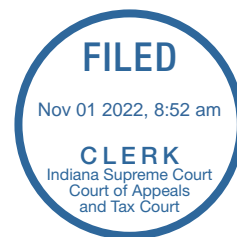


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Jerald Irvin Crider, III,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 1, 2022

Court of Appeals Case No.
22A-CR-663

Appeal from the
Jasper Superior Court

The Honorable
Russell D. Bailey, Judge

Trial Court Case Nos.
37D01-2101-F5-19
37D01-2104-F6-325

Darden, Senior Judge.

Statement of the Case

- [1] Jerald Crider pleaded guilty to burglary, a Level 5 felony, and possession of methamphetamine, a Level 6 felony, and admitted to being an habitual offender. The trial court sentenced him to nine and one-half years in the Indiana Department of Correction (DOC), and Crider now challenges the appropriateness of his placement in the DOC for his entire sentence. We affirm.

Issue

- [2] Crider presents one issue on appeal: whether his sentence is inappropriate in light of the nature of his offenses and his character.

Facts and Procedural History

- [3] Although the guilty plea transcript reveals little about the nature of Crider's offenses, more detailed versions exist in the charging information and probable cause affidavits, which Crider cites in his appellate brief and which were attached to the pre-sentence investigation report as exhibits. *See* Appellant's Br. pp. 7-8; Appellant's App. Vol. 2, pp. 118-20, 123-26, 137-39, 141-42.
- [4] On January 3, 2021, around 11:00 p.m. the Rensselaer Police Department dispatch was contacted regarding an alarm going off at the business of P&P Hobby and Collectibles. Officers Davis and Walker arrived on the scene and discovered a broken window and a rear door that had been forced open. The officers then tracked footprints in the snow leading from the business to an

apartment building and attempted to make contact with a person, who was later identified as Crider, in one of the apartments. Crider jumped from the second floor apartment window and attempted to run from the officers, but he was arrested and taken into custody. The tread of the shoes worn by Crider matched the tread of the footprints in the snow leading from the business. Based on this evidence, the State charged Crider with burglary as a Level 5 felony, attempted burglary as a Level 5 felony, and resisting law enforcement as a Class A misdemeanor. In addition, the State alleged that Crider is an habitual offender.

- [5] On January 8, in a separate and unrelated cause, the State charged Crider with theft, as a Level 6 felony. On March 7, Crider bonded out of jail.
- [6] On April 15, the owner of a store contacted the Rensselaer Police Department to report the theft of a wallet from her store the day before by a male subject. A little over an hour later, the store owner contacted the police department again to report that the male subject who had stolen the wallet from her store the day before was currently seen in another local store. Officers Hammond and Fontaine responded, went to the store, and made contact with the male, who was later identified as Crider. Officer Hammond advised Crider of the theft allegation, and, at first, he denied stealing anything. Once the officer suggested there was video footage showing Crider stealing the wallet, he then admitted to taking the wallet; however, he stated he accidentally took the wallet and wanted to pay for it. As Crider and the officers were leaving for him to go pay for the wallet, the store owner got the attention of the officers, and Officer Fontaine

stopped to speak with her. She gave the officer a black zipper pouch that Crider had been carrying with him but had left behind when the officers approached him. Inside the pouch were two hypodermic needles and a small zipper baggie that contained a clear, crystal-like substance that later field-tested positive for methamphetamine. Based on this evidence, the State charged Crider with unlawful possession of a syringe as a Level 6 felony and possession of methamphetamine as a Level 6 felony.

[7] In another separate and unrelated cause, Crider was arrested on April 16 and later charged with residential entry as a Level 6 felony and resisting law enforcement as a Class A misdemeanor. Further, on April 27 in another unrelated cause, the State charged Crider with theft as a Level 6 felony.

[8] In May, the State moved to revoke Crider's bond, and the court granted the motion. Later, on July 7, the court released Crider on his own recognizance and ordered him to report to Wabash Recovery by noon on July 8. Crider was also ordered to immediately report back to the Jasper County Jail upon completion of the in-patient program at Wabash Recovery. On July 12, the Executive Director of Wabash Recovery contacted the Jasper County Probation Department and reported that Crider was discharged because he had used drugs while in the program. The director informed probation that Crider had also packed his belongings and left and his whereabouts were unknown. The court issued a warrant for Crider's arrest on July 16. Crider was arrested on the warrant on July 29, and was found to be in possession of methamphetamine.

As a result, the State filed an additional charge of possession of methamphetamine as a Level 6 felony.

[9] Pursuant to a plea agreement, Crider pleaded guilty on February 16, 2022, to the charges of burglary and possession of methamphetamine and admitted he was an habitual offender. The plea agreement left Crider's sentence to the discretion of the court with the following parameters: the minimum aggregate sentence was set at four years and the maximum aggregate sentence was limited to ten years, with the sentences for the two underlying causes to be served consecutively. The remaining charges were to be dismissed. The court accepted the agreement and sentenced Crider to four years for burglary and to 547 days for possession of methamphetamine, to be served consecutively. The court enhanced Crider's sentence for burglary by an additional four years for his status as an habitual offender, for an aggregate sentence of nine and one-half years executed in the DOC. Crider now appeals.

Discussion and Decision

[10] Crider contends that, in light of the nature of his offenses and his character, his sentence is inappropriate as to his placement in the DOC for his entire sentence.

[11] Although a trial court may have acted within its lawful discretion in imposing a particular sentence, article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we

determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014). However, “we must and should exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires us to give ‘due consideration’ to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions.” *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The defendant bears the burden of persuading the appellate court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[12] The location where a sentence is to be served is a proper issue for application of our review and revise authority. *Fonner v. State*, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007). Nevertheless, it will be rather difficult for a defendant to prevail on a claim that the placement for his sentence is inappropriate. *Id.* Practically speaking, trial courts know the feasibility of alternative placements in their communities and are aware of the availability, costs, and entrance requirements for these placements. *Id.* at 343-44. Additionally, and more relevant to our review, is that the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). A defendant challenging the placement for a sentence must convince us that the original placement is inappropriate. *Fonner*, 876 N.E.2d at 344.

