MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Andrew B. Arnett
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Justin F. Roebel
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Barry Keith Spiker,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 18, 2021

Court of Appeals Case No. 20A-CR-2221

Appeal from the Shelby Superior Court

The Honorable Barbara Arnold Harcourt, Senior Judge

Trial Court Cause No. 73D01-2008-F6-334

Bailey, Judge.

Case Summary

[1] After pleading guilty to Level 6 felony Escape[1] and admitting to having the status of a habitual offender,[2] Barry Keith Spiker ("Spiker") was sentenced to five years in the Department of Correction. Spiker now challenges his sentence.

[2] We affirm.

Facts and Procedural History

[3] In August 2020, the State filed an information alleging that Spiker violated a home-detention order by removing a GPS tracking device. The State later alleged that Spiker had the status of a habitual offender. Spiker eventually waived his right to counsel and admitted to the allegations without a plea agreement. The trial court ordered a presentence investigation report ("PSR"), wherein the recommendation was for a sentence of two years for the Level 6 felony Escape, enhanced by three years, for a total of five years executed.

[4] A sentencing hearing was held on October 21, 2020. At the hearing, Spiker—proceeding *pro se*—stated that he had "read the [PSR]" and "what the probation is recommending is . . . probably a good idea[.]" Tr. at 40. Spiker then noted that he would "like to have a half-way house" and potentially the opportunity to "get some drug rehabilitation[.]" *Id.* Thereafter, the State agreed with the

---

[1] Ind. Code § 35-44.1-3-4.

[2] I.C. § 35-50-2-8.

recommendation set forth in the PSR. The trial court then imposed the recommended sentence, *i.e.*, two years for the Level 6 felony with a three-year enhancement, for a total of five years in the Indiana Department of Correction.

[5] Spiker now appeals.

Discussion and Decision

[6] Spiker first argues that the trial court abused its sentencing discretion. In so arguing, Spiker baldly asserts that the court "did not ever state any potential aggravating or mitigating factors." Br. of Appellant at 8. Spiker mentions potential mitigating factors. However, he does not develop a supporting analysis regarding why the treatment of any factor amounted to an abuse of discretion. Ultimately, although Spiker recites the abuse-of-discretion standard, he does not analyze the types of sentencing deficiencies he alleges. Under these circumstances, we agree with the State that Spiker has waived his claim of an abuse of sentencing discretion. *See* Ind. Appellate Rule 46(A)(8)(a) (requiring that the argument section "contain the contentions of the appellant on the issues presented, supported by cogent reasoning" as well as "citations to the authorities . . . relied on"); *see also, e.g.*, *Griffith v. State*, 59 N.E.3d 947, 958 n.5 (Ind. 2016) (identifying waiver for the failure to provide cogent reasoning).

[7] In addition to alleging an abuse of sentencing discretion, Spiker asks that we independently review his sentence under Appellate Rule 7(B). Under this rule, we "may revise a sentence authorized by statute if, after due consideration of

the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B). The principal role of our review is to "attempt to leaven the outliers . . . not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). We will revise the sentence only if there is "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). Moreover, "it is the defendant's burden to persuade us that a sentence is inappropriate." *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021).

[8] Here, Spiker received two years for the Level 6 felony as well as a three-year sentence enhancement, for a total sentence of five years in the Department of Correction. This sentence was within the range permitted by statute. That is, a Level 6 felony carries a sentencing range of six months to two and one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). Moreover, the enhancement requires an additional two to six years. I.C. § 35-50-2-8(i).

[9] As to the nature of the offense, Spiker cut off his GPS tracking device and left his residence. When interviewed in connection with the PSR, Spiker said that his decision to cut off the device was related to his mental illness. That is, Spiker stated that he heard voices and feared "people were out to get him," so he cut off the device and sought treatment. App. Vol. 2 at 26. Although there is evidence that Spiker has bipolar disorder, there is no documentation showing

that Spiker actually obtained treatment after his escape. Moreover, by Spiker's own account, after he completed treatment, he went to his sister's house and began working; he did not notify the police of his whereabouts for two weeks.

[10] On appeal, Spiker argues that "[t]his was not a crime of violence or even a crime related to his substance abuse issues." Br. of Appellant at 10. That is true. Nonetheless, having reviewed the record, we ultimately discern nothing compelling about the nature of the offense that warrants revising the sentence.

[11] Turning to the character of the offender, Spiker directs us to evidence indicating that he struggles with substance abuse and has severe mental-health issues. Spiker points out that he "maintained a desire for drug treatment," which Spiker contends is evidence that he "acknowledges his flaws and seeks help in trying to correct them." *Id.* As to mental health, the State asserts that Spiker "repeatedly told the trial court that his issues can be controlled with proper medication" and that he "provided no explanation for why [his] delusions were not prevented by medication." Br. of Appellee at 14. The State also observes that Spiker reported that he tested positive for heroin and methamphetamine after his escape, which "indicates he was undermining the medication's efficacy with substance abuse." *Id.* The State ultimately argues that Spiker's "mental illness does not require a shorter sentence because its effects could have been controlled through medication and avoiding illegal substances." *Id.* at 14-15.

[12] As to Spiker's character, we note that he has a lengthy criminal history, including felony convictions for Incest, Battery Resulting in the Bodily Injury of

a Law Enforcement Officer, and Dealing in Methamphetamine. He also has misdemeanor convictions for, *inter alia*, Check Deception and Resisting Law Enforcement. Moreover, he previously violated the conditions of probation.

[13] All in all, the record does not disclose compelling evidence that would support revising the sentence under Appellate Rule 7(B).

[14] Affirmed.

May, J., and Robb, J., concur.