

## 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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Heath Ashley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 20, 2022

Court of Appeals Case No.  
21A-CR-1907

Appeal from the Posey Circuit  
Court

The Honorable Craig S. Goedde,  
Judge

Trial Court Cause No.  
65C01-2103-F6-141

**Najam, Judge.**

## Statement of the Case

- [1] Heath Ashley appeals his sentence after he pleaded guilty to possession of methamphetamine, as a Level 6 felony, and after his adjudication as a habitual offender. Ashley raises one issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

## Facts and Procedural History

- [3] On March 8, 2021, deputies responded to a call that a woman needed medical attention. When they arrived, medics informed the officers that the woman was declining medical treatment. As the deputies approached the house to speak to the woman, Ashley stuck his head out of a window, provided officers with his name, and told them that the woman was “mentally handicapped.” Appellant’s App. Vol. 2 at 12. The deputies were ultimately able to speak to the woman, who continued to refuse treatment. While at the scene, the officers learned that Ashley had three separate warrants out for his arrest. The deputies then informed Ashley of the warrants. Ashley began to argue, but the officers were able to place him in handcuffs. The officers then searched Ashley and found a baggie that contained a small amount of methamphetamine.
- [4] The State charged Ashley with possession of methamphetamine, as a Level 6 felony, and alleged that he was a habitual offender. At a pre-trial conference, the State presented Ashley with an offer under which the State would drop the habitual offender charge and agree to a sentence of twenty months if Ashley

pleaded guilty to the possession charge. Ashley declined that offer. Thereafter, on the morning of the scheduled trial, Ashley pleaded guilty to possession of methamphetamine without the benefit of a plea agreement, and the court adjudicated Ashley a habitual offender following a bench trial.

[5] At a sentencing hearing, the court identified Ashley's criminal history as a "very heavy" aggravator. Tr. at 51. And the court identified Ashley's guilty plea to be a mitigator. The court also considered the fact that Ashley possessed only a small amount of methamphetamine, that Ashley had reoffended "quickly" following his last offense, and that Ashley had "used heavily everyday" prior to his arrest. *Id.* at 52. The court then found that the aggravator outweighed the mitigator and sentenced Ashley to two years for the possession conviction enhanced by four years for the habitual offender adjudication, for an aggregate sentence of six years in the Department of Correction. This appeal ensued.

## **Discussion and Decision**

[6] Ashley contends that his sentence is inappropriate in light of the nature of the offense and his character. Indiana Appellate Rule 7(B) provides that "[t]he 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." This court has recently held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed."

*Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived “correct” result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007).

*Shoun v. State*, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

- [7] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on “our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case.” *Id.* at 1224. The question 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). Deference to the trial court “prevail[s] 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).

[8] The sentencing range for a Level 6 felony is six months to two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b) (2021). And the court shall sentence a person found to be a habitual offender to an additional fixed term of between two years to six years for a person convicted of a Level 6 felony. I.C. § 35-50-2-8(i)(2). Here, the court identified as mitigating Ashley’s guilty plea. And the court identified Ashley’s criminal history as a “very heavy” aggravator. Tr. at 51. The court then found that the aggravator outweighed the mitigator and sentenced Ashley to an aggregate term of six years in the Department of Correction.

[9] Ashley contends that his sentence is inappropriate in light of the nature of the offense because the amount of methamphetamine in his possession was less than 0.01 gram and because it would be “difficult to imagine the existence of any less egregious offense of possession of methamphetamine than .01 gram.” Appellant’s Br. at 14. Be that as it may,<sup>1</sup> we consider both the nature of the offense *and* Ashley’s character in our review. *See Williams v. State*, 891 N.E.2d

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<sup>1</sup> As to the nature of the offense, the State contends that Ashley “attempted to dissuade” medics from providing medical care to the woman. Appellee’s Br. at 8. However, the probable cause affidavit simply states: “As we attempted to make contact with the woman, . . . a man stuck his head out the window and began talking to us about the situation. He identified himself as Heath Ashley and briefly said that [the woman] was mentally handicapped before then shutting the wi[n]dow.” Appellant’s App. Vol. 2 at 12. We do not read this as an attempt by Ashley to dissuade anyone from providing treatment to the woman. In addition, the State contends that Ashley was “uncooperative” with law enforcement and had to be “physically manipulated” in order to be placed in handcuffs. Appellee’s Br. at 8. But the probable cause affidavit states that, after officers informed Ashley of the arrest warrants, “he began to argue but was turned around *without incident* and was placed in handcuffs[.]” Appellant’s App. Vol. 2 at 12 (emphasis added). We do not interpret that as Ashley being uncooperative or as needing to be manipulated by the officers.

621, 623 (Ind. Ct. App. 2008). And Ashley’s bad character persuades us that his sentence is not inappropriate.

[10] Indeed, Ashley has a lengthy criminal history that spans thirty years and includes eleven felony convictions and twenty-three misdemeanor convictions. Further, Ashley has had his probation revoked five times. In other words, Ashley has engaged in a life of crime and continues to break the law despite the court’s prior grants of leniency. Further, as the court acknowledged, Ashley used drugs “heavily” every day until the day of his arrest, which reflects poorly on his character. Tr. at 52. As such, we cannot say that his sentence is inappropriate.<sup>2</sup> We affirm Ashley’s sentence.

[11] Affirmed.

Vaidik, J., and Weissmann, J., concur.

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<sup>2</sup> To the extent Ashley contends that his sentence is inappropriate because it was harsher than the sentence he would have received had he accepted the State’s plea offer, that was the risk Ashley took when he rejected that offer.