

## MEMORANDUM DECISION

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### ATTORNEY FOR APPELLANT

Jennifer A. Joas  
Madison, Indiana

### ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General  
J.T. Whitehead  
Deputy Attorney General  
Indianapolis, Indiana

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## IN THE COURT OF APPEALS OF INDIANA

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Jeremiah J. McIntosh,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

June 15, 2023

Court of Appeals Case No.  
23A-CR-95

Appeal from the  
Ripley Circuit Court

The Honorable  
Jeffrey Sharp, Special Judge

Trial Court Cause No.  
69C01-2205-F2-1

**Memorandum Decision by Judge Vaidik**  
Judges Tavitas and Foley concur.

**Vaidik, Judge.**

## Case Summary

- [1] Jeremiah J. McIntosh pled guilty to Level 2 felony dealing in methamphetamine and was sentenced to twenty-five years. McIntosh now appeals his sentence, arguing the trial court erred in identifying an aggravator and that his sentence is inappropriate. We affirm.

## Facts and Procedural History

- [2] In July 2021, the Versailles Police Department received a complaint of suspicious activity in a car at a store's parking lot. Police obtained a search warrant for the car, which belonged to McIntosh. Inside the car, police found 52.72 grams of methamphetamine, syringes, and a small amount of marijuana.
- [3] The State charged McIntosh with Level 2 felony dealing in methamphetamine (at least ten grams), Level 6 felony unlawful possession of a syringe, and Class B misdemeanor possession of marijuana. The State also alleged that McIntosh is a habitual offender. Thereafter, McIntosh and the State entered into a plea agreement under which McIntosh agreed to plead guilty to Level 2 felony dealing in methamphetamine and the State agreed to dismiss the remaining counts. McIntosh's sentence was left to the discretion of the trial court.
- [4] At the sentencing hearing, evidence was presented that McIntosh was on parole at the time of the offense and had been released from prison two months before.

Evidence was also presented that McIntosh’s criminal history spans three decades and includes twenty-three convictions in both Indiana and Florida. Specifically, McIntosh has thirteen felony convictions, including voluntary manslaughter, burglary, and robbery, and ten misdemeanor convictions. In addition, he has violated probation nine times.

[5] The trial court found five aggravators: (1) McIntosh has a “significant” criminal history; (2) he committed this offense while he was on parole; (3) he possessed 52.72 grams of methamphetamine, which went “far beyond what is necessary to prove the elements of the current offense”; (4) McIntosh’s character is poor, as his “actions indicate a complete disregard for the rule of law”; and (5) he is likely to reoffend based on his criminal history and “as indicated” by his Indiana Risk Assessment System score. Appellant’s App. Vol. II p. 31. The court found three mitigators: (1) McIntosh’s substance abuse has “negatively impacted” his life; (2) he pled guilty and took responsibility for his actions; and (3) he apologized to his family and expressed remorse. *Id.* at 51-52. Finding the aggravators to “significantly” outweigh the mitigators, the court sentenced McIntosh to an above-advisory term of twenty-five years. *Id.* at 53.

[6] McIntosh now appeals.

## Discussion and Decision

## I. Aggravator

- [7] McIntosh first argues the trial court found his Indiana Risk Assessment System score to be an aggravator and that this was improper. As McIntosh points out, “offender recidivism risk assessment instruments do not function as aggravating or mitigating circumstances for the purpose of determining the length of the sentence appropriate for each defendant.” *J.S. v. State*, 928 N.E.2d 576, 578 (Ind. 2010). But while an offender’s risk-assessment score cannot be a stand-alone aggravator, it “may be considered to ‘supplement and enhance a judge’s evaluation, weighing, and application of the other sentencing evidence in the formulation of an individualized sentencing program appropriate for each defendant.’” *Id.* (quoting *Malenchik v. State*, 928 N.E.2d 564, 573 (Ind. 2010)).
- [8] That is exactly what happened here. The court found that McIntosh was likely to reoffend based on his criminal history and simply noted that his assessment score supports that finding:

The Court finds that based on Defendant’s prior criminal history, Defendant is a high likelihood to re-offend. The Defendant’s Indiana Risk Assessment score as indicated in the Pre-Sentence Investigation Report further supports this finding. The Court finds this to be an aggravating factor.

Appellant’s App. Vol. II p. 50. The court did not err in using McIntosh’s risk-assessment score to support the aggravator that he is likely to reoffend.

## II. Indiana Appellate Rule 7(B)

[9] McIntosh next argues his sentence is inappropriate and asks us to reduce it under Indiana Appellate Rule 7(B), which provides that an appellate court “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.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019).

“Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[10] The sentencing range for a Level 2 felony is ten to thirty years, with an advisory sentence of seventeen-and-a-half years. Ind. Code § 35-50-2-4.5. Here, the trial court imposed an above-advisory sentence of twenty-five years.

[11] McIntosh points out that the nature of his offense “was not so egregious as to deserve a sentence a mere five (5) years shy of the maximum sentence” because “nobody was hurt during this interaction with officers and there was no violence or property destruction.” Appellant’s Br. p. 13. While this is true,

McIntosh possessed 52.72 grams of methamphetamine, which is over five times the minimum required for a Level 2 felony. *See* I.C. § 35-48-4-1.1(e)(1).

[12] McIntosh’s character alone, however, supports his sentence. McIntosh points to his remorse and substance-abuse issues. But these are eclipsed by his extensive criminal history. He has thirteen felony convictions, ten misdemeanor convictions, and nine probation violations. At the time of the offense, McIntosh, who has spent “most of his adult life in prison,” was on parole and had been out of prison for only two months. Tr. p. 49. McIntosh has failed to persuade us that his twenty-five-year sentence is inappropriate.

[13] Affirmed.

Tavitas, J., and Foley, J., concur.