MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Samuel J. Dayton
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Keith A. Bryson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

July 20, 2022

Court of Appeals Case No. 21A-CR-2700

Appeal from the Dearborn Superior Court

The Honorable Sally A. McLaughlin, Judge

Trial Court Cause Nos.
15D02-2005-F6-204
15D02-2005-CM-309
15D02-2107-CM-536

May, Judge.

[1] Keith Bryson appeals the one-year sentence he received for Class A misdemeanor operating while intoxicated and endangering a person[1] ("OWI endangering") and asserts that sentence is inappropriate. Bryson also argues the trial court abused its discretion when it revoked his probation under a separate cause number for violating its terms. We affirm.

Facts and Procedural History

[2] On May 14, 2020, the State charged Bryson with Class A misdemeanor possession of marijuana[2] and Class B misdemeanor public intoxication[3] under cause number 15D02-2005-CM-309 ("CM-309"). On May 26, 2020, the State charged Bryson with Level 6 felony possession of a legend drug,[4] Level 6 felony possession of a syringe,[5] two counts of Class A misdemeanor possession of a controlled substance,[6] Class B misdemeanor possession of marijuana,[7] and Class C misdemeanor possession of paraphernalia[8] under cause number 15D02-2005-F6-204 ("F6-204").

---

[1] Ind. Code § 9-30-5-2(b) (2001).

[2] Ind. Code § 35-48-4-11(b)(1) (2018).

[3] Ind. Code § 7.1-5-1-3(a)(1) (2012).

[4] Ind. Code § 16-42-19-13 (2021).

[5] Ind. Code § 16-42-19-18(a) (2015).

[6] Ind. Code § 35-48-4-7(a) (2020).

[7] Ind. Code § 35-48-4-11(a)(1) (2018).

[8] Ind. Code § 35-48-4-8.3(b)(1) (2015).

[3] On September 24, 2020, Bryson pled guilty pursuant to a plea agreement. The agreement required Bryson to admit Level 6 felony possession of a legend drug in F6-204 and Class A misdemeanor possession of marijuana in CM-309, and the State to dismiss all the other charges under both cause numbers. Under F6-204, the agreement called for Bryson to receive a sentence of 910 days with 365 days suspended under F6-204 and a sentence of 365 days with 365 days suspended under CM-309. The agreement also called for Bryson to serve 545 days on home detention with a 730-day probation period to begin upon sentencing. The terms of the agreement required Bryson to refrain from consuming alcohol or controlled substances without a prescription and to participate in, and successfully complete, a drug and alcohol program. The trial court accepted the parties' plea agreement and sentenced Bryson in accordance therewith.

[4] In May 2021, Bryson removed the ankle monitor required by his home detention and absconded. As a result, the State charged Bryson with Level 6 felony escape under cause number 15D02-2105-F6-208 ("F6-208"). In addition, the State petitioned to revoke Bryson's probation under F6-204 and CM-309 because Bryson allegedly failed to report for random drug screens, tested positive for alcohol, removed his ankle bracelet without prior authorization, and committed the new crime of escape as charged in F6-208. The trial court issued warrants for Bryson's arrest.

[5] On the evening of July 29, 2021, Bryson crashed his car into another vehicle after drinking six or seven beers. Deputy Austin Jefferson of the Dearborn

County Sheriff's Department responded to the accident and noticed Bryson's slurred speech and red eyes. The Deputy also smelled alcohol. Bryson refused to submit to a breath test but later acquiesced to a blood test that revealed his blood alcohol level was approximately 0.17 grams of alcohol per milliliter. Bryson was arrested, and on July 30, 2021, the State charged Bryson with Class A misdemeanor OWI endangering and Class C misdemeanor operating while intoxicated under 15D02-2107-CM-536 ("CM-536"). The probation department amended its allegations for the probation revocation petitions filed in F6-204 and CM-309 to allege an additional probation violation related to the new OWI endangering offense.

[6] During his change of plea hearing on October 22, 2021, Bryson pled guilty to Level 6 felony escape and to Class A misdemeanor OWI endangering. He also admitted violating his home detention in F6-204 and his probation in F6-204 and CM-309.

[7] At Bryson's sentencing hearing on November 4, 2021, the aggravating circumstance found by the trial court included Bryson cutting off his ankle bracelet and disappearing for two months. The court also noted Bryson's OWI offense demonstrated Bryson's risk to the community. For OWI endangering under CM-536, the court imposed a 365-day executed sentence. For Level 6 felony escape in F6-208, the court imposed two-and-a-half years with one-and-one-half years suspended to probation. The court ordered the sentences served consecutively.

