MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Ray Hall,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 5, 2024

Court of Appeals Case No. 23A-CR-2175

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2212-F2-413

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

[1] David Ray Hall was convicted of Level 2 felony dealing in a narcotic drug after he had been found to have possessed 10.83 grams of fentanyl with the intent to deliver. Hall was also found to be a habitual offender. On appeal, Hall contends that the evidence is insufficient to sustain his conviction and that his aggregate thirty-four-year sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On December 18, 2022, Huntington Patrol Officer Jordan Corral was on patrol when he observed a black or dark-colored Cadillac Escalade on U.S. 24. Officer Corral confirmed that the vehicle belonged to Shawn Kennedy and that Kennedy's license had been suspended "with a prior judgment." Tr. Vol. II p. 113. Officer Corral followed the vehicle for a short time and, prior to initiating a traffic stop, observed the occupants of the vehicle "moving around inside the vehicle." Tr. Vol. II p. 114.

[3] When Officer Corral first activated his lights, the "vehicle slowed down briefly but then began to pick up speed." Tr. Vol. II p. 116. "As the vehicle began to pick up speed," Officer Corral observed "the passenger-side window lower and then a small bag containing [a] blue substance fly out the window and land on the pavement near the curb." Tr. Vol. II p. 116. After the vehicle failed to stop, Officer Corral "alerted Huntington dispatch, as well as the other patrol officers that were working that night, that [he] had a vehicle fleeing from [him]." Tr.

Vol. II p. 117. Officer Corral "gave [his] location and also advised them that the occupants had thrown a small plastic bag containing blue pills out of the passenger-side window" and "that it had fallen on the west side of the road." Tr. Vol. II p. 117.

[4] The driver of the vehicle eventually heeded Officer Corral's instruction to stop, after which Officer Corral identified Kennedy as the driver and Hall as the passenger. Hall dropped his cell phone on the ground next to the vehicle as both he and Kennedy exited the vehicle and Officer Corral could smell the "very strong" odor of marijuana emanating from inside the vehicle. Tr. Vol. II p. 118. Officers were able to recover the bag of pills that had been thrown out of Hall's window. Once the bag of pills had been recovered, officers discovered that it contained "100 blue fentanyl pills." Tr. Vol. II p. 124. After testing, the pills were determined to have contained a total of "10.83 grams" of fentanyl. Ex. Vol. p. 39.

[5] Kennedy subsequently indicated that on the date in question, he had been driving Hall to see his son, and that the plan had been that Hall would purchase the fentanyl from Kennedy before Hall would then turn around and sell the fentanyl to his son. Kennedy had already given the fentanyl to Hall before they were pursued by Officer Corral. While Kennedy claimed that he had not seen Hall dispose of the fentanyl by throwing it out of the passenger-side window, Kennedy reiterated that he and Hall had been the only occupants of the vehicle and asserted that he had not discarded the fentanyl.

[6] On December 19, 2022, the State charged Hall with Level 2 felony dealing in a narcotic drug, Level 4 felony possession of a narcotic drug, Level 6 felony obstruction of justice, Level 6 felony possession or use of a legend drug, and Class B misdemeanor possession of marijuana. The State also alleged that Hall is a habitual offender. The State dismissed the Level 6 felony and Class B misdemeanor possession charges in July of 2023.

[7] Hall's case proceeded to trial in August of 2023, at the conclusion of which the jury found him guilty of Level 2 felony dealing in a narcotic drug and Level 4 felony possession of a narcotic drug but not guilty of Level 6 felony obstruction of justice. The trial court subsequently found that Hall was a habitual offender. On September 5, 2023, the trial court sentenced Hall to a twenty-two-year term in connection with his Level 2 felony conviction and enhanced the sentence by twelve years by virtue of Hall's status as a habitual offender, for an aggregate thirty-four-year sentence. The trial court did not enter a judgment of conviction for Level 4 felony possession of a narcotic drug.

Discussion and Decision

I. Sufficiency of the Evidence

[8] Hall contends that the evidence is insufficient to sustain his conviction for Level 2 felony dealing in a narcotic drug.