[13] To assess whether a sentence is inappropriate, we look first to the statutory range established for the class of the offenses. Here, Crider was convicted of

Level 5 felony burglary, for which the advisory sentence is three years, with a minimum of one year and a maximum of six years. Ind. Code § 35-50-2-6 (2014). He was also convicted of Level 6 felony possession of methamphetamine, for which the advisory is one year, with a minimum of six months and a maximum of two and one-half years. Ind. Code § 35-50-2-7 (2019). In addition, Crider admitted to being an habitual offender, which in this case has a sentencing range of two to six years. Ind. Code § 35-50-2-8 (2017). The court sentenced Crider within the parameters of the plea agreement to consecutive terms of four years on the Level 5 burglary and 547 days on the Level 6 possession. The court enhanced Crider's burglary sentence by four years for his adjudication as an habitual offender, for a total sentence of nine and one-half years. In summary, the court sentenced Crider to just above the advisory for both felonies and in the middle of the range of years for being an habitual offender.

[14] Next, we consider the nature of the offenses. While not especially egregious crimes, the nature of Crider's offenses do not necessarily support a less restrictive placement.

[15] Finally, we turn to the character of the offender. For this factor, we note that even a minor criminal history is a poor reflection of a defendant's character. *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*. Yet, Crider's criminal history is far from minor. In fact, the court found Crider's criminal history for a thirty-year-old person to be "extraordinarily long," "troubling," and "extensive." Tr. Vol. II, p. 32, 33. At the time of sentencing,

Crider’s criminal history reflected that he had accumulated four misdemeanor convictions and six felony convictions. Although not all of his prior arrests and charges were reduced to convictions, just in the seven-month period between January and July 2021, Crider went on a crime spree and was charged with eight felonies and two misdemeanors. See *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (stating that although record of arrests by itself is not evidence of defendant’s criminal history, it is appropriate to consider such record as poor reflection on defendant’s character as possibly revealing that he has not been deterred even after having been subjected to police authority); see also *Bethea v. State*, 983 N.E.2d 1134, 1145 (Ind. 2013) (holding that courts are not required to “turn a blind eye to the facts of the incident that brought the defendant before them”). Pursuant to the plea agreement, Crider pleaded guilty to only two of these charges, and the remaining charges were dismissed.

[16] Additionally, in the past when Crider was given the opportunity of serving terms of probation and alternative placement, he did not succeed. He had been placed on probation four times; his probation was unsuccessful one time and revoked three times. On three separate occasions, Crider had been placed on work release—the same placement he now requests in this case—and motions for change of placement were filed in all three cases due to violations of terms and conditions. Crider also has a prior conviction for escape. Furthermore, when the trial court in the instant case released him on his own recognizance to go to in-patient treatment, he was discharged within the first few days because he used drugs. Further, in the instant case, rather than reporting back to the

Jasper County Jail, as he was ordered to do upon completion of the program, or reporting to the probation office, Crider packed his belongings and left the facility without informing anyone that he was doing so or where he was going. Such continued violations and non-compliance show an unquestionable overall pattern of refusal to conform his behavior to the rules of society.

[17] Crider admits to a history of substance abuse, which began when he was eleven and includes alcohol, marijuana, and methamphetamine. Although Crider claims that his criminal behavior is due to his substance abuse problem, this does not necessarily indicate or support his argument that his sentence placement is inappropriate and should be revised, especially given his overall record of squandered opportunities and pattern of non-compliance. *See Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (trial court did not err in failing to consider defendant’s substance abuse as mitigating factor, especially when defendant is aware of substance abuse problem but has not taken appropriate steps to treat it), *trans. denied*; *Bennett v. State*, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003) (holding that defendant’s alcoholism could properly have been considered aggravating circumstance), *trans. denied*; *Iddings v. State*, 772 N.E.2d 1006, 1018 (Ind. Ct. App. 2002) (“a history of substance abuse is sometimes found by trial courts to be an aggravator, not a mitigator”), *trans. denied*.

[18] Here, Crider informed the court that he qualified for community corrections and was eligible for the work release program. He asked the court for a stair-step approach to his sentence where he would serve some time in the DOC,

then serve some time in community corrections on work release, and finish with time on probation. The trial court denied the request, citing Crider's extensive criminal history and wasted opportunities as reflected in the record:

But at thirty years old, you have the capacity and capability to make changes if you really want to. This record in front of me shows that none of those were taken. That path was not taken. It was offered, and not taken in multiple respects throughout the history.

. . . .

So there has been a pattern of opportunities presented and opportunities thrown away. The more recent example is a year ago when I allowed him to go on his own recognizance to Sober Living. It didn't even last three day, four days. And then failed to report back to the jail. So there's even recent examples of violations of pre-trial release, as well as an extensive criminal history. So this, all of this to say that I don't believe that a – you know, I understand counsel's argument, I just don't agree with it, that – that a step-down approach is appropriate in this matter.

Tr. Vol. II, pp. 32, 33.

[19] Given the nature of his offenses, lengthy criminal history, multiple violations of past attempts at probation and opportunities at work release placements, and his continued disregard for the rule of the law, the trial court correctly concluded that the DOC is the appropriate placement for Crider.

Conclusion

[20] Based on the foregoing, we conclude that Crider has failed to meet his burden of demonstrating that his placement is inappropriate.

[21] Affirmed.

Brown, J., and Pyle, J., concur.