

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Theodore J. Minch
Sovich Minch, LLP
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Catherine E. Brizzi
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Emily Heath,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 19, 2022

Court of Appeals Case No.
22A-CR-499

Appeal from the
Shelby Circuit Court

The Honorable
Trent Meltzer, Judge

Trial Court Cause No.
73C01-1911-F2-15

Vaidik, Judge.

Case Summary

- [1] Emily Heath pled guilty to Level 3 felony possession of methamphetamine and being a habitual offender, and the trial court sentenced her to seventeen years in prison. She now appeals, arguing her sentence is inappropriate. We disagree and affirm.

Facts and Procedural History

- [2] In 2019, Heath was the target of a dealing investigation in Shelbyville. That fall, confidential informants purchased methamphetamine from Heath four times. After obtaining a search warrant, police searched Heath's home on November 4. They found several syringes, around 44.5 grams of methamphetamine, a glass pipe containing burnt residue, and several notebooks that appeared to be drug ledgers. Heath spoke to police and admitted driving to Indianapolis to purchase methamphetamine and then bringing it back to Shelbyville to sell.
- [3] The State charged Heath in two separate cause numbers. In Cause Number 73C01-1911-F2-15, based on the November 4 search, the State charged Heath with Level 2 felony dealing in methamphetamine, Level 6 felony possession of a syringe, Level 6 felony maintaining a common nuisance, and being a habitual offender. In Cause Number 73C01-2001-F2-2, based on the controlled buys, the State charged Heath with two counts of Level 2 felony dealing in methamphetamine. Heath was released on bond, but when she didn't appear for a pretrial hearing, the trial court revoked her bond.

- [4] In December 2021, Heath and the State entered into a plea agreement that covered both cause numbers. Heath agreed to plead guilty to Level 3 felony possession of methamphetamine (as a lesser-included offense of dealing) and being a habitual offender in F2-15. In exchange, the State agreed to dismiss the remaining charges in both F2-15 and F2-2. Sentencing was left to the trial court's discretion, except that the executed portion of Heath's sentence was capped at nineteen years (nine years for the Level 3 felony and ten years for the habitual-offender enhancement).
- [5] At the sentencing hearing, evidence was presented about Heath's drug involvement. She had sexual relationships with two drug dealers who had violent backgrounds. One of the drug dealers was connected to five to ten overdose deaths in Shelby County. Evidence was also presented about Heath's criminal history, which was mostly drug and alcohol related and included three felonies and seven misdemeanors.
- [6] The trial court found three aggravators: (1) Heath's criminal history; (2) Heath failed to appear at a pretrial hearing, violating the conditions of her bond; and (3) Heath's actions "exceeded what would have been necessary to be found guilty of this crime." Tr. p. 55. The court found as a mitigator that Heath pled guilty but gave it minimum weight because of the "substantial" benefit she received from the plea agreement. *Id.* The court sentenced Heath to nine years for Level 3 felony possession of methamphetamine, enhanced by eight years for being a habitual offender, for a total sentence of seventeen years, all executed. The court recommended Heath for the Recovery While Incarcerated program

and said that if she is successful, it would consider a modification of her sentence.

[7] Heath now appeals.

Discussion and Decision

[8] Heath contends that her seventeen-year executed sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) 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 appellate 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, 159-60 (Ind. 2019) (quotation omitted). “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).

[9] The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5. The sentencing range for

the habitual-offender enhancement is six to twenty years. I.C. § 35-50-2-8(i)(1). For the Level 3 felony, the trial court sentenced Heath to the advisory term of nine years. For the habitual-offender enhancement, the court sentenced Heath to eight years, which is two years less than what she could have gotten under her plea agreement and just two years more than the minimum. Heath's seventeen-year executed sentence is two years shy of the maximum executed sentence allowed by her plea agreement. The court recommended Heath for Recovery While Incarcerated and said it would consider a sentence modification upon successful completion of that program.

[10] As for the nature of the offense, Heath possessed around 44.5 grams of methamphetamine. This is significantly more than the 28 grams required for Level 3 felony possession of methamphetamine. *See* I.C. § 35-48-4-6.1(d). In addition, Heath admitted that she planned to sell the methamphetamine, as she had already done on multiple occasions.

[11] As for her character, Heath acknowledges that she has a long criminal history. Since the age of nineteen, Heath has accumulated three felony convictions and seven misdemeanor convictions, most of which involve alcohol and drugs: misdemeanor illegal possession of an alcoholic beverage (1996); misdemeanor criminal conversion (1998); misdemeanor possession of marijuana and felony possession of a controlled substance (2000); misdemeanor operating while intoxicated (2002); misdemeanor public intoxication and reckless driving (2003); misdemeanor operating while intoxicated (2011); felony operating while intoxicated (2013); and felony escape (2015). For these convictions, Heath has

been sentenced to community service, probation, home detention, jail, and suspended time in the Department of Correction. In addition, Heath has violated her probation in three cases, and she violated the conditions of her bond in this case.

[12] We acknowledge Heath's efforts to overcome her drug and alcohol addiction. But given that her drug offenses have escalated in severity and previous alternatives have not helped, Heath has failed to persuade us that her advisory sentence for Level 3 felony possession of methamphetamine and eight-year enhancement for being a habitual offender is inappropriate. This is especially so considering the trial court said it would consider a sentence modification upon Heath's successful completion of Recovery While Incarcerated.

[13] Affirmed.

Riley, J., and Bailey, J., concur.