

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Indianapolis, Indiana

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Corey R. Lambert,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 1, 2023
Court of Appeals Case No.
23A-CR-190
Appeal from the Dearborn
Superior Court
The Honorable Sally A.
McLaughlin, Judge
Trial Court Cause No.
15D02-2112-F3-000016

Memorandum Decision by Judge May
Chief Judge Altice and Judge Foley concur.

May, Judge.

[1] Corey R. Lambert appeals his sentence following his conviction of Level 3 felony possession of methamphetamine within 500 feet of a public park.¹ Lambert argues his sentence is inappropriate considering the nature of his offense and character. We affirm.

Facts and Procedural History

[2] On July 28, 2019, Lambert committed Level 5 felony battery resulting in serious bodily injury,² and the Dearborn Circuit Court sentenced Lambert to a six-year term of incarceration for that crime on April 2, 2020. The trial court gave Lambert credit for 270 days served and suspended the remainder of his sentence to probation. In May 2020, the State filed a petition to revoke Lambert's probation, and the trial court issued a warrant for Lambert's arrest. Lambert remained at-large for over one-and-a-half years, but in November 2021, an anonymous person provided a tip to law enforcement that Lambert could likely be found at Vaughn Brinkman's apartment in Lawrenceburg, Indiana, near the Lawrenceburg Civic Park.

[3] On December 1, 2021, Carrie Combs, a field supervisor with Southeast Regional Community Corrections, along with another community corrections field officer and two Lawrenceburg Police Department officers, conducted a

¹ Ind. Code § 35-48-4-6.1(d)(2).

² Ind. Code § 35-42-2-1(g)(1).

home visit at Brinkman's residence. Brinkman was serving a sentence on community corrections at the time, and he allowed the officers into his residence. One of the police officers went with Brinkman into the bathroom to collect a urine sample for a drug screen, and Combs and the other officers searched the residence. Combs found a backpack behind a recliner in the living room. Brinkman told Combs the backpack belonged to his brother, who had left the apartment a couple of hours earlier. Combs opened the backpack and found a black nylon bag inside it. She then opened the black nylon bag and found two baggies inside it. Subsequent laboratory testing confirmed that one of the baggies contained 10.04 grams of methamphetamine and the other baggie contained a crystal substance that was not methamphetamine.

[4] The officers then decided to search the apartment again, and they found Lambert in the bathtub in the bathroom. Lambert admitted the backpack and the methamphetamine inside the backpack belonged to him, and the police arrested him. The police also seized Lambert's cell phone, which was resting on a nightstand.

[5] On December 2, 2021, the State charged Lambert with Level 3 felony possession of methamphetamine within 500 feet of a public park, Level 6 felony maintaining a common nuisance,³ and Level 6 felony assisting a criminal.⁴ The

³ Ind. Code § 35-45-1-5(c).

⁴ Ind. Code § 35-44.1-2-5(a)(1).

State later amended the charging information to allege that Lambert qualified for the habitual offender sentencing enhancement.⁵ On November 14, 2022, the parties entered into a plea agreement whereby Lambert agreed to plead guilty to Level 3 possession of methamphetamine within 500 feet of a public park, and the State agreed to dismiss the remaining charges and the habitual offender enhancement. The plea agreement also provided that Lambert “shall be sentenced by the Court, at the sole discretion of the Court pursuant to Indiana sentencing laws.” (App. Vol. II at 186.) The trial court accepted Lambert’s guilty plea.

[6] The trial court held Lambert’s sentencing hearing on December 27, 2022, and the trial court pronounced Lambert’s sentence on December 29, 2022. The trial court also issued a written sentencing order. In its order, the trial court detailed Lambert’s prior criminal history including three felony convictions, ten misdemeanor convictions, and multiple probation violations. The trial court explained that it gave “great weight as an aggravating circumstance that the defendant was on probation . . . when the defendant committed the instant felony offense and . . . that at the time of the offense a warrant for a probation violation was outstanding for over a year[.]” (*Id.* at 209.) The trial court acknowledged Lambert’s professed desire to seek treatment and his “strong family support system,” but noted “the support system was in place prior to the defendant’s arrest in this matter and despite prior probation violations and

⁵ Ind. Code § 35-50-2-8.

issues with substance abuse the defendant did not seek any treatment prior to arrest.” (*Id.*) The trial court also determined Lambert’s incarceration would not result in an undue hardship to his ill mother because other family members were available to provide care for her and Lambert’s plea was not significant because he benefitted from dismissed charges. The trial court then sentenced Lambert to a term of sixteen years in the Indiana Department of Correction.

