MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jerome S. Brantley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 25, 2022

Court of Appeals Case No. 22A-CR-561

Appeal from the Bartholomew Circuit Court

The Honorable Kelly S. Benjamin, Judge

Trial Court Cause Nos. 03C01-1811-F6-6188 03C01-2104-F6-1983

Molter, Judge.

[1] Following a jury trial, and while on probation for another offense, Jerome S. Brantley was convicted of possession of methamphetamine as a Level 6 felony. He was sentenced to two years in the Indiana Department of Correction. Also, the trial court revoked his probation and ordered that he serve the remainder of that previously-suspended sentence. Brantley now appeals, arguing that the evidence was insufficient to support his conviction for possession of methamphetamine and that his sentence is inappropriate in light of the nature of the offense and his character. He also argues the trial court abused its discretion when it ordered him to serve the remainder of his suspended sentence. Finding no error, we affirm.

Facts and Procedural History

[2] On April 5, 2021, Columbus Police Officer Adriane Polley was investigating a call concerning a suspicious person when he observed Brantley outside of a building. Officer Polley recognized Brantley from an active warrants list and began placing him under arrest soon after. During this time, Officer Schmidt arrived at the scene to assist Officer Polley, and Brantley asked his companion, Keisha Weiler, to retrieve something from his vehicle. Weiler complied, reached into the vehicle, and tried to conceal "three small plastic baggies that had a white crystal substance in them." Tr. at 29. Officer Schmidt immediately detained Weiler for her actions and confiscated the baggies for further investigation. While doing so, he noticed a wallet, which contained items with Brantley's name on them, next to the baggies.

[3] The officers subsequently separated Brantley and Weiler, and Officer Polley advised Brantley of his *Miranda* rights. Further, Officer Polley asked Brantley about the baggies in his vehicle, and Brantley responded that the baggies were his and contained methamphetamine. Then, because Brantley was feeling "hot," Officer Polley requested medics to check on him. *Id.* at 25. Brantley was "cleared" shortly after and transported to jail. *Id.*

[4] Under Cause Number 03C01-2104-F6-1983 ("F6-1983"), the State charged Brantley with possession of methamphetamine as a Level 6 felony. Also, at the time, Brantley was on probation for Level 6 felony possession of methamphetamine under Cause Number 03C01-1811-F6-6188 ("F6-6188"). During his jury trial, Brantley testified that he told Officer Polley that the baggies were his. However, he explained that he did so because he did not want Weiler, who he was having an affair with, to get in trouble or for his fiancée to learn of the affair. He also claimed that he "was half out of it" when he admitted to possessing the methamphetamine. *Id.* at 62. The jury found Brantley guilty as charged, and the State petitioned to revoke Brantley's probation under F6-6188 thereafter.

[5] In February 2022, the trial court held a sentencing hearing on both F6-1983, the present case, and F6-6188, Brantley's prior Level 6 felony possession of methamphetamine case. As to F6-1983, the trial court sentenced Brantley to two years in the Indiana Department of Correction and identified several aggravating but no mitigating factors. As aggravators, the trial court found that Brantley was on probation at the time of the present offense, had previous

opportunities for treatment, and had an extensive criminal history—including previously being on probation, violating probation, and having two pending criminal cases.

[6] Next, as to F6-6188, the State presented evidence that Brantley failed to report to his probation officer several times and failed to notify the probation department of his new address. Consequently, the trial court revoked Brantley's probation and ordered that he serve the remainder of his suspended sentence (702 days) in the Indiana Department of Correction. Brantley now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

[7] Brantley argues the evidence was insufficient to support his conviction for possession of methamphetamine under F6-1983. When reviewing a claim of insufficient evidence to sustain a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Jackson v. State*, 50 N.E.3d 767, 770 (Ind. 2016). It is the factfinder's role, not ours, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* We will affirm the conviction unless no reasonable factfinder could have found the elements of the crime proven beyond a reasonable doubt. *Id.* It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence; rather, the evidence is sufficient if an

inference may reasonably be drawn from it to support the verdict. *Drane v. State*, 867 N.E.2d 144, 146–47 (Ind. 2007).

[8] To convict Brantley of Level 6 felony possession of methamphetamine, the State had to prove beyond a reasonable doubt that Brantley "knowingly or intentionally possesse[d] methamphetamine."[1] Ind. Code § 35-48-4-6.1(a). Conviction for possession of illegal items "can be based on either actual or constructive possession. Actual possession occurs when a person has direct physical control over an item. Constructive possession can be inferred when a person had the capability and intent to maintain dominion and control over the item." *Grubbs v. State*, 132 N.E.3d 451, 453 (Ind. Ct. App. 2019) (quotations omitted). Here, given the circumstances, we must determine whether the State proved that Brantley constructively possessed the methamphetamine.

[9] Brantley argues he did not have the capability to maintain dominion and control over the methamphetamine.[2] Particularly, he asserts that he was

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[1] To the extent that Brantley argues there was insufficient evidence to sustain a finding that he "knowingly" possessed methamphetamine, Appellant's Br. at 11 ("If Brantley knew about the methamphetamine in the vehicle, it would not be reasonable for him to draw attention to it."), he has waived this issue for our review. *See* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . .").

