MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Deven G. Frisque,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 30, 2022

Court of Appeals Case No. 21A-CR-1963

Appeal from the Jefferson Circuit Court

The Honorable Donald J. Mote, Judge

The Honorable Richard G. Striegel, Senior Judge

Trial Court Cause No. 39C01-1809-F1-984

Altice, Judge.

Case Summary

[1] Following a jury trial, Deven Frisque was convicted of Level 1 felony neglect of a dependent resulting in death. He appeals raising the following restated issues:

> I. Did the trial court abuse its discretion when it permitted the pathologist who performed the autopsy to testify as an expert witness pursuant to Indiana Evidence Rule 702 regarding the child's cause of death?
>
> II. Did the trial court rely upon improper aggravators, and thereby abuse its discretion, when sentencing Frisque?
>
> III. Is Frisque's forty-year sentence inappropriate in light of the nature of the offense and his character?

[2] We affirm.

Facts & Procedural History

[3] In July 2018, thirty-one-year-old Frisque and his girlfriend, Tara Savage, were living in an apartment with their three-month-old son, E.F., and Tara's six-year-old daughter, M.S. On July 15, police responded to Frisque's residence around 2:20 p.m. on a report of an unresponsive infant. City of Madison Police Department Officer Josh Nolan arrived and saw multiple people standing outside, including Frisque. Officer Nolan entered the apartment and observed a baby, later determined to be E.F., lying in the corner of the sectional sofa. E.F. was stiff and cool to the touch and purple around the face. Officer Nolan moved E.F. to the floor and began CPR although he observed "indicators that

the baby . . . had been deceased for some hours." *Transcript Vol. 2* at 57. Another officer, who was a registered nurse, arrived and took over CPR, and it was "immediately apparent" to him that the child was deceased. *Id*. at 67. The Jefferson County coroner arranged for Dr. Thomas Sozio, a board-certified forensic pathologist, to perform an autopsy.

[4] Frisque gave a statement to Indiana State Police Detective Peter Tressler at the scene. Frisque told the detective that he and Tara had slept on the sectional sofa and were awakened around 2:20 p.m. when a friend knocked on their front door. He said that it was then that Tara discovered that E.F., who also had slept on the sectional, was unresponsive, and Frisque ran to a neighbor's home to call 911. Detective Tressler asked Frisque about his and Tara's activities in the time period before E.F. was found deceased, and Frisque replied that he and Tara had been up during the night watching television together, and E.F. was with them on the sectional. Frisque said that, around 5:00 a.m., he consumed a dose of his prescribed Suboxone, which "puts [him] to sleep" and "knocked [him] out cold turkey." *State's Exhibit 26*. Frisque told Detective Tressler that, before falling asleep, he saw Tara, on the sofa, feeding E.F. with a bottle. When the detective asked Frisque why E.F. slept on the sectional sofa that night, Frisque replied that E.F. had "pissed" in his crib or bassinette a few days prior and no one had had a chance to clean it. *Transcript Vol. 3* at 16.

[5] Frisque consented to a drug test, acknowledging to Detective Tressler that he would probably "piss dirty," and was transported to the hospital to obtain a blood sample. *Transcript Vol. 2*. at 181. Frisque tested positive for

methamphetamine, amphetamine, and marijuana. Tara also tested positive for methamphetamine and amphetamine. Officers conducted a search of the apartment and found no evidence of drugs or drug paraphernalia. A crime scene investigator observed that there was a "pumpkin seat" and a bouncy seat in the living room and a crib upstairs. *Id*. at 177.

[6] On July 17, 2018, Dr. Sozio performed an autopsy. As part of the process, he spoke to investigating officers and reviewed photographs taken at the scene. He also reviewed x-rays and medical records and had toxicology tests performed. In his physical examination of E.F., Dr. Sozio found no signs of trauma, congenital defect, disease, or dehydration. The toxicology results came back positive for methamphetamine and its metabolite amphetamine. Dr. Sozio considered but ruled out sudden unexplained infant death (SUID) and positional asphyxiation as causes of death, concluding that E.F.'s cause of death was "acute methamphetamine ingestion." *Appellant's Appendix Vol. II* at 75.

