MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Rachel Jo Wells,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 21, 2023

Court of Appeals Case No.
22A-CR-2695

Appeal from the
Huntington Superior Court

The Honorable
Jennifer E. Newton, Judge

Trial Court Cause No.
35D01-2203-F2-82

Memorandum Decision by Judge Foley
Judges Vaidik and Tavitas concur.

Foley, Judge.

[1] Rachel Jo Wells ("Wells") was convicted after a jury trial of possession of methamphetamine[1] as a Level 3 felony, maintaining a common nuisance[2] as a Level 6 felony, possession of paraphernalia[3] as a Class C misdemeanor, and aiding, inducing, or causing dealing in methamphetamine[4] as a Level 2 felony. She was sentenced to an aggregate sentence of twenty years executed in the Indiana Department of Correction. Wells appeals and raises three issues for our review:

I. Whether her convictions for possession of methamphetamine and aiding, inducing, or causing dealing in methamphetamine violated double jeopardy;

II. Whether the State presented sufficient evidence to support her convictions for Level 3 felony possession of methamphetamine, Level 6 felony maintaining a common nuisance, and Level 2 felony aiding, inducing, or causing dealing in methamphetamine; and

III. Whether her sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm in part, reverse in part, and remand with instructions.

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[1] Ind. Code § 35-48-4-6.1(a), (d)(1).

[2] I.C. § 35-45-1-5(c).

[3] I.C. § 35-48-4-8.3(b)(1).

[4] I.C. § 35-48-4-1.1(a)(2), (e)(1); I.C. § 35-41-2-4.

Facts and Procedural History

[2] On March 11, 2022, Wells messaged her friend, Kara Bryant ("Bryant"), and told her, "[w]e got 250 worth," referring to an amount of money to purchase heroin. Tr. Vol. 2 p. 174; Ex. Vol. 4 p. 35. Bryant responded, "[y]es but no weights," which meant that she had heroin but did not have a scale to weigh out the drugs. Tr. Vol. 2 p. 174; Ex. Vol. 4 p. 36. Wells then messaged Bryant, "[s]ister I need," which was a request for methamphetamine. Tr. Vol. II 175; Ex. Vol. 4 p. 38. Bryant went to Wells's home at approximately 3:00 a.m. and brought with her a bag containing more than 130 grams of methamphetamine. Wells and Bryant went to Wells's bedroom, which was "the only room that [Wells] allowed anything to happen in, and snorted several lines of this methamphetamine,[5] despite the fact that Wells's thirteen-year-old child was in the house.

[3] Bryant asked Wells if Richard Clayton ("Clayton") could come over and purchase methamphetamine, and Wells agreed. Bryant used Wells's Facebook Messenger account to message Clayton and arrange for him to come to Wells's house to obtain the methamphetamine. Clayton came over with Kenneth Moore ("Moore"), and once there, they went to Wells's bedroom where they purchased seven grams of methamphetamine from Bryant and snorted

[5] Bryant testified that she and Wells did "a few hot rails," which she explained was where methamphetamine is "crushed up onto a glass or a plate, put in a line, and you heat up the glass piece and you snort it." Tr. Vol. 2 p. 176.

methamphetamine. While this transaction took place, Wells sat next to Bryant and took approximately one ounce of methamphetamine out of Bryant's bag, split the drugs into two smaller bags, and put the small bags in her bra. After about twenty minutes, Clayton and Moore left Wells's house, and Bryant went to the gas station.

[4] Meanwhile, Huntington City Police Department Officer Jordan Corral ("Officer Corral") was working part-time for the Andrews Police Department and was patrolling the area near Wells's house because it is a high crime area. He noticed Clayton's unfamiliar car parked at Wells's address and ran the license plate, which returned to a different vehicle from the one the plate was displayed on. Therefore, when Clayton left Wells's residence, Officer Corral conducted a traffic stop of Clayton, discovered he had active felony warrants, arrested him, and searched the vehicle. Officer Corral located the approximately seven grams of methamphetamine that Clayton had purchased from Bryant. Clayton told Officer Corral that he had purchased the methamphetamine at Wells's residence, and Officer Corral obtained a search warrant for the residence.

