

## MEMORANDUM DECISION

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### ATTORNEY FOR APPELLANT

Theodore J. Minch  
Sovich Minch, LLP  
Indianapolis, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
Nicole D. Wiggins  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Tymothy James Debolt,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

April 10, 2023

Court of Appeals Case No.  
22A-CR-1742

Appeal from the Shelby Superior  
Court

The Honorable David N. Riggins,  
Judge

Trial Court Cause No.  
73D02-2006-F2-8

**Memorandum Decision by Judge Weissmann**  
Judges Bailey and Brown concur.

**Weissmann, Judge.**

- [1] Caught with 148 grams of methamphetamine, Tymothy DeBolt pleaded guilty to Level 3 felony possession in exchange for a 13-year sentencing cap and the State's dismissal of six other charges, including Level 2 felony dealing. DeBolt now appeals his 11-year sentence, arguing that it is inappropriate in light of the nature of the offense and his character. We affirm.

**Facts**

- [2] Police lawfully arrested DeBolt, a habitual traffic violator, for operating a vehicle while his driving privileges were suspended. An inventory search of DeBolt's car revealed 148 grams of methamphetamine, a baggie of LSD-saturated paper, a Xanax pill, several syringes, a glass smoking device, a digital scale, multiple empty baggies, and \$2,656 cash. DeBolt later admitted to police that he was dealing methamphetamine.
- [3] The State charged DeBolt with eight offenses: (1) dealing in methamphetamine, a Level 2 felony; (2) possession of methamphetamine, a Level 3 felony; (3) possession of a controlled substance, Level 6 felony; (4) possession of syringe, a Level 6 felony; (5) operating a vehicle as a habitual traffic violator, a Level 6 felony; (6) possession of a controlled substance, a Class A misdemeanor; (7) possession of paraphernalia, a Class A misdemeanor; and (8) possession of paraphernalia, a Class C misdemeanor.

[4] Pursuant to a plea agreement with the State, DeBolt pleaded guilty to Level 3 felony possession of methamphetamine in exchange for a 13-year sentencing cap and dismissal of the remaining seven charges. The trial court accepted DeBolt's guilty plea and entered judgment of conviction on the Level 3 felony. The court later sentenced DeBolt to 11 years in prison, with 3 years suspended to probation. DeBolt appeals only his sentence.

## Discussion and Decision

[5] DeBolt challenges his sentence under Indiana Appellate Rule 7(B), which provides: "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 reviewing the appropriateness of a sentence, our "principal role . . . is to attempt to leaven the outliers . . . not to achieve a perceived 'correct' sentence." *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014) (internal citations and quotations omitted). Accordingly, we give "substantial deference" and "due consideration" to the trial court's sentencing decision. *Id.*

[6] "[T]he advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. DeBolt was convicted of possession of methamphetamine as a Level 3 felony. The sentencing range for a Level 3 felony is 3 to 16 years imprisonment, with an advisory sentence of 9 years. Ind. Code § 35-50-2-5. The trial court sentenced DeBolt to 11 years in prison, with 3 years suspended to probation.

- [7] DeBolt makes no argument concerning the nature of his offense nor are we compelled to revise his sentence on that basis. DeBolt possessed 148 grams of methamphetamine—more than five times the amount required to sustain his conviction for Level 3 felony possession. Ind. Code § 35-48-4-6.1(d)(1) (requiring only 28 grams). In fact, the amount of methamphetamine DeBolt possessed alone would have supported his conviction on the Level 2 felony dealing charge. Ind. Code § 35-48-4-1.1(a)(2), (b)(1), (e)(1) (collectively requiring only 28 grams).
- [8] As to his character, DeBolt’s criminal history includes Class A misdemeanor convictions for operating while intoxicated, possession of marijuana, possession of paraphernalia, resisting law enforcement, and battery on a law enforcement officer. Moreover, the week after DeBolt’s arrest in this case, while he was out of jail on bond, DeBolt was arrested again for dealing in and possession of methamphetamine, possession of paraphernalia, and operating a vehicle as a habitual traffic offender. Those charges remained pending at the time of sentencing in this case. *See generally Tunstill v. State*, 568 N.E.2d 539, 545 (Ind. 1991) (“Pending charges . . . are relevant and may be considered by a sentencing court as being reflective of the defendant’s character . . .”).
- [9] DeBolt’s presentence investigation report details his evolving history of alcohol and drug use, which is largely inseparable from his criminal history and pending charges. DeBolt acknowledged his addiction issues at sentencing, and commendably, he has taken steps to address them while incarcerated. But DeBolt repeatedly denied at sentencing that he was a methamphetamine

dealer—a fact he had previously admitted to police and which the physical evidence overwhelmingly supported. Thus, it appears DeBolt’s decision to plead guilty was “more likely the result of pragmatism than acceptance of responsibility and remorse.” *Anglemyer v. State*, 875 N.E.2d 218, 221 (Ind. 2007) (rehearing opinion).

[10] To say nothing of the six other dismissed charges, DeBolt substantially benefitted from the dismissal of the Level 2 felony dealing charge as part of his plea agreement with the State. The sentencing range for a Level 2 felony is 10 to 30 years, with an advisory sentence of 17½ years. Ind. Code § 35-50-2-4.5. DeBolt did not even receive the maximum 13-year sentence available under his plea agreement, and only 8 years of his 11-year sentence were ordered to be served in prison. We are not persuaded that DeBolt’s sentence is inappropriate in light of the nature of the offense and his character.

[11] Affirmed.

Bailey, J., and Brown, J., concur.