[7] Following the toxicology results and the finalized autopsy report, Detective Tressler interviewed Frisque a second time on August 14, 2018. Frisque stated that he had relapsed on methamphetamine "the night before" E.F. was found deceased. *State's Exhibit 29.* When the detective asked how Frisque obtained the methamphetamine, Frisque responded that on July 14 he went and met "a dope man" who "gave" it to him and that he consumed all that he had. *Id*. When Detective Tressler informed Frisque that E.F. had tested positive for methamphetamine, Frisque indicated that he had no idea how E.F. would have

gotten methamphetamine in his system. Frisque maintained that his only methods of consuming methamphetamine were to snort it or eat it, stating "I don't smoke meth" and "I don't shoot up meth." *Id*.

[8] On September 24, 2018, the State charged Frisque with Level 1 felony neglect of a dependent resulting in death, alleging that on or about July 14-16, 2018, Frisque knowingly or intentionally "place[d] the dependent in a situation that endangered the dependent's life or health which result[ed] in the dependent's death[.]"[1] *Appellant's Appendix Vol. II* at 28. On June 1, 2021, Frisque filed several motions in limine, including a motion seeking to prevent Dr. Sozio from testifying as an expert witness as to E.F.'s cause of death pursuant to Evid. R. 702.

[9] At a hearing, Frisque argued that, while Dr. Sozio utilized an accepted methodology of "differential diagnosis etiology," which eliminates causes of death, Dr. Sozio's cause of death determination of "acute methamphetamine ingestion" was not scientifically reliable because there is no scientific agreement on what a fatally toxic level of methamphetamine is in an infant. *Transcript Vol. 2* at 14. Frisque emphasized that the lack of data is particularly important here, where Dr. Sozio acknowledged that the only factor that distinguished E.F.'s death from being considered SUID was the presence of the methamphetamine. The State, in turn, maintained that Dr. Sozio was clearly an expert, that he

[1] The State later requested and received permission to add charges of Level 5 felony conspiracy to deal methamphetamine and Level 6 felony neglect of a dependent. Those two counts were dismissed prior to trial.

followed a recognized methodology, and that the defense would have the opportunity at trial to cross-examine the doctor on his conclusion. *Id*. at 16. At the conclusion of the hearing, the trial court denied the motion in limine as to Dr. Sozio's testimony.

[10] A jury trial was held on June 7-10, 2021. At trial, Frisque reasserted his objection to Dr. Sozio's opinion testimony, which the court overruled. Dr. Sozio testified that he observed petechiae – "small pinpoint burst little vessel" spots – on the thymus and heart that he explained could "occur with lots of different types of causes of death" including asphyxiation. *Id*. at 117-18. Dr. Sozio testified that a blood sample taken during the autopsy tested positive for 11 nanograms per milliliter of methamphetamine and 5.1 nanograms per milliliter of amphetamine, which is the metabolite for methamphetamine. He acknowledged this is a relatively low dose of methamphetamine and that Molina's Handbook of Forensic Toxicology for Medical Examiners, a recognized forensic pathology treatise, provides that the lethal level for methamphetamine is generally 100 nanograms, but also observed that that there are no studies addressing lethal levels for a three-month-old child. The following exchange occurred:

> Q: What effect, if any, would methamphetamine have on an infant the size, weight, and health as baby [E.F.]?
>
> A: It can cause death. It can speed up your heart, make it -- called tachycardia. It can cause seizures. It can cause your body to become too warm and suffer from hypothermia, raise your blood pressure to really high levels that can result in death.

Id. at 119-20. Dr. Sozio explained that someone with no methamphetamine tolerance would be more likely to overdose and that there is "no safe amount of methamphetamine in … [a] child, especially a child who's smaller." *Id*. at 122.

