

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Travis Wayne Hayes,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

April 25, 2022

Court of Appeals Case No.  
21A-CR-1986

Appeal from the  
Shelby Circuit Court

The Honorable  
Trent E. Meltzer, Judge

Trial Court Cause No.  
73C01-2103-F2-4

**Molter, Judge.**

- [1] Travis Wayne Hayes was convicted of dealing methamphetamine as a Level 2 felony, and he was sentenced to a total of forty years in the Indiana Department

of Correction. He appeals his sentence, arguing it is inappropriate in light of the nature of the offense and his character. We disagree and affirm.

### **Facts and Procedural History**

[2] On March 11, 2021, law enforcement officers executed a search warrant at Hayes’s residence. The Shelby County Sheriff’s Department had been investigating Hayes for drug-related crimes, and, when executing the search warrant, officers found Hayes and another individual in the residence. Before the officers began their search, Hayes informed them that they would find methamphetamine and spice (a synthetic drug) in his bedroom. The officers then found approximately forty-four grams of methamphetamine and twenty-eight grams of spice in the bedroom.

[3] Officers also found cocaine, psilocybin,<sup>1</sup> cutting agents,<sup>2</sup> digital scales with crystal residue, empty plastic baggies, paraphernalia, and two shotguns in the residence. Additionally, during the search, Hayes spoke with an officer and told him that “he does not deal [drugs] to a lot of people and [that] most [of them] are out of towners.” Appellant’s App. Vol. 2 at 18. He also stated he usually obtains and deals roughly one ounce, or twenty-eight grams, of methamphetamine per day.

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<sup>1</sup> Psilocybin is a hallucinogenic chemical derived from specific types of mushrooms.

<sup>2</sup> Cutting agents, which may include some non-controlled substances and are common in drug manufacturing, are additives used to increase the amount of a narcotic drug.

- [4] Hayes was subsequently arrested. The State charged him with dealing in methamphetamine as a Level 2 felony, dealing in a Schedule I controlled substance as a Level 2 felony, possession of methamphetamine as a Level 3 felony, possession of a firearm by a serious violent felon as a Level 4 felony, and possession of cocaine as a Level 5 felony. Hayes was also alleged to be a habitual offender.
- [5] Before trial, the State moved to dismiss the Level 4 and Level 5 felony counts, and the trial court granted its request. Then, during the jury trial on the remaining counts, the parties stipulated to the dismissal of the Level 2 felony dealing in a Schedule I controlled substance count. The jury later found Hayes guilty of the remaining counts—Level 2 felony dealing in methamphetamine and Level 3 possession of methamphetamine—and they concluded Hayes was a habitual offender.
- [6] The trial court sentenced Hayes to a total of forty years in the Indiana Department of Correction. He was sentenced to twenty-five years for the dealing methamphetamine conviction, and the trial court merged the possession of methamphetamine conviction with the dealing conviction for sentencing purposes. The dealing methamphetamine conviction was increased by fifteen years under the habitual offender enhancement. At the sentencing hearing, the trial court found no mitigating factors. As aggravating factors, it found Hayes had five prior felony convictions, five prior misdemeanor convictions, and his fourth felony conviction was for dealing drugs. Hayes now appeals.

## Discussion and Decision

- [7] 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).
- [8] Our role is only to “leaven the outliers,” which means we exercise our authority only in “exceptional cases.” *Id.* at 160. Thus, 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).
- [9] 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). The sentencing range for a Level 2 felony is a fixed term of imprisonment between ten and

thirty years, with the advisory sentence being seventeen and one-half years. Ind. Code § 35-50-2-4.5. The sentencing range for a habitual offender enhancement for a Level 2 felony is between six and twenty years. Ind. Code § 35-50-2-8(i). Here, Hayes's twenty-five-year sentence for Level 2 felony dealing in methamphetamine was five years less than the maximum and seven and one-half years more than the advisory sentence. His sentence enhancement for his habitual offender conviction was five years less than the maximum.

[10] Hayes first argues his aggregate sentence was inappropriate in light of the nature of his offense because there is nothing particularly egregious about his actions. He asserts that, although a large amount of methamphetamine was discovered in his residence, that does not mean he planned to deal those drugs. Instead, he claims it is not unusual for heavy drug users to possess large quantities of drugs to trade with one another or to supply others to feed their habit.

[11] We do not find this argument persuasive. Hayes possessed roughly forty-four grams of methamphetamine, which is over four times the amount required to be charged with Level 2 felony dealing in methamphetamine, Ind. Code. § 35-48-4-1.1. He further described how he sold or gave methamphetamine away to other people, and he was found with several items in his possession related to drug use or dealing—cutting agents, digital scales with crystal residue, empty plastic baggies, and paraphernalia. This goes above and beyond conduct warranting an advisory sentence, and it does not reflect compelling evidence placing the offense in a more positive light.

[12] As to his character, Hayes acknowledges his criminal history, but he argues it should not be used against him because his prior convictions were motivated by his serious addiction to drugs and alcohol. We do not find this argument persuasive either.

[13] The law is well-established that it is proper to consider a defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). Here, that history is extensive. Hayes was fifty-four years old at sentencing, and his criminal history goes back to at least when he was twenty-two years old. Omitting the offense at issue here, his criminal history includes fourteen total arrests resulting in five felony and five misdemeanor convictions—nearly all related to drugs or alcohol. Hayes has also been placed on probation seven times with violations filed in five of those supervisions. Further, he has a long history of substance abuse, and he has had multiple opportunities to change his behavior. Thus, his attempts at rehabilitation have failed.

[14] We cannot say that Hayes has shown “substantial virtuous traits or persistent examples of good character” such that the requested reduction of his sentence is warranted based on his character. *Stephenson*, 29 N.E.3d at 122. Therefore, Hayes has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

[15] Affirmed.

Mathias, J., and Brown, J., concur.