Discussion and Decision

[7] Lambert contends his sentence is inappropriate given the nature of his offense and his character. Our standard of review for such claims is well settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review is deferential to the trial court’s decision, and our goal is to determine whether the appellant’s sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[8] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, “we consider whether there is anything more or less egregious about the offense as committed

by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Indiana Code section 35-50-2-5 provides that a person convicted of a Level 3 felony “shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years.” Thus, the trial court sentenced Lambert to the maximum term for his offense.

[9] Regarding the nature of Lambert’s offense, Lambert asserts that when law enforcement asked him about the backpack found in the living room, he “immediately admitted the backpack containing the methamphetamine was his and took responsibility for its contents.” (Appellant’s Br. at 10.) He also points out that the amount of methamphetamine he possessed was also only slightly over the statutory threshold for a Level 3 felony. *See* Ind. Code § 35-48-4-6.1(d)(2) (“the amount of the drug involved is at least ten (10) but less than twenty-eight (28) grams and an enhancing circumstance applies”). However, Lambert initially hid in the bathroom when community corrections came to Brinkman’s door to conduct a home visit, and he only admitted the backpack was his after the police found him. Moreover, in addition to methamphetamine, Lambert possessed a crystal substance. Detective Nick Beetz of the Lawrenceburg Police Department testified that based on his training and experience he believed the crystal substance was a “cutting

agent[.]”⁶ Detective Beetz also testified that it was rare for a person to have over ten grams of methamphetamine for one’s personal use and Lambert had videos on his phone of him demonstrating how to smoke methamphetamine. Thus, we cannot say the nature of Lambert’s offense warrants a more lenient sentence. *See Skeens v. State*, 191 N.E.3d 916, 924 (Ind. Ct. App. 2022) (holding the defendant’s sentence was not inappropriate in light of the nature of the defendant’s offense when the defendant was uncooperative with law enforcement and possessed paraphernalia, methamphetamine, and large amounts of cash).

[10] Moving to Lambert’s character, one of the factors we evaluate when assessing the appropriateness of a defendant’s sentence is his criminal history. *Williams v. State*, 170 N.E.3d 237, 246 (Ind. Ct. App. 2021) (“When considering the character of the offender, one relevant fact is the defendant’s criminal history.”), *trans. denied*. The significance of a defendant’s criminal history “varies based on the gravity, nature, and number of prior offenses in relation to the current offense.” *Id.* Lambert’s criminal history is extensive, including felony convictions of assault, theft, and battery. Moreover, when he committed

⁶ Detective Beetz explained:

A cutting agent can be added to a pure substance and you can basically double your weight or you can add to your weight. Say, if you have 10 grams of methamphetamine, you can add 10 grams of a substance that looks like methamphetamine and then have 20 grams. It’s meant to dilute the substance, but still push if [sic] forward.

(Tr. Vol. II at 131.)

the instant offense, Lambert was on probation as part of his sentence for battery resulting in serious bodily injury and had an active warrant out for his arrest because of a probation violation. *See Rich v. State*, 890 N.E.2d 44, 54 (Ind. Ct. App. 2008) (holding fact defendant committed the instant offense while on probation reflected poorly on his character), *trans. denied*. As the trial court explained, Lambert’s “criminal history reflects poorly on his character and demonstrates a risk to community safety and a disdain for authority and inability to follow Court orders and the law.” (App. Vol. II at 212.) Therefore, we hold Lambert’s sentence is not inappropriate given his character. *See Frank v. State*, 192 N.E.3d 904, 908 (Ind. Ct. App. 2022) (holding maximum sentence was not inappropriate given the defendant’s criminal history and past failures on community corrections), *trans. denied*.

Conclusion

[11] We conclude Lambert’s sentence is not inappropriate given the nature of his offense and his extensive criminal history. Therefore, we affirm the trial court’s judgment.

[12] Affirmed.

Altice, C.J., and Foley, J., concur.