[11] Dr. Sozio acknowledged that one possible cause of death was positional asphyxia – where the body cannot get enough oxygen due to its position – and another was SUID. He stated that the toxicology report "takes [SUID] off the table" because SUID applies when a death is unexplained – "Basically, it's a negative autopsy and scene investigation, negative toxicology" – and here, an explanation existed. *Id*. at 156-57. Dr. Sozio also acknowledged that, although he did not "totally" eliminate positional asphyxiation as a cause of death, he had definitive proof of methamphetamine ingestion and that the differential diagnosis methodology he followed required him to "narrow it down to the best most likely cause of death." *Id*. at 141, 142. Using that methodology, Dr. Sozio ultimately determined to "a reasonable degree of medical certainty" that the cause of death was "acute methamphetamine intoxication." *Id*. at 122. Dr. Sozio was unable to provide an opinion as to how the methamphetamine was ingested but stated that "[t]here's lots of different ways that [methamphetamine] can be ingested," such as, "you can breathe it in. It can go through your skin and your nose and things like that." *Id*. at 120.

[12] The defense presented the testimony of Sheila Arnold, a forensic toxicologist with the Indiana State Department of Toxicology. She testified that methamphetamine can be a prescribed drug, "basically as a last resort . . . for depression or for weight loss," and that the accepted therapeutic range is a

blood concentration of 6 to 36 nanograms per milliliter of blood. *Id*. at 224. She acknowledged that the noted "therapeutic range" applied to adults, and there were no studies or research as to therapeutic effects of methamphetamine for infants. She also testified that ten nanograms per milliliter of methamphetamine in the blood was the "cut off" such that less than that would be a presumptive negative test. *Id*. at 231. When asked if 11 nanograms per milliliter is generally considered to be a lethal level for methamphetamine, Arnold indicated that it depends, in part, on the person's history of use. She also conceded that there is no known "safe amount" for a three-month-old baby and, "it's really hard to determine what it would take to be a lethal dose for a three-month old baby, just because we don't have scientific data." *Id*. at 239, 244.

[13] Frisque testified on his own behalf, describing that on July 14 he dropped off E.F. at a neighbor's home around 2:00 p.m., while Tara was at work, and went to a location and snorted methamphetamine. He said that he returned home for several hours then picked up E.F. around 8:00 p.m. Frisque testified that, by that time, he was no longer under the effect of the drug. Frisque maintained that he never used methamphetamine in E.F.'s presence and had never been under the influence of methamphetamine when caring for E.F.

[14] Frisque described that Tara was "extremely sick" when she got home from work at 1:00 a.m. but was feeling better "a couple hours later." *Transcript Vol. 3* at 3, 4. He said that he then made Tara a plate of food and gave E.F. a bath, and from 3:30-4:30 a.m. he and Tara watched television. Frisque testified that

he fell asleep around 5:00 a.m. on the sofa, after taking a dose of Suboxone, noting he usually took a partial dose unless there was another adult present to take care of E.F. He said that his last recollection was "Tara saying she was going to . . . go fix a bottle" for E.F. *Id*. at 6. Frisque said that when he awoke to a knock at the door, he was still in the same position as when he fell asleep and that Tara had found E.F. unresponsive. Frisque stated that he first learned that E.F. tested positive for methamphetamine when Detective Tressler told him about the toxicology report, and he denied having any knowledge as to how E.F. would have been exposed to methamphetamine. Frisque acknowledged that because of his "drug use" and being "under the influence," he did not hear E.F. crying and did not attend to any medical need that E.F. may have had. *Id*. at 13.

[15] After the jury found Frisque guilty of neglect of a dependent causing death, the trial court held a sentencing hearing on August 3, 2021. Frisque, his sister, and a family friend testified for the defense. Evidence was presented that Frisque had a tenth-grade education, had a somewhat dysfunctional upbringing, and was unemployed for five months prior to the current offense. Frisque acknowledged that he had a criminal history and was on probation for burglary at the time of the current offense.

[16] The State presented the testimony of DCS family case manager (FCM) Emily Goins. FCM Goins stated that she was called to the scene at around 7:00 p.m. and she described Frisque's demeanor: "Honestly, he appeared irritated that he had to answer more questions. He appeared to be unaffected by the situation."

Id. at 124. She began to interview Frisque around 8:40 p.m. but "[Frisque] ended the interview . . . to eat his Taco Bell" that a friend or family member had brought to him. *Id*. at 130. FCM Goins located M.S. at a neighbor's home and took her to the Child Advocacy Center (CAC) where an interview was conducted.

