

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shawn Patrick Moore,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 1, 2021

Court of Appeals Case No.
21A-CR-1227

Appeal from the
Henry Circuit Court

The Honorable
Kit C. Dean Crane, Judge

Trial Court Cause No.
33C02-2104-F6-139

Molter, Judge.

[1] Shawn Patrick Moore (“Moore”) pleaded guilty to possession of methamphetamine as a Level 6 felony. He was sentenced to the Indiana Department of Correction for a period of 912 days, fully executed. Moore appeals and raises the following restated issue for our review: whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] On April 7, 2021, Moore’s parole agent visited Moore’s residence to conduct a routine check. Appellant’s App. Vol. 2 at 15. While there, she found two knives and a marijuana joint in Moore’s pocket. *Id.* She also found drug paraphernalia—including a pipe containing methamphetamine—on Moore’s kitchen table. *Id.* When asked about the pipe, Moore admitted the items on the kitchen table were his. *Id.* Subsequent testing revealed the pipe not only contained methamphetamine but cocaine as well. *Id.* Moore was arrested, and the State charged him with possession of methamphetamine as a Level 6 felony, possession of cocaine as a Level 6 felony, possession of marijuana as a Class B misdemeanor, and possession of paraphernalia as a Class C misdemeanor. *Id.* at 9–11.

[4] Later in April 2021, Moore entered into a plea agreement with the State. He pleaded guilty to possessing methamphetamine, and the State dismissed the

remaining three charges in exchange. *Id.* at 25–26. The trial court accepted Moore’s guilty plea and entered a judgment of conviction and sentencing order on May 27, 2021. *Id.* at 44–45. The trial court sentenced Moore to 912 days—the maximum sentence—fully executed in the Indiana Department of Correction, noting that Moore violated conditions of his parole and had an extensive history of criminal and delinquent activity. *Id.* at 45; Tr. Vol. 2 at 21. Moore’s criminal history consisted of twelve prior felony convictions and eleven misdemeanor convictions, including convictions for possession of methamphetamine and possession of paraphernalia. Appellant’s Conf. App. Vol. 2 at 32, 40. During sentencing, the trial court also noted that while Moore accepted responsibility for his actions by pleading guilty, he already received a benefit for that when the State dismissed his other three charges. Tr. Vol. 2 at 21.

Discussion and Decision

[5] The Indiana Constitution authorizes independent appellate review and revision of a trial court’s sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). “That authority is implemented through Appellate Rule 7(B), which permits an appellate court to revise a sentence if, after due consideration of the trial court’s decision, the sentence is found to be inappropriate in light of the nature of the offense and the character of the offender.” *Faith v. State*, 131 N.E.3d 158, 159 (Ind. 2019).

[6] Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Id.* at 160. Thus, we generally defer to the trial court’s decision, and our goal is to determine whether the defendant’s sentence is inappropriate, not whether some other sentence would be more appropriate. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). “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).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[7] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as the appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). The sentencing range for a Level 6 felony is a fixed term of imprisonment between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7. So, Moore’s maximum sentence was over double the advisory sentence.

[8] He first argues his sentence is too harsh in light of the nature of his offense because he possessed only a “small” amount of methamphetamine, and there is nothing particularly egregious about that. Appellant’s Br. at 8. Analyzing the nature of the offense requires us to consider “whether there is anything more or less egregious about the offense as committed by the defendant that ‘makes it

different from the typical offense accounted for by the legislature when it set the advisory sentence.”” *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*. Here, the trial judge reasonably considered that this offense was more egregious because Moore committed it while on parole. Tr. at 21. And Moore was not just found with a small amount of methamphetamine. He also had knives, other drugs, and drug paraphernalia, all while on parole for another drug-related offense. Appellant’s App. Vol. 2 at 15.

[9] As to his character, Moore acknowledges his criminal history, but he argues that it should not be used against him because he accepted responsibility for his misconduct by pleading guilty. The trial court reasonably gave minimal weight to Moore’s guilty plea because he already received a substantial benefit from the State dismissing his three other charges. Tr. at 21. The law is also well-established that it was proper for the trial court to consider Moore’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013).

[10] Here, that history is extensive. Moore was 47 years old at sentencing, and his criminal history goes back at least to when he was 18 years of age. Appellant’s Conf. App. Vol. 2 at 30, 33. Omitting the offense at issue here, his criminal history includes twelve prior felony convictions and eleven misdemeanor convictions. *Id.* at 32. And again, Moore was on parole for unlawful possession or use of a legend drug as a Level 6 felony when he committed the offense at issue here. *Id.* at 40. Moreover, he has been charged on at least

eleven separate occasions for different alcohol- and drug-related offenses, and he has repeatedly violated probation. *Id.* at 33–41. Further, Moore has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed. Tr. Vol. 2 at 22, 23.

[11] We cannot say that Moore has shown “substantial virtuous traits or persistent examples of good character” such that his requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Therefore, Moore has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

[12] Affirmed.

Vaidik, J., and May, J., concur.