

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

Brett W. Walters,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 28, 2021

Court of Appeals Case No.
21A-CR-74

Appeal from the Allen Superior
Court

The Honorable Frances C. Gull,
Judge

Trial Court Cause Nos.
02D05-1908-F6-944
02D05-1908-CM-3818

Brown, Judge.

[1] Brett W. Walters appeals his sentence for possession of methamphetamine as a level 6 felony, possession of paraphernalia as a class C misdemeanor, resisting law enforcement as a class A misdemeanor, and two counts of disorderly conduct as class B misdemeanors, and asserts his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On July 29, 2019, Fort Wayne Police officers were dispatched to a Walmart store in Fort Wayne in reference to an unwanted party.¹ When they arrived, the officers found Walters accompanying a person they suspected to be the unwanted party. The officers noticed a smell of marijuana coming from Walters and detained him. During a patdown search, officers located a glass smoking device which contained burnt residue. The officers placed Walters under arrest, searched him further, and located a clear sandwich bag containing 2.8 grams of methamphetamine.

[3] On August 2, 2019, the State charged Walters under cause number 02D05-1908-F6-944 (“Cause No. 944”) with possession of methamphetamine as a level 6 felony and possession of paraphernalia as a class C misdemeanor. On August 14, 2019, the court entered an Order for Monitored Conditional Release.

¹ Although the guilty plea transcript reveals little about the nature of the offenses, Walters cites portions of the probable cause affidavits on appeal.

- [4] On August 17, 2019, Fort Wayne Police officers were dispatched to an address in reference to a “party armed.” Appellant’s Appendix Volume II at 100. The officers located Walters who began to yell and argue with them. Officers told him to quiet down but he continued to be loud and drew the attention of a crowd. After being taken to the hospital, he continued to yell and scream and called the police and hospital staff “foul names.” Appellant’s Brief at 9. His conduct continued, and officers forcibly removed him from the hospital. Walters then fell to the ground and refused to stand up while being taken to a police vehicle. While being placed in the vehicle, he attempted to kick and lunge at the officers, pushed off the vehicle, and caused an officer to be knocked backwards.
- [5] The State charged Walters under cause number 02D05-1908-CM-3818 (“Cause No. 3818”) with resisting law enforcement as a class A misdemeanor and two counts of disorderly conduct as class B misdemeanors. On August 19, 2019, the court entered an order under Cause No. 944 finding probable cause that Walters violated the conditions of release and ordered him to be held without bond.
- [6] On September 9, 2019, Walters entered a Drug Court Program Participation Agreement in which he agreed to plead guilty to the charged offenses under Cause Nos. 944 and 3818 in exchange for the opportunity to participate in the drug court program. The State agreed to dismiss all counts under Cause Nos. 944 and 3818 upon Walters’s compliance with all terms and conditions of the agreement and after his successful completion of all program requirements.

That same day, the court held a hearing under Cause Nos. 944 and 3818, and Walters pled guilty and indicated that he read and signed the agreement.

[7] On November 16, 2020, the Allen County Drug Court Case Manager filed a petition to terminate Walters's participation in the drug court program and alleged Walters violated the terms of the participation agreement by failing to maintain good behavior by being in possession of synthetic marijuana on or about October 24, 2020, during a home visit by the field team. That same day, the court entered orders under Cause Nos. 944 and 3818 finding that he violated the terms of the agreement and revoked him from the drug court program.

[8] On December 18, 2020, the court held a consolidated sentencing hearing under Cause Nos. 944 and 3818. Walters stated:

[The prosecutor] said that I didn't complete my residence. I completed Road to Recovery, but as for overall, I apologize to the system. I don't mean to cause more problems or more work for you guys. I think I had every intention to complete the program, I meant to complete the program, I would have completed the program, but on Valentine's I was placed in the county jail for two missed appointments, which one of them I rescheduled and one of them I went to, but they told me to leave because I was sick. I felt that wasn't right, but I was placed in the county jail for Valentine's Day. I think that was the beginning of the end for my relationship with my significant other at that time and ever since then my thought process towards the program has been negative because of the failed relationship. And it shouldn't have been. I should have been able to get past that and complete the program. It just had my thought process poisoned toward the

program and I didn't want to complete the program anymore and I apologize.