[5] When Bryant returned from the gas station, she observed a police vehicle located about a block away from Wells's residence, which was parked facing the house. Bryant went inside the house and told Wells about the police vehicle, and the two hid the large bag of methamphetamine inside a box of purses and put it in the trunk of Wells's car. Wells took the two smaller bags of

methamphetamine from her bra and hid them in a corn starch container in her kitchen cabinet.

[6] After obtaining the search warrant, officers searched Wells's residence, and they discovered the bag of methamphetamine in the trunk of Wells's vehicle. Bryant and Wells were both detained, read *Miranda* warnings, and interviewed. Wells told officers that Clayton and Moore had been in her home and that they were all in her bedroom so they could smoke. Wells acknowledged that a drug transaction took place in her bedroom. Officers searched Wells's kitchen and discovered three bags of methamphetamine in the corn starch container in a kitchen cabinet. The two small bags that Wells had taken from her bra and hidden contained approximately fourteen grams of methamphetamine each. The third bag found in the corn starch container contained approximately five grams of "reclaim."[6] Tr. Vol. 2 p. 148. Initially, Wells told officers that Clayton or Moore must have placed the methamphetamine in the corn starch container. When officers told Wells that this explanation did not make sense, Wells changed her story and told officers that Bryant placed the drugs in the container. Eventually, Wells admitted that the bag of reclaim in the corn starch container belonged to her.

[7] The State ultimately charged Wells with: (1) Level 2 felony dealing in methamphetamine based on her possession with intent to deliver the thirty-

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[6] Officer Corral testified that "reclaim" is methamphetamine residue that users scrape out of pipes to use again. Tr. Vol. 2 p. 148.

three grams of methamphetamine in the two half-ounce bags from her kitchen; (2) Level 3 felony possession of methamphetamine based on the thirty-three grams in her kitchen; (3) Level 5 felony possession of a narcotic drug; (4) Level 6 felony maintaining a common nuisance; (5) Class C misdemeanor possession of paraphernalia; (6) Level 2 felony conspiracy to commit dealing in methamphetamine; and (7) Level 2 felony aiding, inducing, or causing dealing in methamphetamine based on her actions aiding Bryant in possessing methamphetamine with the intent to deliver.

[8] After a jury trial, the jury found Wells guilty of Level 3 felony possession of methamphetamine, Level 6 felony maintaining a common nuisance, Class C misdemeanor possession of paraphernalia, and Level 2 felony aiding in dealing in methamphetamine. The trial court sentenced Wells to ten years for possession of methamphetamine, one-and-a-half years for maintaining a common nuisance, sixty days for possession of paraphernalia, and twenty years for aiding in dealing in methamphetamine, with all of the sentences to be served concurrently for an aggregate sentence of twenty years executed. The trial court stated that it would consider modification of Wells's sentence upon the successful completion of the Department of Correction's Recovery While Incarcerated substance abuse treatment program. Wells now appeals.

Discussion and Decision

I. Double Jeopardy

[9] Wells argues that her convictions for both Level 3 felony possession of methamphetamine and Level 2 felony aiding in dealing in methamphetamine violate double jeopardy because her possession of methamphetamine conviction is an included offense of aiding in dealing in methamphetamine. Where a single act or transaction implicates multiple statutes, *Wadle v. State*, 151 N.E.3d 227 (Ind. 2020), requires that we engage in a multi-step process to determine whether the convictions comport with double jeopardy principles. *Id*. at 235. The first step is to review the two statutes under which Wells was convicted. If the language of the statutes "clearly permits multiple punishment," then there is no double jeopardy violation. *Id*. at 248. Neither of the statutes at issue expressly authorize multiple punishments for the same criminal act. Nor are they part of a statutory scheme that requires multiple punishments. Because neither statute clearly permits multiple punishment, either expressly or by unmistakable implication, we must move to the next step in the Wadle analysis. *Id*.

