

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Amanda O. Blackketter
Blackketter Law, LLC
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Tracy Alon Black,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

February 24, 2023

Court of Appeals Case No.
22A-CR-1891

Appeal from the
Shelby Superior Court

The Honorable
R. Kent Apsley, Judge

Trial Court Cause No.
73D01-2107-F6-312

Memorandum Decision by Judge Vaidik
Judges Tavitas and Foley concur.

Vaidik, Judge.

Case Summary

- [1] Tracy Alon Black appeals her eighteen-month sentence for Level 6 felony escape, arguing it is inappropriate in light of the nature of her offense and her character. We disagree and affirm.

Facts and Procedural History

- [2] On May 12, 2021, Black was placed on home detention for 180 days after pleading guilty to Level 6 felony unlawful possession of a syringe. Over the next two months, Black committed numerous violations of the home-detention order. On June 11 and 13, she went to several locations that were not on her home-detention schedule. On July 1 and 8, she submitted diluted drug-screen samples. On July 19, she allowed her GPS monitor to be damaged. On July 21, she went to a location that was not on her home-detention schedule and spent the night. On July 22, she went to several locations that were not on her home-detention schedule, including a casino. And on July 24, she again went to a location that was not on her home-detention schedule.
- [3] Based on these violations, the State charged Black with Level 6 felony escape. Black pled guilty as charged, leaving sentencing to the discretion of the trial court. The court sentenced Black to eighteen months in the Department of Correction.

[4] Black now appeals.

Discussion and Decision

[5] Black contends her sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate 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.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[6] The sentencing range for a Level 6 felony is six months to two-and-a-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Here, the trial court imposed an above-advisory term of eighteen months.

[7] Regarding the nature of the offense, Black offers explanations for several of her home-detention violations. She claims: (1) she provided diluted urine samples

because her job with a sealcoating company had her working in high temperatures and she was required to drink large amounts of water; (2) her GPS monitor was damaged when a co-worker sprayed her with sealant; (3) most of her location violations were work-related; and (4) when she committed the final violations, she had already been told by her home-detention officer that an escape charge was being filed and a warrant issued, so she honestly believed she was “off the program” and no longer had to follow the rules. Appellant’s Br. pp. 8-9. Even if all this is true, the fact remains that, starting weeks after being placed on home detention and continuing for almost two months, Black committed multiple violations, each of which could have been charged as a separate felony. *See* I.C. § 35-44.1-3-4(c) (“A person who . . . knowingly or intentionally violates a home detention order . . . commits escape, a Level 6 felony.”).

[8] As for her character, Black notes that at the time of sentencing she had been “clean and sober” for fourteen months, had a job, had recently completed various treatment programs, and was enrolled in another program. Appellant’s Br. p. 9. These are all positive developments, as the trial court recognized, *see* Tr. p. 46, but they must be weighed against her criminal history, which is substantial. Before this case, Black had three felony convictions (Class C felony drug possession in 2009, Class D felony maintaining a common nuisance in 2016, and Level 6 felony unlawful possession of a syringe in 2021) and eight misdemeanor convictions (operating while intoxicated in 2009, battery in 2009, driving while suspended in 2004, 2006, 2008, 2018, 2019, and 2020). She also

violated probation numerous times in those cases. Given this history, we cannot say that a sentence of eighteen months—six months over the advisory but a year under the maximum—is inappropriate.

[9] Affirmed.

Tavitas, J., and Foley, J., concur.