MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Trenton Eugene Scott,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 5, 2022

Court of Appeals Case No. 22A-CR-849

Appeal from the Huntington Superior Court

The Honorable Jennifer E. Newton, Judge

Trial Court Cause No. 35D01-2105-F6-168

Tavitas, Judge.

Case Summary

[1] Trenton Eugene Scott appeals his convictions for possession of methamphetamine, a Level 6 felony; possession of marijuana, a Class A misdemeanor; and possession of paraphernalia, a Class C misdemeanor. Scott argues that the evidence is insufficient to sustain his convictions and that his sentence is inappropriate in light of the nature of the offense and his character. Finding the evidence sufficient and his sentence not inappropriate, we affirm.

Issues

[2] Scott raises two issues on appeal:

I. Whether the evidence is sufficient to sustain his convictions.

II. Whether Scott's sentence is inappropriate in light of the nature of the offense and his character.

Facts

[3] On May 18, 2021, at 6:09 p.m., Officer Jared Brinkman with the Huntington City Police Department and Officer Justin Yohe with Huntington County Community Corrections conducted a home check and executed an arrest warrant for Jeffrey Craig, who was on home detention, at a house in Huntington, Indiana.

[4] Aaron Harrell, the owner of the house, allowed the officers to enter the house. Harrell then led the officers past the living room to a bedroom in the back of the

house, which took "[l]ess than a minute." Tr. Vol. II p. 150. The bedroom had a sheet or blanket covering the doorway in lieu of a door. Harrell knocked on the doorframe and moved the curtain aside "[s]imultaneously almost." *Id*. at 118.

[5] The officers located Craig in the bedroom, along with Sarah Kohler. Craig complied with the arrest and was placed in handcuffs. Craig had signed a search and seizure form consenting to a search by the police earlier that month, and the officers accordingly conducted a search of the room. In the "same area" where Craig sat during the search, Officer Yohe identified a "black-and-white checkered" zipper bag that looked like "a purse without handles." *Id*. at 103, 128. The bag emitted an "odor that's associated with raw and burnt marijuana." *Id*. at 103. Officer Yohe searched the bag and found the following contraband:

- A red grinder typical of those used for grinding up buds of marijuana;
- A small, resealable plastic bag with a green border and "green leafy material in it";
- A small wooden smoking pipe "that had the smell that's associated with burnt marijuana";
- A pair of scissors with short blades;
- A thin metal rod with a small scoop at the tip for "when the marijuana burned and you want to clean out whatever you're using to smoke it in"; and
- A clear jar-like container which contained two rolled up pieces of paper, one containing a green plant material and another containing a "white crystal substance."

Id. at 106, 108, 162-63.

[6] The bag also contained Scott's personal items, including his wallet, unemployment card, bank card, men's deodorant, and papers; the contraband items were found "[m]ixed in with the other articles towards the bottom." *Id*. at 108. Craig denied that the bag belonged to him and denied knowledge of its contents. The officers did not observe either Craig or Kohler handle the bag. Craig told police that the bag belonged to his friend, Scott, who was in the bathroom at that time. Craig stated that Scott brought the bag to Craig's room earlier that day, and that he, Craig, and Kohler were there to "all get[] high together." *Id*. at 130. Testing later determined that the green plant material was marijuana and that the white crystalline substance was methamphetamine.

[7] Officer Brinkman knocked on the bathroom door "directly off of the bedroom." *Id*. at 155. Scott identified himself from inside. Scott stepped out of the bathroom and into the bedroom where he acted "[n]ervous [and] anxious." *Id*. at 132. Officer Brinkman read Scott his *Miranda* rights and asked if the bag belonged to Scott. Scott admitted that the bag belonged to him.

[8] Officer Brinkman escorted Scott to the police department where Scott was again read his *Miranda* rights and interviewed. Officer Brinkman again asked Scott if the bag was his, and Scott again admitted it belonged to him. Scott also admitted that the "green plant material" inside the bag was marijuana, that it belonged to him, and that he smoked marijuana the day before. *Id*. at 158. Officer Brinkman did not question Scott about the other contents of the bag.

[9] After the interview, Officer Brinkman escorted Scott to the Huntington County Jail. On May 24, 2021, Scott called Kohler from the jail and told Kohler, "I need you to do me a huge favor, dude. I need you to go by Jeff and Sarah's house . . . as soon as you possibly can . . . Like, she has my bag of s**t[.]" State's Ex. 8 at 01:50-02:05. In a September 2, 2021 telephone call to Kohler, Scott told Kohler, "Jeff definitely rolled on me," and "[t]hey had to unzip my bag before anything was found, then Jeff proceeded to tell on me." State's Ex. 9 at 1:44-1:47; 4:03-4:10. In neither phone call did Scott or Kohler deny that the marijuana, methamphetamine, or paraphernalia belonged to Scott.