[10] We next consider, under Indiana's included offense statutes, whether one charged offense is included in another charged offense. *Id*. (citing Ind. Code § 35-38-1-6; I.C. § 35-31.5-2-168). Under Indiana Code section 35-38-1-6: "Whenever: (1) a defendant is charged with an offense and an included offense in separate counts; and (2) the defendant is found guilty of both counts;

judgment and sentence may not be entered against the defendant for the included offense." An "included offense," is an offense:

> (1) that "is established by proof of the same material elements or less than all the material elements required to establish the commission of the offense charged,"
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> (2) that "consists of an attempt to commit the offense charged or an offense otherwise included therein," or
>
> (3) that "differs from the offense charged only in the respect that a less serious harm or risk of harm to the same person, property, or public interest, or a lesser kind of culpability, is required to establish its commission."

I.C. § 35-31.5-2-168. "If neither offense is included in the other (either inherently or as charged), there is no violation of double jeopardy." *Wadle*, 151 N.E.3d at 253. "But if one offense is included in the other (either inherently or as charged), then the court must examine the facts underlying those offenses, as presented in the charging instrument and as adduced at trial." *Id.* An offense is "inherently included" if it "may be established by proof of the same material elements or less than all the material elements defining the crime charged" or if "the only feature distinguishing the two offenses is that a lesser culpability is required to establish the commission of the lesser offense." *Id.* at 251 n.30 (citation omitted).

[11] Wells contends that Level 3 felony possession of methamphetamine is an inherently included offense of Level 2 felony aiding in dealing in

methamphetamine. Looking to Level 3 felony possession of methamphetamine, the offense is established as charged by proof that Wells knowingly or intentionally possessed methamphetamine and the amount was at least twenty-eight grams. I.C. 35-48-4-6.1(a), (d)(1). Level 2 felony aiding in dealing in methamphetamine is established as charged by proof that Wells knowingly or intentionally aided, induced, or caused Bryant to commit the crime of dealing in methamphetamine. I.C. § 35-48-4-1.1(a)(2), (e)(1); I.C. § 35-41-2-4. Dealing in methamphetamine as a Level 2 felony is established as charged by proof that a person possessed with intent to deliver methamphetamine and the amount involved was at least ten grams. I.C. § 35-48-4-1.1(a)(2), (e)(1). A person who knowingly or intentionally aids, induces, or causes another person to commit an offense commits that offense. I.C. § 35-41-2-4.

[12] Dealing of methamphetamine and possession of methamphetamine are included offenses under subsection (1) of Indiana Code section 35-31.5-2-168. The material elements of possession of methamphetamine—that is, knowing or intentional possession of the drug—are established through proof of the material elements of aiding in dealing in methamphetamine—aiding in the possession with intent to deliver methamphetamine. *See* I.C. § 35-48-4-1.1(a); I.C. § 35-58-4-6.1(a)(2); I.C. § 35-41-2-4. This is true even though Wells was charged with aiding in dealing and not dealing in methamphetamine because "[a] person who knowingly or intentionally aids . . . another person to commit an offense commits that offense." I.C. § 35-41-2-4. Because possession of

methamphetamine is established by proof of the same or less than all the material elements required to establish Level 2 felony aiding in dealing in methamphetamine, we conclude that the two offenses are inherently included under Indiana Code section 35-31.5-2-168.

[13] When one offense is included in the other (either inherently or as charged), we must then look at the facts of the two crimes to determine whether the offenses are the same. *Wadle*, 151 N.E.3d at 248. In this step, we examine the underlying facts to determine whether the defendant's actions were "so compressed in terms of time, place, singleness of purpose, and continuity of action as to constitute a single transaction." *Id*. at 253.

[14] Looking at the facts presented at trial, we conclude that they established a single transaction. Both Wells's possession of methamphetamine and her aiding in dealing in methamphetamine occurred over the span of only a few hours and in Wells's home and involved the same quantity of methamphetamine that Bryant brought to Wells's home. Over a brief period of time, Bryant brought the over 130 grams of methamphetamine to Wells's home, Wells gave Bryant permission to have Clayton come over to her home so that Bryant could give him a cut of the methamphetamine, and Bryant gave Clayton an amount to sell from the larger amount. Wells also removed approximately one ounce of methamphetamine from the larger amount and placed this methamphetamine in two smaller baggies and then placed those baggies in her bra. Shortly thereafter, when it became evident that the police were watching Wells's home, she and Bryant hid the larger amount of methamphetamine in Wells's car