[17] Counsel for Frisque asked the court to impose the advisory thirty-year sentence, arguing that several mitigators existed: the circumstances were unlikely to reoccur, Frisque had a history of substance abuse, and E.F. was in the care and control of Tara – not Frisque – when last seen alive.

[18] The State asked the court to impose a forty-year executed sentence, arguing that a number of aggravators existed. The State addressed Frisque's history of criminal behavior that included one misdemeanor and four felony convictions and noted that he was on probation at the time he committed the current offense. The State also argued that the nature and circumstances warranted an aggravated sentence, noting that (1) six-year-old M.S. was left unattended until 2:00 p.m. and that in her CAC interview she indicated that she found E.F. looking purple and on the sofa but did not wake her mother or Frisque; (2) Frisque exhibited a lack of remorse at the scene; and (3) E.F. was three months old and died of methamphetamine ingestion. The State asked the court to reject the proposition that Frisque's substance abuse was a mitigating factor.

[19] In imposing the sentence, the trial court found no mitigating circumstances and found the existence of the following aggravators: Frisque had a "significant"

history of criminal behavior that included "very serious" convictions; the victim was less than twelve years of age; Frisque was in a position of having the care, custody, and control of the victim; and the infant victim was found with methamphetamine in his system, which the court opined "was particularly frightening" and "one of the saddest things I've heard as a judge in 41 years[.]" *Id*. at 146, 147. The trial court sentenced Frisque to forty years in the Indiana Department of Correction. He now appeals.

Discussion & Decision

I. Evid. R 702

[20] Frisque asserts that Dr. Sozio's opinion regarding the cause of death did not comport with Evid. R. 702 and should have been excluded. "A trial court's determination regarding the admissibility of expert testimony under Rule 702 is a matter within its broad discretion and will be reversed only for abuse of that discretion." *Bennett v. Richmond*, 960 N.E.2d 782, 786 (Ind. 2012) (quotation omitted). We presume that the trial court's decision is correct, and the burden is on the party challenging the decision to persuade us that the trial court has abused its discretion. *Id*.

[21] Evid. R. 702 provides:

> (a) If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

> (b) Expert scientific testimony is admissible only if the court is satisfied that the scientific principles upon which the expert testimony rests are reliable.

The rule "assigns to the trial court a gatekeeping function of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand." *Bennett*, 960 N.E.2d at 786; *Lytle v. Ford Motor Co.*, 814 N.E.2d 301, 309 (Ind. Ct. App. 2004), *trans. denied*.

[22] Frisque claims that, under Evid. R. 702(b), Dr. Sozio's testimony was not based upon reliable scientific principles.[2] In determining whether an expert's testimony is scientifically reliable, the trial court must make a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and whether that reasoning or methodology properly can be applied to the facts in issue. *Person v. Shipley*, 962 N.E.2d 1192, 1196 (Ind. 2012). Once the admissibility of the expert's opinion is established under Rule 702, "then the accuracy, consistency, and credibility of the expert's opinions may properly be left to vigorous cross-examination, presentation of contrary evidence, argument of counsel, and resolution by the trier of fact." *Bennett*, 960 N.E.2d at 786-87.

[23] Frisque's argument focuses on the differential etiology methodology that Dr. Sozio used in forming his opinion and claims that Dr. Sozio "did not properly follow" it. *Appellant's Brief* at 15. Our court has explained that methodology:

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[2] Frisque does not challenge Dr. Sozio's qualifications under Evid. R. 702(a).

> [I]n a differential etiology, the doctor rules in all the potential causes of a patient's ailment and then, by systematically ruling out causes that would not apply to the patient, the physician arrives at what is the likely cause of the ailment or death. There is nothing controversial about that methodology. The question [of] whether it is reliable is made [on] a case-by-case basis, focused on which potential causes should be ruled in and which should be ruled out. In essence, admissible expert testimony need not rule out all alternative causes, *but where a defendant points to a plausible alternative cause and the doctor offers no explanation for why he or she has concluded that it was not the sole cause, that doctor's methodology is unreliable*.

Carter v. Robinson, 977 N.E.2d 448, 453 (Ind. Ct. App. 2012), *trans. denied* (emphasis added) (cleaned up).

