MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Justin B. Stumler,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 20, 2022

Court of Appeals Case No. 21A-CR-1927

Appeal from the Floyd Superior Court

The Honorable Carrie K. Stiller, Judge

Trial Court Cause No. 22D01-2012-F2-2033

Bailey, Judge.

Case Summary

[1] Justin B. Stumler ("Stumler") appeals his sentence for dealing in methamphetamine, as a Level 2 felony,[1] and auto theft, as a Level 6 felony,[2] following the entry of a plea agreement. The only issue he raises is whether the sentence imposed is inappropriate in light of the nature of the dealing offense and Stumler's character.

[2] We affirm.

Facts and Procedural History

[3] On December 2, 2020, police found Stumler in possession of a stolen vehicle. As a police officer was taking Stumler into custody, he located fentanyl in Stumler's sock and marijuana in his pocket. Officers searched the vehicle and located syringes and what later proved to be 110.18 grams of methamphetamine in the back seat.

[4] The State charged Stumler with dealing in methamphetamine, possession of a controlled substance, unlawful possession of a syringe, auto theft, and possession of marijuana. On May 13, 2021, Stumler entered into a plea agreement with the State in which he agreed to plead guilty to "Dealing in Methamphetamine over 10 grams, a Level 2 Felony" and "Auto Theft, a Level

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[1] Ind. Code § 35-48-4-1.1(a), (e).

[2] I.C. § 35-43-4-2(a)(1)(B)(ii).

6 Felony." Appellant's Appendix ("App.") at 82. In exchange, the State agreed to a dismissal of the remaining counts and a "[s]entence open to court, with a cap of 18 total years [and a] 10 year[] minimum." *Id*. That same day, the trial court took Stumler's guilty plea under advisement and ordered the Probation Department to complete a presentence investigation report.

[5] According to the presentence investigation report, Stumler was thirty years old at the time of sentencing. As an adult, Stumler had been arrested sixty times and had accumulated fifty-seven separate convictions for theft, escape, attempted escape, criminal trespass, failure to maintain insurance, shoplifting, assault, promoting contraband, trafficking in a controlled substance, possession of a handgun as a convicted felon, burglary, and fleeing or evading the police. His criminal history also contained five probation revocations. As a result of his criminal conduct, Stumler had been sent to prison four times. At the time of his arrest in the instant case, he was on probation in Kentucky.

[6] Stumler reported that he began smoking marijuana when he was eleven years old and smoked marijuana daily until he was most recently arrested. Stumler began using Xanax when he was thirteen years old and used it weekly. Stumler also reported that he began "snorting" and smoking methamphetamine when he was twenty-three years old and used methamphetamine daily until his arrest in the instant case. App. at 106. Stumler admitted to using heroin daily and reported that he would "snort," smoke, and inject the drug. *Id*. Stumler

advised the Probation Department that he had never received treatment for his drug use.

[7] On August 3, 2021, the trial court accepted Stumler's guilty plea and imposed a sentence. When issuing the sentence, the trial judge stated that it gave the "greatest weight" to the aggravating factor of Stumler's unusually "extensive criminal history" which included violent crimes and multiple probation violations. Tr. at 72, 73. The court noted as an additional aggravator the fact that Stumler possessed a much greater weight of methamphetamine than was required to support his conviction of dealing as a Level 2 felony. The trial court determined those aggravators "strongly outweighed" the mitigators of his guilty plea, remorse, and relationship with his two minor children. *Id*. at 75. The court imposed a seventeen-year sentence for Stumler's conviction for dealing in methamphetamine and a consecutive one-year sentence for his conviction for auto theft, all of which is to be served in the Indiana Department of Correction. The court also ordered Stumler to participate in Recovery While Incarcerated with an opportunity to obtain a sentence modification upon completion of the program.

[8] Stumler now appeals his sentence.

Discussion and Decision

[9] Stumler contends that the sentence for his Level 2 felony conviction of dealing methamphetamine[3] is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[10] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to "leaven the outliers." *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day 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.* at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

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[3] Stumler purports to appeal the sentences for both of his consecutive convictions but he only provides argument and analysis regarding the dealing methamphetamine conviction. Therefore, Stumler has waived a challenge to his sentence for the auto theft conviction. *See* Ind. Appellate Rule 46(A).