trunk, and Wells hid the drugs from her bra in the kitchen cabinet. We, therefore, conclude that the evidence at trial showed only one criminal transaction. Thus, Wells's multiple punishment—*i.e.*, two convictions and two sentences—violates the prohibition against substantive double jeopardy, and both her convictions for Level 3 felony possession of methamphetamine and Level 2 felony aiding in dealing in methamphetamine cannot stand. We, therefore, reverse Wells's conviction for Level 3 felony possession of methamphetamine and remand with instructions to vacate that conviction. *See id*. at 256 (remanding for the trial court to vacate additional convictions).

II. Sufficient Evidence

[15] Wells argues that insufficient evidence was presented to support her convictions for Level 3 felony possession of methamphetamine, Level 6 felony maintaining a common nuisance, and Level 2 felony aiding in dealing in methamphetamine. However, as we have found that Wells's conviction for Level 3 felony possession of methamphetamine must be vacated, we proceed to only determine if sufficient evidence was presented to support her convictions for Level 6 felony maintaining a common nuisance and Level 2 felony aiding in dealing in methamphetamine. When there is a challenge to the sufficiency of the evidence, "[w]e neither reweigh evidence nor judge witness credibility." *Gibson v. State*, 51 N.E.3d 204, 210 (Ind. 2016), *cert. denied*. Instead, we consider only that evidence most favorable to the judgment together with all reasonable inferences drawn therefrom. *Id*. "We will affirm the judgment if it is supported

by substantial evidence of probative value even if there is some conflict in that evidence." *Id.* (internal quotation marks, ellipses, and brackets omitted). Further, "[w]e will affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Love v. State*, 73 N.E.3d 693, 696 (Ind. 2017).

A. Maintaining a Common Nuisance

[16] Wells argues that her conviction for Level 6 felony maintaining a common nuisance was not supported by sufficient evidence. She asserts that the State did not prove that her home was a common nuisance because the evidence did not show that any criminal activity took place there on any date other than March 11, 2022. In order to convict Wells for maintaining a common nuisance, the State was required to prove that she knowingly or intentionally maintained her house to unlawfully use, manufacture, keep, sell, deliver, or finance the delivery of controlled substances or items of drug paraphernalia. I.C. § 35-45-1-5(c). An offender maintains a site when he exerts control over it. *Gaynor v. State*, 914 N.E.2d 815, 819 (Ind. Ct. App. 2009), *trans. denied*. Our court has previously stated that a location is a common nuisance only if it is one where "continuous or recurrent prohibited activity takes place." *Leatherman v. State*, 101 N.E.3d 879, 884 (Ind. Ct. App. 2018).

[17] Wells relies on *Leatherman* for her assertion that the State's evidence was insufficient to prove that her residence was a common nuisance because there was no evidence presented of any criminal activity outside of the March 11, 2022 date charged in the charging Information. In *Leatherman*, the defendant

was convicted of maintaining a common nuisance for possessing methamphetamine while in his van and delivering a quantity of methamphetamine to another individual. *Id.* at 882. This court held that to prove that a nuisance was a common nuisance, "the State must provide evidence that the vehicle was used on more than one occasion for the unlawful delivery of a controlled substance." *Id.* at 883 (citing *Zuniga v. State,* 815 N.E.2d 197, 200 (Ind. Ct. App. 2004)). Based on the evidence in that case, where the defendant was only proven to possess and deliver methamphetamine in the van on one single occasion, we found that the State failed to present sufficient evidence that the van the defendant was driving had been used on multiple occasions for the delivery of a controlled substance. *Id.* at 884. We do not read *Leatherman* to require that the "more than one occasion" element of the common nuisance statute requires that the occasions occur on more than one calendar day.