> When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the verdict. It is

> the fact-finder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider it most favorably to the trial court's ruling. Appellate courts affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict.

Drane v. State, 867 N.E.2d 144, 146–47 (Ind. 2007) (cleaned up). Stated differently, in reviewing the sufficiency of the evidence, "we consider only the evidence and reasonable inferences most favorable to the convictions, neither reweighing evidence nor reassessing witness credibility" and "affirm the judgment unless no reasonable factfinder could find the defendant guilty." *Griffith v. State*, 59 N.E.3d 947, 958 (Ind. 2016).

[9] In order to sustain a conviction for Level 2 felony dealing in a narcotic drug, the State was required to prove that Hall had possessed, with the intent to deliver, at least ten grams of fentanyl. Ind. Code § 35-48-4-1(a)(2) & (e)(1). Kennedy testified at trial that Hall had purchased the fentanyl from him, and that Hall had planned to sell the fentanyl to his son. Hall's son also testified at Hall's trial and corroborated Kennedy's testimony. Specifically, Hall's son testified that he had agreed to purchase 100 pills containing fentanyl from Hall. Kennedy further testified that he had already given the fentanyl to Hall by the time they had been pursued by Officer Corral. Kennedy testified that he had

not been the individual who had discarded the fentanyl out of the passenger-side window, supporting the inference that Hall had done so.

[10] The evidence establishes that Hall had possessed more than ten grams of fentanyl with the intent to deliver the fentanyl to another, *i.e.*, his son. The evidence is therefore sufficient to sustain Hall's conviction for Level 2 felony dealing in a narcotic drug. Hall's claim to the contrary amounts to nothing more than an invitation to reweigh the evidence, which we will not do.[1] *See Griffith*, 59 N.E.3d at 958.

II. Appropriateness of Sentence

[11] Hall also contends that his thirty-four-year sentence is inappropriate. Indiana Appellate Rule 7(B) provides that "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." In analyzing such claims, we "concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of

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[1] Hall also argues that the evidence is insufficient to sustain his conviction for Level 4 felony possession of a narcotic drug. We need not consider the sufficiency of the evidence to support this alleged offense, however, because the trial court did not enter a judgment of conviction for this offense.

persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[12] "A person who commits a Level 2 felony shall be imprisoned for a fixed term of between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17½) years." Ind. Code § 35-50-2-4.5. The trial court shall enhance the sentence of a person found to be a habitual offender "to an additional fixed term that is between … eight (8) years and twenty (20) years, for a person convicted of" a Level 2 felony. Ind. Code § 35-50-2-8(i). The additional term imposed by virtue of a habitual-offender enhancement "is nonsuspendible." Ind. Code § 35-50-2-8(i). With regard to Hall's conviction, the trial court imposed an aggravated twenty-two-year sentence, enhanced by an additional twelve years by virtue of Hall's status as a habitual offender.

[13] The nature of Hall's offense is serious. He possessed more than ten grams of fentanyl with the intent to sell the drugs to his son. In addition, in attempting to dispose of the drugs, Hall threw the pills out of the passenger-side window, with the drugs landing on the pavement where it would have been possible for a member of the public, including a child, to have come into possession of the pills, without having known that the pills contained fentanyl.

[14] Additionally, we agree with the State that it reflects poorly on Hall's character that he intended to sell the fentanyl to his son. Hall also has a significant criminal history which includes a prior juvenile adjudication, nine prior misdemeanor convictions, and eight prior felony convictions. Hall's criminal

history includes both violent and non-violent offenses and, since being charged in this case, Hall has been charged with Level 6 felony intimidation, Level 6 felony battery resulting in moderate bodily injury, and Class A misdemeanor battery resulting in bodily injury. As the trial court noted, Hall also "has eight petitions to revoke probation, and he was terminated from drug court." Tr. Vol. III p. 27. Hall has failed to take advantage of prior attempts at leniency and was determined to be a "very high" risk to reoffend. Appellant's App. Vol. II p. 139. Hall has failed to bear his burden of persuading us that his sentence is inappropriate in light of the nature of his offense and his character. *Sanchez*, 891 N.E.2d at 176.

[15] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.