

# MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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# IN THE COURT OF APPEALS OF INDIANA

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Corey Marshawn Green,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 29, 2022

Court of Appeals Case No.  
21A-CR-2729

Appeal from the Vanderburgh  
Circuit Court

The Honorable Ryan C. Reed,  
Magistrate

Trial Court Case No.  
82C01-2104-F5-1682

**Baker, Senior Judge.**

## Statement of the Case

- [1] Corey Marshawn Green appeals the sentence the trial court imposed after he pleaded guilty to escape, a Level 6 felony,<sup>1</sup> and to being an habitual offender.<sup>2</sup> We affirm.

## Issue

- [2] Green raises one issue, which we restate as: whether his sentence of four years is inappropriate in light of the nature of the offense and his character.

## Facts and Procedural History

- [3] Green was serving a sentence on electronic home detention in Evansville. ABK Tracking (“ABK”) monitored Green’s whereabouts through a GPS tracking bracelet he wore on his ankle. Green is addicted to controlled substances, and he alleges that in the weeks leading up to the events at issue, he told his ABK case manager that he was concerned about relapsing and asked for help, but he received none.
- [4] On March 25, 2021, Green arrived at ABK’s office for a random drug screen. He tested positive for a controlled substance. When advised of his test results, Green denied any drug use and left the office.

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<sup>1</sup> Ind. Code § 35-44.1-3-4 (2014).

<sup>2</sup> Ind. Code § 35-50-2-8 (2017).

- [5] On the evening of March 26, ABK received a “device [sic] tamper signal” for the GPS tracking bracelet that had been assigned to Green. Appellant’s App. Vol. II, p. 26. The signal came from a convenience store in Evansville. Soon thereafter, an ABK employee was contacted by a 911 operator. The operator stated that a call had come in from the convenience store. A store employee had reported that someone had asked to borrow scissors, and soon thereafter, the employee found a GPS tracking bracelet on the premises. Subsequent investigation revealed the bracelet had been assigned to Green.
- [6] On April 1, 2021, the State charged Green with two counts of escape: one as a Level 5 felony (flight from lawful detention), and one as a Level 6 felony (removing a GPS tracking device). The State also filed a notice of intent to file an habitual offender sentencing enhancement. Green moved to dismiss the Level 5 felony escape charge, and the State filed a response. The trial court granted the motion after a hearing.
- [7] Next, Green pleaded guilty, without a plea agreement, to Level 6 felony escape and to being an habitual offender. The trial court accepted Green’s guilty plea and imposed a four-year sentence, with one year suspended to work release. This appeal followed, after Green requested and received permission to file a belated notice of appeal.

## Discussion and Decision

- [8] Green argues that his sentence is inappropriate and asks that it be reduced by an unspecified amount. Indiana Appellate Rule 7(B) provides: “The Court may

revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.”

[9] “When reviewing a sentence, our principal role is to ‘leaven the outliers’ rather than necessarily achieve what is perceived as the ‘correct’ result.” *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225) (Ind. 2008)). As a result, we do not “merely substitute our opinion for that of the trial court.” *Clara v. State*, 899 N.E.2d 733, 736 (Ind. Ct. App. 2009). Rather, our deference to the trial court’s sentencing decision “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).

[10] The defendant has the burden of demonstrating that the sentence is inappropriate. *Spitler v. State*, 908 N.E.2d 694, 696 (Ind. Ct. App. 2009), *trans. denied*. As we conduct our review, we may consider any factors appearing in the record. *Clara*, 899 N.E.2d at 736.

[11] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Brown v. State*, 160 N.E.3d 205, 220 (Ind. Ct. App. 2020). At the time Green committed his offense, a person who committed a Level 6 felony could be sentenced to an advisory term of one year, with a maximum sentence of

two and one-half years and a minimum sentence of six months. Ind. Code § 35-50-2-7 (2019). In addition, a person who is convicted of a Level 5 or 6 felony and is found to be an habitual offender may be sentenced to an additional fixed, nonsuspendible term of between two and six years. Ind. Code § 35-50-2-8(i). The trial court sentenced Green to two years for Level 6 felony escape, with a sentencing enhancement of two years, for a total of four years, with one year suspended to work release. Green's sentence is above the advisory, but still well short of the maximum possible sentence of eight and one-half years.

[12]The nature of the offense does not demonstrate a lack of restraint on Green's part. Although Green stated that he had previously expressed concerns about relapsing and asked for help, when he was told that he had failed a random drug screen, he denied using such substances and fled ABK's offices. He later cut off his monitoring device in an attempt to further conceal his conduct from the authorities.

[13]The character of the offender also reflects poorly on Green. At the time he committed his offense, he was married with several children. In addition, he pleaded guilty without a plea agreement. But Green, who was thirty years old at sentencing, has accrued a lengthy criminal history, including seven felonies (plus two additional felonies that were the basis for the habitual offender sentencing enhancement) and eleven misdemeanors. He also violated the terms and conditions of probation in a prior case. Under these circumstances, it was reasonable for the trial court to conclude that an aggravated sentence, with a portion of the sentence to be served on work release, was necessary to correct

Green's behavior. Green has failed to demonstrate that his sentence is an outlier in need of correction.

## Conclusion

[14] For the reasons stated above, we affirm the judgment of the trial court.

Pyle, J., and Molter, J., concur.