[24] Here, Frisque argues that there was "a plausible alternative cause," namely SUID, and that Dr. Sozio's explanation for rejecting SUID, i.e., the existence of methamphetamine in E.F.'s system, was unreliable due to the fact that it is unknown within the scientific community as to what level of methamphetamine is lethal to an infant. That is, Frisque asserts that Dr. Sozio's determination – ruling out SUID and determining that acute methamphetamine ingestion was the cause of E.F.'s death – was speculative and unreliable and should not have been admitted. We disagree.

[25] Dr. Sozio used an accepted methodology and provided an explanation as to how and why he ruled out possible alternative causes. While Frisque argues that Dr. Sozio "offered no scientific explanation" as to why SUID was not the sole cause of death, the inquiry under *Carter* is not whether the doctor provides

a scientific explanation, but whether "the doctor offers no explanation for why he or she has concluded that it was not the sole cause[.]" 977 N.E.2d at 453. Here, Dr. Sozio stated that SUID – by its very definition – only applies when a death is "unexplained" and, in this case, "the toxicology [results] takes [SUID] off the table." *Transcript Vol. 2* at 158. Dr. Sozio testified that the effects of methamphetamine such as tachycardia, seizures, hypothermia, and high blood pressure could cause death and stated that lower amounts can cause overdoses in people without tolerance to the drug. He concluded with "a reasonable degree of medical certainty" that the cause of death was acute methamphetamine ingestion. *Id*. at 139. This evidence was properly admitted and was subject to challenge through cross-examination or contrary evidence.

[26] Both Dr. Sozio and toxicologist Arnold testified that there is no safe level of methamphetamine in an infant. Further, through able and vigorous cross-examination, the jury was presented with evidence that Dr. Sozio most likely would have found that E.F.'s death was a SUID but for E.F.s' toxicology results, which showed a methamphetamine level near the cutoff for a negative test, within therapeutic range for an adult, and far below what studies have shown to be the lethal level for an adult. Thus, the jury could evaluate any weaknesses in Dr. Sozio's conclusion. We find no reversible error in the admission of Dr. Sozio's expert opinion testimony under Evid. R. 702 as to E.F.'s cause of death.

II. Abuse of Discretion in Sentencing

[27] Frisque asserts that the trial court abused its discretion when sentencing him. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. "An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*. When reviewing the aggravating and mitigating circumstances identified by the trial court in its sentencing statement, we will remand only if "the record does not support the reasons, or the sentencing statement omits reasons that are clearly supported by the record, and advanced for consideration, or the reasons given are improper as a matter of law." *Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*. We review the court's finding of aggravators and mitigators to justify a sentence, but we cannot review the relative weight assigned to those factors. *Id*.

[28] Here, the trial court identified four aggravators and no mitigators. Frisque argues that two of the four should not have been considered as aggravating factors – namely: "[t]he child was only three months and a few days old at the time of this offense" and Frisque "was in a position of having care and control over the child" – because those were material elements of the offense. *Appellant's Appendix Vol. III* at 111.

[29] This court has recognized that, while a trial court may not find a sentencing aggravator based solely on an element of the crime, the court can consider the particularized circumstances of the crime, and Indiana courts have affirmed a trial court's finding of aggravators involving the young age of the child a violation of a position of trust where particularized circumstances warrant it. *See e.g.*, *Gober v. State*, 163 N.E.3d 347, 356 (Ind. Ct. App. 2021) (finding no error in trial court's consideration of child victims' ages of two, four, and six as an aggravator and observing that the children "were much younger than the threshold requirement" of the neglect of a dependent statute), *trans. denied*; *Robinson v. State*, 894 N.E.2d 1038, 1043 (Ind. Ct. App. 2008) (affirming violation of trust as aggravator and noting that trial court "did not merely rely on an element of the crime" but considered particularized circumstances where defendant was in position of care over a newborn who was "more vulnerable than other potential victims protected by the neglect of a dependent statute"). We find that, in this case, the trial court's consideration of these particularized circumstances was not an abuse of discretion.

[30] Further, even if the court should not have considered the two challenged circumstances as aggravators, our courts have recognized that "a single aggravating circumstance may be sufficient to enhance a sentence" and "when a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld." *Baumholser*, 62 N.E.3d at 417. The question we must decide is whether we are confident the

trial court would have imposed the same sentence even if it had not found the improper aggravator. *Id*.

