MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jared Andrew Walker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

December 15, 2023

Court of Appeals Case No. 23A-CR-864

Appeal from the Tippecanoe Superior Court

The Honorable Randy J. Williams, Judge

Trial Court Cause No. 79D01-2109-F2-31

Memorandum Decision by Judge Tavitas
Judges Pyle and Foley concur.

Tavitas, Judge.

Case Summary

[1] Jared Walker was convicted of dealing in methamphetamine, a Level 2 felony; possession of marijuana, a Class B misdemeanor; and possession of paraphernalia, a Class C misdemeanor. Walker argues that: (1) the evidence is insufficient to sustain his conviction for dealing in methamphetamine; and (2) his twenty-six-year sentence is inappropriate in light of the nature of the offenses and his character. We conclude that the State presented sufficient evidence to sustain his conviction for dealing in methamphetamine and that his sentence is not inappropriate. Accordingly, we affirm.

Issues

[2] Walker raises two issues, which we restate as:

I. Whether the evidence is sufficient to sustain Walker's conviction for dealing in methamphetamine.

II. Whether his sentence is inappropriate.

Facts

[3] On September 17, 2021, deputies from the Tippecanoe County Sheriff's Department attempted to execute a search warrant at Walker's residence. Law enforcement made announcements for individuals in the residence to exit. After twenty to thirty minutes, one woman left the residence. Approximately fifteen minutes later, several other individuals exited the residence, but Walker

remained inside. After approximately four hours, law enforcement deployed tear gas in the residence and located Walker in an upstairs bedroom.

[4] In a basement bedroom, officers found a black duffle bag, which contained a handgun, a baggie containing 36.05 grams of methamphetamine, a grinder, marijuana, small clear plastic bags "usually associated with narcotics dealing", and a wallet containing Walker's identification. Tr. Vol. II p. 112. Walker's DNA was found on two areas of the handgun.[1] On a table in the basement bedroom, the officers found a pipe and loose methamphetamine on a mirror. "F**k you Pay Me" was written in large letters on a wall on the main level of the house. State's Ex. 15 at 9:10-9:15.

[5] The State charged Walker with: (1) Count I, dealing in methamphetamine, a Level 2 felony; (2) Count II, possession of methamphetamine, a Level 3 felony; (3) Count III, possession of marijuana, a Class B misdemeanor; and (4) Count IV, possession of paraphernalia, a Class C misdemeanor. The State also alleged that Walker was an habitual offender.

[6] A jury trial was held in February 2023. An investigator testified that the "threshold" between a user or a dealer was generally three and one-half grams of methamphetamine. Tr. Vol. II p. 155. Users do not generally "stockpile"

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[1] Testing of one location showed the DNA was "1.3 thousand times more likely if it originated from Jared Walker and three unknown individuals than if it originated from four unknown unrelated individuals." Tr. Vol. II pp. 139-40. Testing of the other location showed the "DNA profile is 1.2 billion times more likely if it originated from Jared Walker and two unknown individuals, than if it originated from three unknown, unrelated individuals." *Id.* at 140.

the drug; rather, users typically consume the drug immediately. *Id.* The investigator also testified that a gram of methamphetamine costs approximately eighty dollars.

[7] Walker testified in his own defense that the black duffle bag did not belong to him and that he regularly put his handgun, wallet, and keys in a filing cabinet next to where the duffle bag was found. Walker testified that he was using the methamphetamine and marijuana the night of the search but that someone else brought the drugs to the house.

[8] The jury found Walker guilty as charged. Walker waived his right to a jury trial regarding the habitual offender allegation, and the trial court found Walker to be an habitual offender.

[9] At the sentencing hearing, the trial court vacated the conviction for Count II, possession of methamphetamine, due to double jeopardy concerns. The trial court found Walker's "mental health issues," "support," and completion of programs in the county jail as mitigators. Appellant's App. Vol. II pp. 70-71. The trial court found Walker's criminal history, child support arrearage, and substance abuse history as aggravators. The trial court noted that Walker was out on bond at the time he committed the charged offenses and that Walker committed additional offenses while out on bond before trial for these offenses. The trial court sentenced Walker to: (1) twenty years for Count I, enhanced by six years due to Walker's status as an habitual offender; (2) 180 days for Count III; and (3) sixty days for Count IV. The trial court then ordered the sentences

to be served concurrently for an aggregate sentence of twenty-six years in the Department of Correction ("DOC") with six years suspended to probation. Walker now appeals.