[8] At the same hearing, the court addressed the pending probation revocation petitions. In F6-204, the trial court ordered Bryson to serve 60 days of home detention sentence in jail, and the court revoked Bryson's probation and ordered him to serve that 365 days incarcerated. In CM-309, the trial court revoked zero days of Bryson's probation and ordered his probation would terminate when Bryson finished serving his other sentences, which the court ordered served consecutively.

Discussion and Decision

I. Inappropriateness of Sentence

[9] Bryson argues his one-year sentence for Class A misdemeanor OWI endangering is inappropriate. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court's decision, we find the sentence is inappropriate in light of the nature of the offense and the character of the offender. Bryson "must persuade the appellate court that his . . . sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *reh'g denied*. "Whether we regard a sentence as 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." *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1224 (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." *Cardwell*, 895 N.E.2d at 1225. During his change of plea hearing on October 22, 2021, Bryson pled guilty to Level 6 felony escape and to Class A misdemeanor OWI endangering. He also admitted to violating his home detention in F6-204 and his probation in F6-204 and CM-309.

[10] Bryson is challenging as inappropriate only his sentence for Class A misdemeanor OWI endangering, and the State argues he cannot do that. According to the State, because the trial court sentenced Bryson at the same time for both Class A misdemeanor OWI endangering and Level 6 felony escape, "[t]he sentences for [those] two offenses are to be reviewed together, not piecemeal as Bryson suggests." (Appellee's Br. at 15.) We find instructive *Moyer v. State*, 83 N.E.3d 136, 140 (Ind. Ct. App. 2017), *trans. denied*. Moyer had three separate criminal cases filed against him, and he pled guilty pursuant to a single plea agreement that covered all three. On appeal, Moyer challenged as inappropriate the sentence he received for only one of the three causes. *Id*. We held: "Indiana precedent requires our review of Moyer's entire sentence, not merely a portion of it," *id*. at 138, and we concluded the trial court did not impose an inappropriate sentence considering the aggregate punishment for all the crimes committed. *Id*. Like Moyer, Bryson was sentenced under multiple cause numbers at the same time pursuant to a single plea agreement. Thus, based on *Moyer*, the proper scope for review under Appellate Rule 7(B) is to review Bryson's aggregate sentence for both Class A misdemeanor OWI endangering and Level 6 felony escape.

[11] When considering the nature of the offense, the "advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Connor*, 58 N.E.3d at 220. For misdemeanor sentences, the legislature did not provide an advisory sentence, only a range of zero to 365 days. Ind. Code § 33-50-3-2. Bryson received the maximum sentence for Class A misdemeanor OWI endangering. *See id.* The maximum sentence for a Level 6 felony offense is two and one-half years, with the advisory sentencing being one year, Ind. Code § 35-50-2-7, and Bryson was sentenced to serve two and one-half years, with one and one-half years suspended for his Level 6 felony escape. The trial court ordered these two sentences served consecutively,[9] such that Bryson's cumulative sentence on these two new crimes is three and one-half years, with two years of incarceration followed by one and one-half years of probation.

[12] Turning to the nature of Bryson's offenses, we consider the details and circumstances found in the commission of his offenses. *See Washington v. State*, 940 N.E.2d 1220, 1222 (Ind. Ct. App. 2011). When he was convicted of Level 6 felony possession of a legend drug and Class A misdemeanor possession of marijuana, the court allowed Bryson to serve a significant amount of his

[9] Because Bryson committed these new offenses before being discharged from his home detention and probation sentences from previous offenses, the trial court was required to order Bryson to serve the new offenses consecutive to the old offenses. *See* Ind. Code § 35-50-1-2 (If a person commits a crime after being arrested for another crime before the person is discharged from probation or term of imprisonment imposed from the first crime, "the terms of imprisonment for the crimes shall be served consecutively, regardless of the order in which the crimes are tried and sentences are imposed.").

sentence on home detention and probation. After missing a drug screen, Bryson removed his ankle monitoring equipment for home detention, and he left town for two months. These actions led to Bryson's charge of escape. Bryson was later arrested for driving while intoxicated after crashing into another vehicle. Upon arriving at the scene of the accident, the responding Deputy smelled alcohol on Bryson's breath and observed his slurred speech and red eyes. Bryson admitted he consumed six or seven drinks before he drove, and his blood alcohol content was twice the legal level. At Bryson's sentencing hearing, the trial court stated the following:

> The Court is going to find it's [sic] aggravating circumstances that while you were supposed to be on home detention in a felony case, you cut off your bracelet, disappeared for two months, and got an operating while intoxicated and in addition your history has shown that you can do well for a while on probation and home detention, but you can't seem to do that for an extended period of time. You do pose a risk to community safety this time because you went out and got an operating while intoxicated conviction at this point and the Court is giving you some credit for admitting to all of these things, but I think the State has pretty strong cases that you committed all these offenses if they were to have taken it to trial and the fact finding hearing.