[31] In the present case, the trial court found that Frisque's criminal history was "significant" and included "very serious" convictions and that Frisque's three-month-old had methamphetamine in his system. *Transcript Vol. 3* at 146. Frisque does not claim that these are improper aggravators. We are confident that the trial court would have imposed the same sentence even without the two challenged aggravating factors. Accordingly, we find no abuse of discretion in the trial court's sentencing of Frisque. *See Edrington v. State*, 909 N.E.2d 1093, 1101 (Ind. Ct. App. 2009) (affirming sentence where appellate court was confident that trial court would have imposed the same sentence even if it had not considered an improper aggravator), *trans. denied*.

III. Inappropriate Sentence

[32] Frisque also contends that his sentence is inappropriate. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana's flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and 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). Our role is to "leaven the outliers," which means we exercise our authority in "exceptional cases." *Faith v. State,* 131 N.E.3d 158, 160 (Ind. 2019). Frisque bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[33] When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Baumholser*, 62 N.E.3d at 418. Frisque was convicted of a Level 1 felony, the sentencing range for which is twenty to forty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. Here, the court sentenced Frisque to a maximum forty-year executed sentence. Frisque urges that the maximum sentence was inappropriate and seeks a reduced sentence.

[34] When reviewing the nature of the offense we look to the details and circumstances of the offense and the defendant's participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, Frisque offers that "[w]hile any case involving a child death is necessarily tragic, . . . the circumstances surrounding his neglect are not the most egregious" as to warrant a fully executed, maximum sentence. *Appellant's Brief* at 23. He emphasizes that E.F.'s autopsy showed no signs of trauma or abuse and that he was otherwise healthy, indicating that his death was not the result of long-term neglect. Frisque notes that he was the one who called 911 and that he was cooperative at the scene, voluntarily giving a statement and submitting to an oral drug screen, and continued to be cooperative, later again speaking with

Detective Tressler after the autopsy results. We are not persuaded, however, that the nature of the offense warrants revision of his sentence.

[35] Frisque consumed methamphetamine while Tara was at work and he was to be caring for E.F. He consumed a full dose of Suboxone and left E.F. in Tara's care, although he testified that she was sick after getting home from work, and subsequent toxicology results reflected that she too had methamphetamine in her system. At some point while Frisque slept into the afternoon, E.F. died. Only three months old, and unable to roll over, he was put to sleep on a sectional sofa, with a pillow and blanket(s) near him, as well as two adults on the sofa. At around 2:20 p.m., both parents were awakened by a knock at the door. E.F. was purple and had been deceased for some time. He had methamphetamine and its metabolite in his system. Frisque has failed to establish that the nature of the offense, which the trial court found "particularly frightening" and "one of the saddest things" that the trial judge had heard in forty-one years, warrants reduction of his sentence. *Transcript Vol. 3* at 147.

[36] We conduct our review of a defendant's character by engaging in a broad consideration of his or her qualities. *Madden*, 162 N.E.3d at 564. Character is found in what we learn of the offender's life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). Criminal history is one relevant factor in analyzing character. *Madden*, 162 N.E.3d at 564.

[37] The record before us reflects that Frisque has convictions for battery in 2008, Class D felony possession of a controlled substance in 2009, Level 6 felony

strangulation in 2016, and Level 5 felony burglary in 2017. He violated his probation in 2016 and was on probation when he committed the current offense. We agree with the trial court that this criminal history is "significant." *Transcript Vol. 3* at 146.

[38] While the record reflects that Frisque has struggled with substance abuse for years and has had prior opportunities to address his drug problem, he has never successfully completed a program. FCM Goins, who responded to the scene, described Frisque's demeanor as "irritated that he had to answer more questions" and generally "unaffected by the situation." *Transcript Vol. 3* at 124. On the record before us, we are unpersuaded that Frisque's character warrants revision of his sentence.

[39] Ultimately, we "do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is inappropriate." *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018). Frisque has failed to carry his burden of establishing that his sentence is inappropriate.

[40] Judgment affirmed.

Vaidik, J. and Crone, J., concur.