Discussion and Decision

I. Sufficiency of the Evidence of the Dealing in Methamphetamine Conviction

[10] Walker challenges the sufficiency of the evidence to sustain his conviction for dealing in methamphetamine. Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). "When there are conflicts in the evidence, the jury must resolve them." *Young v. State*, 198 N.E.3d 1172, 1176 (Ind. 2022). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Powell*, 151 N.E.3d at 262 (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* at 263. We 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." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021).

[11] The State charged Walker with dealing in methamphetamine, a Level 2 felony, pursuant to Indiana Code Section 35-48-4-1.1(a)(2), which required the State to prove that Walker did knowingly or intentionally possess, "with intent to . . . deliver [or] finance the delivery of, . . . methamphetamine, pure or adulterated." The offense is a Level 2 felony if the amount of the drug involved is at least ten grams. Ind. Code § 35-48-4-1.1(e)(1).

[12] Walker challenges only the evidence regarding his intent to deliver. Intent is a mental state and can only be established by considering the behavior of the relevant actor, the surrounding circumstances, and the reasonable inferences to be drawn therefrom. *Richardson v. State*, 856 N.E.2d 1222, 1227 (Ind. Ct. App. 2006), *trans. denied*. "Circumstantial evidence showing possession with intent to deliver may support a conviction." *Id.* "Possessing a large amount of a narcotic substance is circumstantial evidence of intent to deliver." *Id.* "The more narcotics a person possesses, the stronger the inference that he intended to deliver it and not consume it personally." *Id.* "Additionally, we reiterate that we may not substitute our own judgment for that of the jury." *Id.* at 1227-28.

[13] Indiana Code Section 35-48-4-1.1(b) addresses the evidence necessary to prove intent to deliver and provides:

> A person may be convicted of an offense under subsection (a)(2) [intent to deliver] only if:
>
> (1) there is evidence in addition to the weight of the drug that the person intended to deliver or finance the delivery of the drug; or

(2) the amount of the drug involved is at least twenty-eight (28) grams.

The State argues, in part, that Walker possessed more than twenty-eight grams of methamphetamine and, thus, the State was not required to present additional evidence to prove intent to deliver. Walker, however, points out that the jury was not instructed regarding subsection (2). Accordingly, we will consider whether there is evidence in addition to the weight of the methamphetamine showing that Walker intended to deliver the drug.

[14] Walker contends that the State failed to present evidence of scales, ledgers, or currency on hand. Walker also argues that the evidence showed only his intent to use the methamphetamine, not his intent to deliver the drug, because law enforcement found some methamphetamine cut into lines on a mirror and also found a pipe used to ingest methamphetamine.

[15] When Walker's residence was searched by law enforcement, law enforcement found a black duffle bag in a basement bedroom. Walker's father testified that Walker was staying in the basement bedroom. The black duffle bag contained a handgun, a baggie containing 36.05 grams of methamphetamine, small clear plastic bags "usually associated with narcotics dealing", and a wallet containing Walker's identification. Tr. Vol. II p. 112. Walker's DNA was found on the handgun. An investigator testified that the "threshold" between a user or a dealer was generally three and one-half grams of methamphetamine and that a gram of methamphetamine typically costs eighty dollars. *Id.* at 155.

Additionally, "F**k you Pay Me" was written in large letters on a wall on the main level of the house. State's Ex. 15 at 9:10-9:15.

[16] The evidence indicates both that Walker was a user of methamphetamine and that Walker intended to deliver methamphetamine. The State was not specifically required to present evidence of ledgers, scales, or currency. The evidence of a large amount of methamphetamine and baggies, combined with the other evidence found by law enforcement, is sufficient to demonstrate Walker's intent to deliver the methamphetamine. Walker's arguments are merely a request that we reweigh the evidence, which we cannot do. The evidence is sufficient to sustain Walker's conviction for dealing in methamphetamine, a Level 2 felony.