Deference to the trial court "prevail[s] 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).

[11] We begin by noting that Stumler's executed sentence is eighteen years, which is the maximum sentence he agreed to in his plea agreement. App. at 82. In addition, his seventeen-year sentence for his Level 2 felony is below the advisory sentence of seventeen-and-one-half years. I.C. § 35-50-2-4.5.[4] The advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed," *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); thus, "[w]e are unlikely to consider an advisory sentence inappropriate." *Shelby v. State*, 986 N.E.2d 345, 371 (Ind. Ct. App. 2013), *trans. denied*. "[A] defendant sentenced to the advisory term bears a particularly heavy burden in persuading [the] court on appeal that his sentence is inappropriate." *Id*.

[12] Moreover, our review of the record discloses nothing remarkable about the nature of the offense that would warrant revising Stumler's sentence. "The nature of the offense is found in the details and circumstances of the commission of the offense and the defendant's participation." *Zavala v. State*,

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[4] We also note that Stumler's one-year sentence for his Level 6 felony is the advisory sentence. I.C. § 35-50-2-7.

138 N.E.3d 291, 301 (Ind. Ct. App. 2019) (quotation and citation omitted), *trans. denied*. One factor we consider is "whether there is anything more or less egregious about the offense 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) (citation omitted), *trans. denied*. Here, not only is Stumler's sentence less than the advisory sentence, but he possessed eleven times the amount of methamphetamine necessary to support his dealing conviction. *See* I.C. 35-48-4-1.1(a)(2)(A), (e)(1) (providing the offense is a Level 2 felony if the amount of the drug involved is at least ten grams). Thus, his offense is so egregious that it is different from the typical offense and, standing alone, would support at least the advisory sentence.

[13] Nor does the nature of Stumler's character warrant a sentence revision. "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Denham v. State*, 142 N.E.3d 514, 517 (Ind. Ct. App. 2020) (quotation and citation omitted), *trans. denied*. And "[c]ontinuing to commit crimes after frequent contacts with the judicial system is a poor reflection on one's character." *Maffett v. State*, 113 N.E.3d 278, 286 (Ind. Ct. App. 2018) (citation omitted). Stumler has a lengthy criminal history—he has been arrested sixty times and had fifty-seven separate convictions for misdemeanor and felony offenses. His criminal history includes convictions of violent crimes, multiple convictions for drug-related crimes, and

five probation violations. Moreover, Stumler was on probation in another matter at the time he committed the crimes in the instant case. Stumler's repeated contact with the criminal justice system reflects poorly on his character.

[14] Citing *Kovats v. State*, Stumler asserts that his sentence should be revised "downward with a portion suspended to court ordered substance abuse treatment" because he has never received such treatment in his many prior contacts with the criminal justice system. Appellant's Br. at 16; 982 N.E.2d 409, 417 (Ind. Ct. App. 2013) (noting an "obvious addiction to narcotics" was not necessarily a mitigating factor but did place the defendant's "behavior in perspective"). However, Stumler has pointed to no evidence that he ever sought substance abuse treatment himself or evidence as to why he failed to seek such treatment. And, unlike the defendant in *Kovats*, Stumler has an extensive criminal history that included four separate terms of incarceration.

[15] Similarly, the young defendant in *Love v. State*, also cited by Stumler, is distinguishable. The defendant in *Love* also did not have the extensive criminal history that Stumler has and, unlike Stumler who received the advisory sentence or below, the defendant in *Love* had received the maximum statutory penalty. 741 N.E.2d 789, 795 (Ind. Ct. App. 2001). We found the fifty-year sentence to be inappropriate for the nineteen-year-old defendant with a limited criminal history. *Id*.

[16] We agree with the trial court that Stumler's extensive criminal history and the egregious nature of his offense outweigh any potential mitigating effect of his possible drug addiction. Moreover, we note that the trial court ordered Stumler to participate in a substance abuse treatment program while incarcerated, "with [the] right to modify" his sentence upon completion of the program. App. at 124.

[17] All in all, we cannot say that Stumler's sentence is inappropriate in light of the offense and his character.

[18] Affirmed.

Najam, J., and Bradford, C.J., concur.