

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Trevor D. Dilk,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

August 2, 2023

Court of Appeals Case No.  
22A-CR-2734

Appeal from the  
Jennings Circuit Court

The Honorable  
Jon W. Webster, Judge Pro  
Tempore

Trial Court Cause No.  
40C01-2203-F2-2

**Memorandum Decision by Senior Judge Robb**  
Judges Crone and Foley concur.

**Robb, Senior Judge.**

## Case Summary

- [1] Trevor Dilk pleaded guilty to possession of methamphetamine, a Level 4 felony, and the trial court sentenced him to six years, with two years suspended to probation. Dilk appeals only his sentence. Concluding that any error in the trial court's consideration of aggravating circumstances is harmless and that Dilk's sentence is not inappropriate, we affirm.

## Facts and Procedural History

- [2] Although the guilty plea transcript reveals a small amount about the nature of Dilk's offenses, a more detailed version exists in the probable cause affidavit. Dilk's presentence investigation report incorporates the probable cause affidavit by directing the reader to the affidavit for the official version of events surrounding his crimes. *See* Appellant's App. Vol. Two, pp. 11-14.
- [3] In February 2022, while searching for a suspect, police went to Dilk's residence. The officers obtained consent to search the residence and found methamphetamine, syringes, a digital scale, and other controlled substances in Dilk's bedroom. The State charged Dilk with dealing in methamphetamine, a Level 2 felony; possession of methamphetamine, a Level 4 felony; maintaining a common nuisance, a Level 6 felony; unlawful possession of a syringe, a Level 6 felony; possession or use of a legend drug, a Level 6 felony; and possession of paraphernalia, a Class C misdemeanor. Dilk ultimately pleaded guilty to possession of methamphetamine. In exchange, the State dismissed the

remaining charges in this case as well as the charges in another case. The parties left sentencing to the discretion of the court, and the court sentenced Dilk to six years, with two years suspended to probation. This appeal followed.

## Issues

- [4] Dilk presents two issues for our review, which we restate as:
- I. Whether the trial court abused its discretion in sentencing Dilk.
  - II. Whether Dilk's sentence is inappropriate.

## Discussion and Decision

### **I. Abuse of Discretion in Sentencing**

- [5] Dilk's presentence investigation report informed the court that his Indiana Risk Assessment System (IRAS) score placed him in the high risk category to reoffend. *See* Appellant's App. Vol. Two, p. 54. In sentencing Dilk, the trial court stated it considered this assessment as an aggravating factor. *See* Tr. Vol. II, p. 52; Appellant's App. Vol. Two, p. 67. Dilk contends the trial court abused its discretion by considering this an aggravator.

- [6] Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. One way in which a trial court abuses its discretion is when it considers factors that are improper as a matter of law. *Id.* at 490-91. In such an instance, we will remand for

resentencing only if we cannot say with confidence that the trial court would have imposed the same sentence absent consideration of the improper factor. *Buford v. State*, 139 N.E.3d 1074, 1081 (Ind. Ct. App. 2019) (quoting *Anglemyer*, 868 N.E.2d at 491).

[7] Here, the State agrees the trial court abused its discretion when it considered Dilk's IRAS score as an aggravating factor. Indeed, in *Malenchik v. State*, our Supreme Court held that, although the IRAS scores may be considered to supplement and enhance a judge's evaluation in formulating an individual's sentence, the scores themselves do not constitute an aggravating or mitigating circumstance. 928 N.E.2d 564, 573 (Ind. 2010).

[8] Nevertheless, the State asserts the error is harmless. "When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld." *Buford*, 139 N.E.3d at 1081. In sentencing Dilk, the court found five other aggravating factors that he does not challenge on appeal. Moreover, although these other aggravators would justify an *enhanced* sentence, the court only sentenced Dilk to the advisory term. Thus, we can say with confidence that the trial court would have imposed the same advisory sentence even if it had not considered this single improper aggravator.

## **II. Inappropriate Sentence**

[9] Dilk argues his sentence is inappropriate because he was forthright with law enforcement, and his offense did not involve violence or property destruction.

He also submits that he is a veteran, and he identified himself as a drug addict who needs help.

### ***A. Standard of Review***

[10] Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (quoting *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007)). Our Supreme Court has long said that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). Accordingly, the defendant bears the burden of persuading the appellate court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

### ***B. Nature of the Offense***

[11] Our analysis of the nature of the offense starts with the advisory sentence, as it is the starting point selected by the legislature as an appropriate sentence for the crime. *Reis v. State*, 88 N.E.3d 1099, 1104 (Ind. Ct. App. 2017). Accordingly, a defendant who is sentenced to the advisory term has a particularly heavy burden to prove it inappropriate under Rule 7(B). *Kincaid v. State*, 171 N.E.3d 1036, 1042 (Ind. Ct. App. 2021), *trans. denied*. Here, Dilk pleaded guilty to Level 4 felony possession of methamphetamine. A person who commits a Level 4 felony shall be imprisoned for a fixed term between two and twelve

years with an advisory sentence of six years. Ind. Code § 35-50-2-5.5 (2014). The court sentenced Dilk to the advisory sentence of six years with two years suspended to probation.

[12] The nature of the offense is found in the details and circumstances surrounding the offense and the defendant's participation therein. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). Dilk's possession of methamphetamine is not particularly remarkable. In support of his request for a sentence reduction, he submits his cooperation with law enforcement. However, the trial court took into account the fact that Dilk admitted to the possession and cooperated with law enforcement when it sentenced him. Dilk has not presented any compelling evidence that positively depicts his offense so as to overcome the deference we give to the trial court's judgment. *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015) (deference to trial court's judgment should prevail unless overcome by compelling evidence that positively portrays nature of offense, such as accompanied by restraint, regard, and lack of brutality).

### ***C. Character of the Offender***

[13] Our analysis of a defendant's character involves a broad consideration of a defendant's qualities, including age, criminal history, background, past rehabilitative efforts, and remorse. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). In examining a defendant's criminal history, the significance varies based on the gravity, nature, temporal proximity, and number of prior offenses in relation to the current offense. *Id.* However, even a minor criminal record reflects poorly on a defendant's character. *Id.*

[14] Dilk's criminal history consists of one felony conviction and three misdemeanor convictions, as well as two probation revocations. Further, he was charged with committing several new offenses while on pretrial release in this case.

[15] While Dilk highlights his service in the military, we note that the trial court considered this information when it sentenced him. In addition, Dilk advances his acknowledgement of his drug abuse and his desire for treatment in support of a reduced sentence. Yet, the court recommended him for a treatment program while he is incarcerated. Moreover, this factor does not constitute a substantial virtuous trait or persistent example of good character that would compel us to override the deference we give to the trial court's judgment. *See Stephenson*, 29 N.E.3d at 122 (deference to trial court's judgment should prevail unless overcome by compelling evidence such as substantial virtuous traits or persistent examples of good character that portray defendant's character in positive light). We remain mindful that the question under Rule 7(B) is not whether another sentence is more appropriate but, rather, whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). In sum, Dilk has not shown that his advisory sentence is inappropriate in light of the nature of the offense and his character.

## Conclusion

[16] We conclude that although the trial court considered an improper aggravating circumstance, any error was harmless, and we can confidently say that the trial

court would have imposed the same advisory sentence regardless. We further conclude that Dilk's sentence is not inappropriate.

[17] Affirmed.

Crone, J., and Foley, J., concur.