(Tr. Vol. II at 41.)

[13] Bryson insists the court imposed an inappropriate sentence when he received the maximum sentence for his Class A misdemeanor OWI endangering because no one was harmed in the car accident. However, we are reviewing whether a three and one-half year sentence is inappropriate for the Level 6 felony escape

and Class A misdemeanor OWI endangering Bryson committed while on home detention and probation. Bryson's fortuitous evasion of injuring another driver does not negate the fact he endangered the lives of others when choosing to drive while intoxicated. The terms of Bryson's probation and home detention required Bryson to abstain from drinking alcohol, and he deliberately violated those terms by driving intoxicated after having escaped from home detention for two months. The trial court's sentencing decision was not inappropriate, given the details and circumstances of Byron's offenses. *See Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017) (finding the trial court's sentence was not inappropriate given the egregious nature of Reis endangering the community by driving while intoxicated).

[14] When considering the character of the offender, one relevant fact to assess is 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*. The trial court noted Bryson's previous offenses:

> In terms of his prior criminal history, in Indiana alone, he has a conviction for burglary, multiple probation violations between 2010 and 2016, including a failure to appear in 2014, convicted for possession of a syringe in 2019, with a subsequent probation violation. He was also convicted in 2020 of the matters, he's currently has [sic] probation violations filed in this Court for. In Kentucky, he was charged with alcohol intoxication in public in the early 2000. I do not have the disposition for that. In Ohio, he does also have a significant history, that being a DUI in 2002 and 2004 convictions for forgery, theft and receiving stolen property.

> In 2012, theft and disorderly conduct, in 2014, breaking and entering and two counts of theft, also a separate charge, a case involving prostitution in 2016, possession of drug abuse instruments.

(Tr. Vol. II at 6.) Although the court acknowledged Bryson's success in completing treatment programs in the past, it mentioned Bryson's tendency to fall back into old patterns of substance abuse and criminal behavior, even when he has support from his family. Bryson argues his sentence is inappropriate based on his character, and he lists numerous factors to support his argument such as his familial support and their belief he would be a productive member of society; his kindness and willingness to help others; his status as a veteran; and his employment through a temp service. Notwithstanding Bryson's devotion to his family and his capacity to be a productive member within society, his substantial criminal history, current criminal activity, and inability to adhere to the terms of his sentencing support the trial court's decision to impose the maximum sentence. *See Reis*, 88 N.E.3d at 1106 (holding sentence imposed was not inappropriate given Reis's long criminal history and the egregious nature of his crimes).

II. Revocation of Probation

[15] Bryson additionally contends the trial court abused its discretion when it revoked his probation under F6-204. It is within the discretion of the trial court "to determine probation conditions and to revoke the probation if the conditions are violated." *McCauley v. State*, 22 N.E.3d 743, 747 (Ind. Ct. App. 2014) (citing *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013)), *reh'g denied*. A

trial court's probation decision is subject to review for an abuse of discretion. *Id*. (citing *Smith v. State*, 963 N.E.2d 1110, 1112 (2012)). "An abuse of discretion occurs where the decision is clearly against the logic and effects of the facts and circumstances before the court." *Id*.

[16] Bryson blames the probation department for his probation and home detention violations, arguing the department provided him a narrow window of opportunity to attend his drug screenings. However, Bryson missed several drug screening appointments and tested positive for alcohol at one screening. He claims he would not have committed the Level 6 felony escape and probation violations had he not been afraid the department would revoke his probation for committing mere administrative violations. He also admits to his offenses and contends he intended to turn himself in, but his efforts to do the right thing were thwarted by his arrest for driving while intoxicated and crashing into a car. Bryson's argument that he committed new offenses because he was afraid he would get in trouble for violating the terms of his probation is not a justifiable contention. In light of the facts that Bryson removed his ankle monitor, fled authorities for two months, and violated the terms of his probation multiple times in the past, the trial court did not abuse its discretion when it revoked his probation. *See Cox v. State*, 850 N.E.2d 485, 491 (Ind. Ct. App. 2006) (affirming the trial court's probation revocation because Cox agreed to his plea agreement, which implied he agreed to comply with the terms of his probation and the imposition of consequences for violating those terms).

Conclusion

[17] Bryson failed to demonstrate the trial court imposed an inappropriate sentence based on the nature of his offenses and his character. Nor has Bryson demonstrated the trial court abused its discretion when it revoked his probation. We accordingly affirm the trial court's decisions.

[18] Affirmed.

Riley, J., and Tavitas, J., concur.