to the trial court's instructions and tender a proposed instruction, *see* Ind. Crim. Rule 8(B); *Harmon v. State*, 849 N.E.2d 726, 731–34 (Ind. Ct. App. 2006), and (b) to develop a cogent argument on appeal. *See Shepherd v. Truex*, 819 N.E.2d 457, 463 (Ind. Ct. App. 2004) (concluding appellant waived claim by failing to present a cogent argument).

probability that he is doing so." Ind. Code § 35-41-2-2. "A person engages in conduct 'intentionally' if, when he engages in the conduct, it is his conscious objective to do so." *Id.*

[11] Here, Stults argues he did not know there was fentanyl, marijuana, or paraphernalia in his home because he had been out of jail for only one week and forgot about their presence. Again, this is a request that we reweigh evidence, which we cannot do.

[12] As to the fentanyl, the State presented evidence that Stults knew that the spoon with the burnt spot was used to consume illicit substances. Tr. Vol. 2 at 235–36. First, during the police investigation, Stults stated that the burnt spot was "probably from heroin" when he was asked about the spoon. Appellant's App. Vol. 2 at 43. Subsequent testing revealed the substance on the spoon was fentanyl, and Stults confirmed this fact at trial. *Id.*; Tr. Vol. 2 at 235. Also, Stults testified that the spoon's purpose was to assist with the injection of drugs intravenously, and, along with the fentanyl residue on the spoon, two syringes and a bunny were discovered in Stults's home. Tr. Vol. 2 at 235. Together, these items are used to inject drugs intravenously. *Id.* at 235–36. Stults further testified that he had handled the syringes discussed above *after* he was released from jail. *Id.* at 239.

[13] Next, as to the marijuana and paraphernalia, the State presented evidence that two joints, which smelled of and contained burnt marijuana, a spoon with fentanyl residue, and a bunny were located in Stults's residence. During the

police investigation, Stults stated that the last illegal drug that he used was marijuana. He also acknowledged his familiarity with the drug during trial and testified that law enforcement found marijuana and paraphernalia in his home. The State also presented evidence that the two joints containing marijuana were found in the same locked briefcase as the two syringes, which Stults testified he had opened after he was released from jail.

[14] Given all these facts, the jury could have inferred that Stults knew of the fentanyl, marijuana, and paraphernalia in his home. Thus, the State presented sufficient evidence to prove that Stults possessed a narcotic drug, marijuana, and paraphernalia. *See Speer v. State*, 995 N.E.2d 1, 10–11 (Ind. Ct. App. 2013) (holding that the State presented sufficient evidence to prove that Speer knew that he had methamphetamine and paraphernalia in his vehicle), *trans. denied*.

II. Inappropriate Sentence

[15] The Indiana Constitution authorizes appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2002). "That authority is implemented through 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." *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[16] Our role is only to "leaven the outliers," which means we exercise our authority only in "exceptional cases." *Id.* at 160. Thus, we generally defer to the trial

court's decision, and our goal is to determine whether the defendant's sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). "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).

[17] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 6 felony is a fixed term of imprisonment between six months and two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7. A person convicted of a Class B misdemeanor may be imprisoned up to 180 days, Ind. Code § 35-50-3-3, and a person convicted of a Class C misdemeanor may be imprisoned for up to sixty days. Ind. Code § 35-50-3-4.

[18] Here, Stults's one-year sentences for Level 6 felony possession of a narcotic drug and Level 6 felony possession of a hypodermic syringe were the advisory sentences. Similarly, his sentence for Class B misdemeanor possession of marijuana was 180 days as allowed by Indiana Code section 35-50-3-3, and his sentence for Class C misdemeanor possession of paraphernalia was sixty days as allowed by Indiana Code section 35-50-3-4. The trial court ordered all four counts to run concurrently, so the aggregate sentence was a term of one year.

[19] Stults first argues his aggregate sentence was inappropriate in light of the nature of his offenses because he believes his crimes were victimless. Analyzing the nature of the offense requires us to consider "whether there is anything more or less egregious about the offense as committed by the defendant that 'makes it different from the typical offense accounted for by the legislature when it set the advisory sentence.'" *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*. While Stults characterizes his drug-related crimes as victimless, that does not make them any different from the typical offense reflected in the legislature's advisory sentence.

[20] Stults also argues his sentence was inappropriate in light of his character, and he contends his criminal history does not merit the sentence he received. We disagree. The law is well-established that it is proper to consider a defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Stults was twenty-eight years old at sentencing, and his criminal history includes one juvenile adjudication, one misdemeanor conviction, two felony convictions, three petitions to revoke his probation, and two petitions to revoke his community corrections placement. Also, when Stults committed the instant offenses, he had just been released from jail for another drug-related offense and was participating in a house check. We further note that Stults tested positive for marijuana after the commission of the instant offenses, and he has a history of substance abuse. Tr. Vol. 2 at 244. At trial, he admitted to having used heroin for "a couple of years." *Id.* at 236.

Thus, Stults has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

[21] We cannot say that Stults has shown "substantial virtuous traits or persistent examples of good character" such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Thus, Stults has not shown that his sentence is inappropriate in light of the nature of the offenses and his character.

[22] Affirmed.

Riley, J., and Robb, J., concur.