[18] Here, the evidence most favorable to the verdict showed that nuisance occurred on more than one occasion. First, Wells maintained her home because she resided there and exerted control over it. Wells's home was used to deliver methamphetamine twice on the same day, once when Bryant delivered methamphetamine to Wells on Wells's request and once when Bryant delivered methamphetamine to Clayton. Wells also did not object to Bryant distributing methamphetamine out of her house or to keeping the large amount of methamphetamine that Bryant brought over in her house and then hiding it in the trunk of her car. Although there may not have been evidence that Wells

allowed methamphetamine to be sold from her home on more than one day, there was sufficient evidence that Wells maintained her home for the recurrent storage and delivery of methamphetamine on more than one occasion, which is sufficient to support her conviction.

[19] The evidence also showed that her home was used on more than one occasion to unlawfully use methamphetamine. On the date in question, Bryant and Wells snorted methamphetamine in Wells's bedroom because that was "the only room in the house that [Wells] allowed anything to happen in" and "the only room in the house that [Wells] allows smoking in." Tr. Vol. II pp. 143, 177. From this evidence the jury could infer that Bryant knew in which rooms of Wells's home drugs could be consumed because she had done so at Wells's house on prior occasions. Although Wells claims that the statement that her bedroom was the only room in which she allowed smoking could refer only to legal tobacco that was smoked in her room, the evidence showed that drug paraphernalia was found in Wells's dresser, and that Wells snorted several lines of methamphetamine in her room with multiple individuals at least twice over the course of one day. When Wells texted Bryant, "[s]ister I need," Bryant knew that she was referring to a request for methamphetamine. *Id*. at 175. Based on the evidence presented at trial, the jury could reasonably infer that methamphetamine, and not merely legal tobacco, was sold, kept, and used in Wells's residence by multiple individuals on a recurring basis and not simply on this isolated occasion.

[20] Citing to *Lovitt v. State*, 915 N.E.2d 1040, 1045 (Ind. Ct. App. 2009), Wells asserts that the evidence of her use of methamphetamine in her home was simply personal consumption and not sufficient to show that she maintained a common nuisance. In *Lovitt*, a panel of this court held that the legislature did not intend for the word "keeping" in the maintaining a common nuisance statute to apply to a defendant who has personal use quantities of a controlled substance on his person or loose in his vehicle. *Id*. Here, however, the evidence showed that Wells maintained her home for the recurrent unlawful use of methamphetamine by multiple individuals. Wells ingested methamphetamine with Bryant in her home often enough that Bryant knew that Wells only ever allowed drug use in her bedroom, and paraphernalia was found in Wells's bedroom dresser drawer. Wells allowed Clayton and Moore, whom she stated she hardly knew, to snort methamphetamine in her home while her son was in the house. Further, Officer Corral testified that he had received multiple anonymous tips that Wells's residence was involved in drug activity. Tr. Vol. 2 pp. 162–63. There was sufficient evidence that Wells used methamphetamine with others and allowed her home to be used for drug activity on more than an isolated or casual incident. We, therefore, conclude that sufficient evidence was presented to support Wells's conviction for Level 6 felony maintaining a common nuisance.

B. Aiding in Dealing in Methamphetamine

[21] Wells also argues that her conviction for Level 2 felony aiding in dealing methamphetamine was not supported by sufficient evidence because the State

relied on the self-serving testimony of Bryant that was contradicted by other testimony. In order to convict Wells of Level 2 felony aiding in dealing methamphetamine, the State was required to prove that she aided Bryant in possessing with the intent to deliver at least ten grams of methamphetamine. I.C. § 35-48-4-1.1(a)(2), (e)(1); I.C. § 35-41-2-4.

[22] A person who knowingly or intentionally aids another person in committing an offense commits that offense. I.C. § 35-41-2-4. "A person engages in conduct 'knowingly' if, when [s]he engages in the conduct, [s]he is aware of a high probability that [s]he is doing so." I.C. § 35-41-2-2(b). "A person engages in conduct 'intentionally' if, when [s]he engages in the conduct, it is h[er] conscious objective to do so." I.C. § 35-41-2-2(a). "When it comes to criminal liability, there is generally no distinction between an accomplice and the person who commits the offense." *Parrish v. State*, 166 N.E.3d 953, 959 (Ind. Ct. App. 2021), *trans. denied*. The particular facts and circumstances of each case must be considered to determine whether a person participated in the offense as an accomplice. *Castillo v. State*, 974 N.E.2d 458, 466 (Ind. 2012). While a defendant's presence at the scene or lack of opposition to a crime, standing alone, is insufficient to establish accomplice liability, courts may consider presence in conjunction with other facts to determine whether one acted as an accomplice to a crime. *Tuggle v. State*, 9 N.E.3d 726, 736 (Ind. Ct. App. 2014), *trans. denied.* The non-exhaustive list of factors relevant to the inquiry include presence at the scene of the crime; companionship with another engaged in a

crime; failure to oppose commission of the crime; and the course of conduct before, during, and after the occurrence of the crime. *Id.*