II. Inappropriate Sentence

[17] Next, Walker argues that his twenty-six-year sentence is inappropriate. Walker contends that we should revise his sentence to twenty-four years with eighteen years executed in the DOC and six years suspended.

[18] 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense

and the character of the offender."[2] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[19] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id.* (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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

[2] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g.*, *State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Ind. Ct. App. 2021) (Tavitas, J., concurring in result).

character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[20] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, the sentence for a Level 2 felony is "between ten (10) and thirty (30) years, with the advisory sentence being seventeen and one-half (17 ½) years." Ind. Code § 35-50-2-4.5. The sentence for a Class B misdemeanor is "not more than one hundred eighty (180) days", Ind. Code § 35-50-3-3, and the sentence for a Class C misdemeanor is "not more than sixty (60) days." Ind. Code § 35-50-3-4. Finally, at the time of Walker's offense, Indiana Code Section 35-50-2-8(i) provided: "The court shall sentence a person found to be a habitual offender to an additional fixed term that is between: (1) six (6) years and twenty (20) years, for a person convicted of murder or a Level 1 through Level 4 felony . . . ." The trial court sentenced Walker to twenty-six years with six years suspended to probation.

[21] Our analysis of the "nature of the offense" requires us to look at the nature, extent, heinousness, and brutality of the offense. *See Brown v. State*, 10 N.E.3d 1, 5 (Ind. 2014). Here, the nature of the offense is that, while attempting to execute a search warrant of Walker's residence, Walker refused to exit the residence for more than four hours, and law enforcement was forced to deploy tear gas into the residence. Upon searching the residence, law enforcement found a black duffle bag, which contained a handgun, a baggie containing 36.05

grams of methamphetamine, a grinder, marijuana, small clear plastic bags "usually associated with narcotics dealing," and a wallet containing Walker's identification. Tr. Vol. II p. 112. Walker's DNA was found on two areas of the handgun. The officers also found paraphernalia and loose methamphetamine on a mirror. Walker possessed a significant amount of methamphetamine, and his actions put the community and law enforcement at risk. The nature of the offense does not warrant a finding that Walker's sentence is inappropriate.

[22] Our analysis of the character of the offender involves a broad consideration of a defendant's qualities, including the defendant's age, criminal history, background, past rehabilitative efforts, and remorse. *See Harris v. State*, 165 N.E.3d 91, 100 (Ind. 2021); *McCain*, 148 N.E.3d at 985. The significance of a criminal history in assessing a defendant's character and an appropriate sentence vary based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense. *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). "Even a minor criminal history is a poor reflection of a defendant's character." *Id.*

[23] Walker contends that he has completed programs in jail and serves as a mentor. Walker argues that he has "demonstrated a significant change in his character" during his incarceration. Appellant's Br. p. 18. Walker, however, has a significant juvenile delinquency history with adjudications for possession of marijuana, possession of paraphernalia, maintaining a common nuisance, leaving home without permission, and multiple adjudications for theft, fraud, and forgery. As an adult, Walker was convicted of forgery and was sentenced

to eight years in the DOC with four years suspended. Walker's probation, however, was revoked twice. Walker was then convicted of five counts of forgery, two counts of theft, and fraud on a financial institution. He was sentenced to eight years in the DOC.

[24] At the time of his arrest on the instant charges, Walker was on bond for charges of possession of methamphetamine, resisting law enforcement, carrying a handgun without a license, and carrying a handgun with a prior felony. While Walker was on bond for the instant case, he was charged with possession of methamphetamine and auto theft. Walker has a significant substance abuse history, which began at the age of twelve, and he has been previously ordered to participate in substance abuse treatment. Given Walker's significant criminal history and his failure to take advantage of substance abuse treatment opportunities previously offered to him, we cannot say that his character warrants a revision of his sentence.

Conclusion

[25] The evidence is sufficient to sustain Walker's conviction for dealing in methamphetamine, a Level 2 felony. Moreover, Walker's sentence is not inappropriate. Accordingly, we affirm.

[26] Affirmed.

Pyle, J., and Foley, J., concur.