[2] To the extent that Brantley argues there was insufficient evidence to sustain a finding that he had the intent to maintain dominion and control over the methamphetamine, Appellant's Br. at 11 ("Even if one might infer that Brantley had the 'intent' to maintain dominion and control over the methamphetamine, the record makes clear that his detention in handcuffs made it impossible for him to have the capability to maintain such control."), he has waived this issue for our review. *See* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on . . . .").

handcuffed when Officer Schmidt discovered the methamphetamine and that there is no "fingerprint evidence" to suggest that he ever handled the baggies. Appellant's Br. 12.

[10] Contrary to Brantley's assertions, a factfinder may infer that a defendant "had the capability to maintain dominion and control over contraband from the simple fact that the defendant had a possessory interest in the premises on which an officer found the item." *Gray v. State*, 957 N.E.2d 171, 174 (Ind. 2011) ("[A] conviction for a possessory offense does not depend on catching a defendant red-handed."). This inference is permitted even when that possessory interest is not exclusive. *Id.* Here, there is no question that Brantley had the ability to reduce the methamphetamine to his personal possession. The methamphetamine was discovered next to his wallet and inside a vehicle in which he was a passenger. Further, Brantley admitted to Officer Polley that the baggies were his and that they contained methamphetamine. While Brantley argues that he told Officer Polley that the baggies were his because, among other reasons, he was trying to protect Weiler, the jury was under no obligation to credit his self-serving testimony. *See, e.g.*, *McCullough v. State*, 985 N.E.2d 1135, 1139 (Ind. Ct. App. 2013), *trans. denied*. Brantley now asks us to reweigh the evidence and reevaluate witness credibility, which we cannot do.

[11] There was sufficient evidence to sustain Brantley's conviction for possession of methamphetamine, and we therefore affirm.

II. Inappropriate Sentence

[12] The Indiana Constitution authorizes 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).

[13] 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).

[14] 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. Here, Brantley's sentence of two years for Level 6 felony possession of methamphetamine was one-half year less than the maximum and one year more than the advisory sentence.

[15] Brantley argues his sentence was too harsh in light of the nature of his offense because there is nothing particularly egregious about the facts at issue. He asserts that no violence was involved, that he possessed less than one gram of methamphetamine, and that no dealing charges were filed against him. But he ignores that he was on probation when he committed this offense.

[16] Next, as to his character, Brantley acknowledges his criminal history but essentially argues it should not be used against him. We disagree. The law is well-established that it is proper to consider a defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Brantley was forty-four years old at sentencing, and his criminal history goes back to at least when he was fifteen years old. Omitting the offense at issue here, his criminal history includes approximately four prior felony convictions, three misdemeanor convictions, and eleven petitions to revoke his probation. Also, Brantley was unsuccessfully discharged from probation at least five times and has a long history of substance abuse. Further, Brantley has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

[17] We cannot say that Brantley 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, Brantley has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

III. Probation Revocation

[18] Brantley last claims the trial court should not have ordered him to serve the remainder of his suspended sentence—702 days—under F6-6188, characterizing his misconduct as "technical violations." Appellant's Br. at 14. "Probation is a matter of grace left to [the] trial court['s] discretion, not a right to which a criminal defendant is entitled." *Prewitt v. State*, 878 N.E.2d 184, 188 (Ind. 2007). It is within the discretion of the trial court to determine probation conditions and to revoke probation if these conditions are violated. *Id.* If a trial court determines that a person has violated a term or condition of probation within the probationary period, the court may impose one or more of the following sanctions:

> (1) Continue the person on probation, with or without modifying or enlarging the conditions.
>
> (2) Extend the person's probationary period for not more than one (1) year beyond the original probationary period.
>
> (3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Ind. Code § 35-38-2-3(h).

[19] We review a trial court's selection of a sanction for an abuse of discretion. *Overstreet v. State*, 136 N.E.3d 260, 263 (Ind. Ct. App. 2019), *trans. denied*. An abuse of discretion occurs when the decision is clearly against the logic and effect of the facts and circumstances. *Id.*

[20] We reject Brantley's claim that his violations were merely technical. To the contrary, he failed or refused to comply with one of the fundamental requirements for a probationer—attending scheduled meetings with his probation officer. He also failed to notify the probation department that his address changed. Further, as Brantley concedes, he violated a mandatory condition of his probation by committing a new criminal offense—possession of methamphetamine under F6-1983. *See Knecht v. State*, 85 N.E.3d 829, 840 (Ind. 2017) (explaining that the commission of a new offense is not a mere technical violation of probation); *see also* Ind. Code § 35-38-2-1(b) ("If the person commits an additional crime, the court may revoke the probation."). We have observed that one violation of a condition of probation is enough to support a probation revocation. *See Knecht*, 85 N.E.3d at 839. Accordingly, the trial court did not abuse its discretion when it ordered Brantley to serve 702 days of his previously suspended sentence under F6-6188.

[21] In sum, we reject Brantley's arguments that, as to F6-1983, the evidence was insufficient to support his conviction for possession of methamphetamine and that his sentence is inappropriate in light of the nature of the offense and his

character. Also, as to F6-6188, we find that the trial court did not abuse its discretion when it found that Brantley violated his probation and ordered him to serve the remainder of his suspended sentence.

[22] Affirmed.

Mathias, J., and Brown, J., concur.