[23] The evidence most favorable to the verdict showed that Wells provided a place for Bryant to use, sell, deliver, and store methamphetamine. Wells gave Bryant permission to have Clayton come over to her home so that Bryant could give him methamphetamine. Bryant brought a bag to Wells's home that contained approximately 130 grams of methamphetamine and delivered approximately seven grams to Clayton in Wells's bedroom. Wells was present during this transaction and observed Bryant give this methamphetamine to Clayton. Later, when Bryant noticed a police vehicle outside of the residence, she and Wells hid the large bag of methamphetamine in a box of purses, and Wells helped Bryant hide the box in the trunk of Wells's car. Wells aided Bryant in hiding the methamphetamine, to assist Bryant in her continued possession of the drugs which Wells knew that she intended to distribute and sell. Further, Bryant testified that Wells occasionally "[got] rid of" methamphetamine for Bryant and would help her sell it. Tr. Vol. 2 p. 185. This was sufficient evidence to support to establish that Wells aided Bryant in possessing methamphetamine with the intent to deliver it.

[24] Wells contends that Bryant's testimony was self-serving and was later contradicted by Clayton. These assertions are merely requests to reweigh the evidence and judge the credibility of the witnesses, which we do not do. *Gibson*, 51 N.E.3d at 210. We, therefore, conclude that sufficient evidence was

presented to support Wells's conviction for Level 2 felony aiding in dealing methamphetamine.

III. Inappropriate Sentence

[25] Wells next argues that her aggregate twenty-year sentence is inappropriate. Although we have determined that Wells's conviction and sentence for Level 3 felony possession of methamphetamine must be vacated, because her other convictions and sentences for Level 2 felony aiding in dealing in methamphetamine, Level 6 felony maintaining a common nuisance, and Class C misdemeanor possession of paraphernalia still remain and the vacation of her possession of methamphetamine conviction does not alter the aggregate sentence imposed by the trial court, we proceed to engage in an analysis as to whether the remaining sentence is inappropriate. 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).

[26] Our review under Appellate Rule 7(B) focuses on "the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). 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).

[27] 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). In her brief, Wells stated that she is only challenging her sentence for Level 2 felony aiding in dealing in methamphetamine since it was the largest sentence imposed and all of the sentences were ordered to run concurrently. However, "a defendant may not limit our review of his sentence by merely challenging an individual sentence within a single order that includes multiple sentences." *Moyer v. State*, 83 N.E.3d 136, 140 (Ind. Ct. App. 2017) (citing *Webb v. State*, 941 N.E.2d 1082, 1087 (Ind. Ct. App. 2011), *trans. denied*), *trans. denied*. In addition to Level 2 felony aiding in dealing in methamphetamine, Wells was convicted of Level 6 felony maintaining a common nuisance and Class C misdemeanor possession of paraphernalia. Therefore, Indiana law requires our review of Wells's entire sentence, not merely a portion of it.

[28] A Level 2 felony carries a possible sentence of between ten and thirty years with an advisory sentence of seventeen-and-a-half years. I.C. § 35-50-2-4.5. A Level

6 felony carries a possible sentence of between six months and two-and-a-half years with an advisory sentence of one year. I.C. § 35-50-2-7(b). A Class C misdemeanor carries a possible maximum sentence of sixty days. I.C. § 35-50-3-4. Wells faced a maximum sentence of approximately thirty-two and a half years. The trial court sentenced Wells to twenty years for Level 2 felony aiding in dealing in methamphetamine, one-and-a-half years for Level 6 felony maintaining a common nuisance, and sixty days for Class C misdemeanor possession of paraphernalia, with all of the sentences to be served concurrently for an aggregate sentence of twenty years executed.

