

## 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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Joseph Peerson,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

May 23, 2022

Court of Appeals Case No.  
22A-CR-17

Appeal from the Hamilton  
Superior Court

The Honorable William J. Hughes,  
Judge

Trial Court Cause No.  
29D03-2008-F2-5190

**Bailey, Judge.**

## Case Summary

- [1] Pursuant to a plea agreement, Joseph Peerson pleaded guilty to Dealing in Methamphetamine, as a Level 2 felony.<sup>1</sup> He received the maximum sentence the court could impose under the terms of the plea agreement, *i.e.*, an aggregate sentence of twenty-five years in the Department of Correction (“DOC”) with twelve years executed and thirteen years suspended to probation. Peerson appeals, seeking revision of his sentence under Indiana Appellate Rule 7(B).
- [2] We affirm.

## Facts and Procedural History

- [3] According to the factual basis, Peerson was pulled over in August 2020 for driving with expired plates. During the traffic stop, law enforcement learned that Peerson’s driving privileges were suspended. After a K-9 unit gave a positive indication for the odor of illegal drugs, law enforcement searched the vehicle. Officers ultimately found what they believed to be heroin as well as methamphetamine, a digital scale, and \$1,700 in cash. Peerson was advised of his rights. He then told law enforcement that he possessed the drugs in order to deal them. Laboratory testing revealed that a seized plastic bag contained 57.28 grams of an off-white substance that tested positive for methamphetamine.

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<sup>1</sup> Ind. Code § 35-48-4-1.1.

- [4] The State charged Peerson with Dealing in Methamphetamine, as a Level 2 felony, Dealing in a Narcotic Drug, as a Level 2 felony,<sup>2</sup> Possession of Methamphetamine, as a Level 3 felony,<sup>3</sup> Possession of a Narcotic Drug, as a Level 4 felony,<sup>4</sup> and Driving While Suspended, as a Class A misdemeanor.<sup>5</sup> The State also alleged that Peerson had the status of a habitual offender.<sup>6</sup>
- [5] Peerson and the State reached a plea agreement under which (1) Peerson would plead guilty to Dealing in Methamphetamine, as a Level 2 felony, (2) the State would move to dismiss the remaining allegations,<sup>7</sup> and (3) the sentence would be capped at twenty-five years in the DOC with no more than twelve years of that time required to be executed. The parties performed under the agreement, at which point the trial court took the matter under advisement, scheduled a sentencing hearing, and obtained a presentence investigation report.
- [6] At the sentencing hearing, the trial court entered a judgment of conviction and orally pronounced the sentence.<sup>8</sup> The court identified one mitigating factor, *i.e.*, that Peerson had a juvenile daughter. The court declined to give much weight

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<sup>2</sup> I.C. § 35-48-4-1.

<sup>3</sup> I.C. § 35-48-4-6.1.

<sup>4</sup> I.C. § 35-48-4-6.

<sup>5</sup> I.C. § 9-24-19-2.

<sup>6</sup> I.C. § 35-50-2-8.

<sup>7</sup> The plea agreement did not specifically refer to the habitual offender enhancement. However, the State confirms on appeal that the agreement was to dismiss the remaining allegations. *See* Br. of Appellee at 4.

<sup>8</sup> The trial court also imposed a sentence in a different cause, which Peerson separately appeals.

to that factor because of evidence that Peerson dealt drugs out of the residence in which his daughter lived. As to aggravating factors, the trial court identified Peerson’s criminal history, the amount of methamphetamine involved, and the circumstances of Peerson’s drug dealing, in that there was evidence that his drug dealings had been linked to injury and death. Finding that the aggravators substantially outweighed the mitigator, the trial court imposed the maximum sentence it could under the terms of the plea agreement: twenty-five years in the DOC with twelve years executed and the balance suspended to probation.

[7] Peerson now appeals.

## Discussion and Decision

[8] Appellate Rule 7(B) permits us to revise a sentence “if, after due consideration of the trial court’s decision,” we find that the sentence is “inappropriate in light of the nature of the offense and the character of the offender.” Moreover, the defendant bears the burden of persuading us that the sentence is inappropriate. *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). In reviewing a sentence, our role is not to decide whether a different sentence is more appropriate. *Helsley v. State*, 43 N.E.3d 225, 228 (Ind. 2015). Rather, we must determine whether the sentence imposed is inappropriate. *Id.* As the Indiana Supreme Court has explained, we “reserve our 7(B) authority for exceptional cases,” *Livingston v. State*, 113 N.E.3d 611, 613 (Ind. 2018), affording considerable deference to the trial court, *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). “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)." *Id.*

[9] Regarding the instant Level 2 felony offense, our legislature chose a sentencing range of ten years to thirty years with an advisory sentence of seventeen and one-half years. I.C. § 35-50-2-4.5. Here, Peerson received an aggravated sentence, with the trial court imposing twenty-five years in the DOC with twelve years executed and thirteen years suspended to probation.

[10] Turning to the nature of the offense, Peerson provides the following argument:

Peerson's sentence is not supported by the nature of the offense. Peerson admitted to dealing in Methamphetamine as a Level 2 Felony part [*sic*] of his guilty plea. The seriousness of this offense is taken into account by the conviction for a Level 2 felony. The nature of the offense does not support the sentence.

Br. of Appellant at 7.

[11] To the extent Peerson is suggesting that a Level 2 felony conviction does not warrant an aggregate sentence of twenty-five years, we emphasize that the sentence imposed is within the range authorized by statute. And to the extent Peerson minimizes the seriousness of his criminal conduct, we note that Dealing in Methamphetamine is a Level 2 felony when a person possesses ten grams of methamphetamine. *See* I.C. § 35-48-4-1.1(e). Here, however, Peerson possessed more than five times that amount: 57.28 grams of methamphetamine.

[12] As to the character of the offender, Peerson provides the following argument:

Peerson accepted responsibility for his actions and pleaded guilty. This saved the State the time and expense of going to trial. Additionally, the trial court noted that this would cause a hardship to his children<sup>9</sup>. . . . The character of the offender does not support Peerson's sentence.

Br. of Appellant at 7-8.

[13] Although we acknowledge that the State benefitted from Peerson's decision to plead guilty, Peerson's acceptance of responsibility in this case does not strike us as an exceptional example of virtuous character—especially because Peerson received a capped sentence and the dismissal of several serious charges in exchange for his plea of guilty. And to the extent Peerson points out that being incarcerated impacts his ability to parent, we cannot say that the factual circumstances of Peerson's incarceration bear on Peerson's character. If anything, Peerson's decision to deal drugs reflects indifference about his parental responsibilities. Indeed, it is not as though this is Peerson's first criminal transgression. Rather, Peerson has had extensive contacts with law enforcement, beginning when he was a juvenile. And although the record indicates that Peerson has struggled with substance abuse—a fact that gives context to his ongoing criminal conduct—Peerson nevertheless has had

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<sup>9</sup> The evidence indicates that Peerson has an adult son in addition to his juvenile daughter. Only the juvenile daughter—to whom the trial court referred—is listed as a dependent in the presentence investigation report. However, Peerson testified that he has a child support obligation associated with his twenty-one-year-old son, including an arrearage from when he was incarcerated and unable to pay child support.

opportunities to reform his behavior after serving sentences for, *inter alia*, Class B felony Burglary and Class B felony Dealing in Cocaine or a Narcotic Drug.

[14] All in all, Peerson has failed to persuade us that the sentence is inappropriate.

[15] Affirmed.

Najam, J., and Bradford, C.J., concur.