Transcript at 18.

- [9] The court found Walters's juvenile and adult criminal record, failed efforts at rehabilitation, commission of new offenses while he was on bond in a felony matter, and that he was a "multi-state offender with a conviction in Kentucky and multiple convictions here in Indiana" as aggravating circumstances. *Id.* at 19. The court found Walters's guilty plea, acceptance of responsibility, and remorse as mitigating circumstances.
- [10] The court sentenced Walters under Cause No. 944 to two years for possession of methamphetamine as a level 6 felony and sixty days for possession of paraphernalia as a class C misdemeanor served concurrent with each other and consecutive to the sentence in Cause No. 3818. Under Cause No. 3818, the court sentenced him to the Allen County Confinement Facility for 365 days for resisting law enforcement as a class A misdemeanor, ninety days for disorderly conduct as a class B misdemeanor, and 180 days for disorderly conduct as a class B misdemeanor. The court ordered that the sentences be served concurrent with each other and consecutive to the sentence under Cause No. 944.

Discussion

- [11] The issue is whether Walters's sentence is inappropriate in light of the nature of the offenses and his character. Walters argues that possession of

methamphetamine does not create any danger to any other person unless additional circumstances are present and his offenses under Cause No. 944 did not harm any other person. He also points to his acceptance of responsibility and guilty plea.

[12] Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[13] Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-3-2 provides that a person who commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-3 provides that a person who commits a class B misdemeanor shall be imprisoned for a fixed term of not more than 180 days. Ind. Code § 35-50-3-4 provides that a person who commits a class C misdemeanor shall be imprisoned for a fixed term of not more than sixty days.

[14] Our review of the nature of the offenses reveals that Walters accompanied an individual who was a suspected unwanted party at a Walmart store. Walters smelled of marijuana and had a glass smoking device with burnt residue as well

as a bag containing 2.8 grams of methamphetamine on his person. Three days after being given monitored conditional release, officers responded to a dispatch regarding an armed party and discovered Walters, and he yelled and argued with officers, refused to quiet down, and drew the attention of a crowd. After being taken to the hospital, he continued to yell and scream, called the police and hospital staff foul names, fell to the ground after being removed from the hospital, refused to stand up, attempted to kick and lunge at the officers, pushed off of a vehicle, and caused an officer to be knocked backwards.

[15] Our review of the character of the offender reveals that Walters pled guilty as charged in exchange for the opportunity to participate in the drug court program and the State agreed to dismiss all counts under Cause Nos. 944 and 3818 upon Walters’s compliance with all terms and conditions of the agreement and his successful completion of all program requirements. Walters subsequently violated the conditions of the drug court program.

[16] Walters did not include his presentence investigation report in the record to facilitate this court’s assessment of his sentence.² Walters acknowledges on appeal that he has accumulated a “substantial criminal history” and that the

²Walters’s failure to include the presentence investigation report in his appendix hampers our ability to consider his argument and review the trial court’s sentencing decision. *See Nasser v. State*, 727 N.E.2d 1105, 1110 (Ind. Ct. App. 2000) (finding that defendant had waived a sentencing argument because he had failed to include the presentence investigation report in the record), *trans. denied; but see* Ind. Appellate Rule 49(B) (providing that “[a]ny party’s failure to include any item in an Appendix shall not waive any issue or argument”). As the appellant, Walters bears the burden of presenting a record that is complete with respect to the issues raised on appeal. *See Ford v. State*, 704 N.E.2d 457, 461 (Ind. 1998), *reh’g denied*.

trial court found at sentencing that he had been adjudicated delinquent nine times for offenses which would have been crimes had they been committed by an adult and that he had accumulated seventeen misdemeanor convictions and nine felony convictions. Appellant's Brief at 15.

[17] After due consideration, we conclude that Walters has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[18] For the foregoing reasons, we affirm Walters's sentence.

[19] Affirmed.

Bradford, C.J., and Mathias, J., concur.