[29] As to the nature of her offense, Wells asserts that although her dealing conviction "may warrant a heavier sentence due to its potential impact on society" because "drug dealing offenses are typically seen as being egregious," Appellant's Br. pp. 28–29, her conviction did not warrant the sentence given because the record shows that she was only selling drugs to support her drug habit. She also contends that the nature of her offense is not the most egregious because she only assisted Bryant with her dealing activities. To show her sentence is inappropriate, Wells must portray the nature of her offense in a positive light, "such as accompanied by restraint, regard, and lack of brutality." *Stephenson*, 29 N.E.3d at 122.

[30] The nature of Wells's offenses shows that she allowed her residence to be used for the use and dealing of methamphetamine. Bryant permitted drug purchasers, who she barely knew, to enter her home and use methamphetamine, used the drugs herself, and then stored the drugs in her

kitchen and hid Bryant's stash of over 130 grams of methamphetamine in her car trunk, all while some or all of her minor children were present. [7] Although Wells's offenses may not be the most egregious, she did not receive a maximum sentence. Instead, she received slightly elevated sentences for her felony convictions with all of the sentences served concurrently. Further, considering Wells's contention that she only committed the crimes to support her drug habit, this argument is unpersuasive because Wells could have obtained methamphetamine for her personal use without aiding Bryant in dealing to other individuals and without exposing her child to potential danger. Considering the nature of Wells's offenses, we do not find her sentence to be inappropriate in light of the nature of her offenses.

[31] As to her character, Wells argues that she had a very minimal criminal history and is a drug addict who is better suited to treatment rather than incarceration. "A defendant's criminal history is one relevant factor in analyzing character, the significance of which varies based on the 'gravity, nature, and number of prior offenses in relation to the current offense.'" *Smoots v. State*, 172 N.E.3d 1279, 1290 (Ind. Ct App. 2021) (quoting *Rutherford v. State,* 866 N.E.2d 867, 874

[7] There was testimony that Wells had three children and that one of them went to school on the morning of March 11, while her thirteen-year-old stayed home because he was homeschooled. As Bryant first arrived at approximately four in the morning, it can be assumed that both of these children were home at that time. However, it is clear that Wells's thirteen-year-old was present for the entirety of the events of March 11, 2022.

(Ind. Ct. App. 2007)). Even a minor criminal history reflects poorly on a defendant's character for the purposes of sentencing. *Id.*

[32] Looking at Wells's criminal history, it is very minimal and, before the instant offenses, contained only one prior juvenile adjudication. However, approximately four months after she was charged in the present case, Wells was charged with failure to appear as a Level 6 felony. During her presentence investigation, Wells reported using methamphetamine daily, which indicates that despite her minor criminal history, she did not lead a law-abiding life. Additionally, the sentence imposed by the trial court already took into account her minor criminal history as the trial court found that to be a mitigating factor when sentencing her. Tr. Vol. 2 p. 118. Further, although Wells contends that she has a serious drug problem that is better suited for treatment than incarceration, when she was on pretrial release, she tested positive for illicit substances, failed to appear for a hearing, and fled the state. *Id*. at 45, 118. This behavior on pretrial release indicates that Wells is in need of a more restrictive environment. Moreover, in sentencing Wells, the trial court stated that it would consider a modification of Wells's sentence if Wells successfully completed the Recovery While Incarcerated program. Wells's sentence is not inappropriate in light of the nature of the offense and her character.

Conclusion

[33] We conclude that Wells's convictions for possession of methamphetamine and aiding in dealing in methamphetamine violate double jeopardy and, therefore, reverse her conviction for Level 3 possession of methamphetamine and remand

with instructions for the trial court to vacate the conviction. We also conclude that sufficient evidence was presented to support Wells's convictions for Level 6 felony maintaining a common nuisance and Level 2 felony aiding in dealing methamphetamine and that her aggregate twenty-year sentence is not inappropriate in light of the nature of the offense and her character.

[34] Affirmed in part, reversed in part, and remanded.

Vaidik, J., and Tavitas, J., concur.