[10] The State charged Scott with: Count I, possession of methamphetamine, a Level 6 felony; Count II, possession of marijuana, hash oil, hashish, or salvia with a prior conviction for a drug offense, a Class A misdemeanor; and Count III, possession of paraphernalia, a Class C misdemeanor. The State also alleged that Scott was an habitual offender.

[11] A jury trial was held in March 2021. At trial, Scott claimed ownership of the bag, wallet, unemployment card, bank card, deodorant, and papers inside of the bag, but he disclaimed ownership of the marijuana, methamphetamine, and drug paraphernalia. Scott testified regarding his prior admission that the marijuana in the bag belonged to him during the interview with Officer Brinkman, "I had already previously confessed ownership of the bag [and] because of my wallet and items being in the bag . . . I just figured, if there's other items in the bag, I'd get screwed with the possession of [marijuana] anyways." Tr. Vol. II p. 211.

[12] The jury found Scott guilty on all three counts. Scott elected to forego a jury trial on the habitual offender enhancement and on the enhancement of Count II due to a prior drug-related conviction, and Scott stipulated to the underlying offenses introduced by the State. The trial court found Scott to be an habitual offender and elevated the possession of marijuana charge to a Class A misdemeanor.

[13] A sentencing hearing was held on March 29, 2022. The trial court found as aggravators: (1) Scott's criminal history, which included five misdemeanors, six felonies, and thirteen petitions to revoke probation; and (2) Scott was on probation when the offense was committed. The trial court found no mitigators. The trial court sentenced Scott as follows: two years for Count 1, which was enhanced by three years based on the habitual offender finding; one year for Count 2; and sixty days for Count 3; all to be served concurrently, for an aggregate sentence of five years. Scott now appeals.

Discussion and Decision

[14] Scott argues the evidence was insufficient to sustain his convictions because there was insufficient evidence to find he "knowingly" possessed the methamphetamine, marijuana, and paraphernalia. Scott further argues that his sentence is inappropriate in light of the nature of the offense and his character. We disagree.

I. Sufficiency—"Knowing" Possession

[15] Scott first argues the evidence was insufficient to support a finding that he "knowingly" possessed the methamphetamine, marijuana, and paraphernalia. Specifically, Scott argues he did not know the methamphetamine, marijuana, or paraphernalia were in his bag and that "there were other parties in the room at the time that could have easily placed the contraband therein." Appellant's Br. p. 15.

[16] Sufficiency of evidence claims "warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility." *Powell v. State*, 151 N.E.3d 256, 262 (Ind. 2020) (citing *Perry v. State*, 638 N.E.2d 1236, 1242 (Ind. 1994)). We consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. *Id.* (citing *Brantley v. State*, 91 N.E.3d 566, 570 (Ind. 2018), *cert. denied*). "We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt." *Id.* We affirm the conviction "unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. It is therefore not necessary that the evidence overcome every reasonable hypothesis of innocence. The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict." *Sutton v. State*, 167 N.E.3d 800, 801 (Ind. Ct. App. 2021) (quoting *Drane v. State*, 867 N.E.2d 144, 146-47 (Ind. 2007)).

[17] Possession of methamphetamine is governed by Indiana Code Section 35-48-4-6.1(a), which provides: "[a] person who, without a valid prescription or order of

a practitioner acting in the course of the practitioner's professional practice, knowingly or intentionally possesses methamphetamine (pure or adulterated) commits possession of methamphetamine[.]"

[18] Possession of marijuana is governed by Indiana Code Section 35-48-4-11, which provides: "[a] person who . . . knowingly or intentionally possesses (pure or adulterated) marijuana . . . commits possession of marijuana . . . a Class B misdemeanor, except as provided in subsections (b) through (c)." Subsection (b)(1) of the marijuana possession statute provides that the offense is a Class A misdemeanor if "the person has a prior conviction for a drug offense[.]"

[19] Finally, possession of paraphernalia is governed by Indiana Code Section 35-48-4-8.3(b)(1), which provides: "[a] person who knowingly or intentionally possesses an instrument, a device, or another object that the person intends to use for . . . introducing into the person's body a controlled substance . . . commits a Class C misdemeanor. In Indiana, "[a] person engages in conduct 'knowingly' if, when he engages in the conduct, he is aware of a high probability that he is doing so." Ind. Code § 35-41-2-2(b).

[20] Although Scott appears to challenge only the "knowingly" element of the offenses, the State also addresses the "possession" element of the offenses. Because there is some overlap between these two elements, we will also discuss possession. Possession can be either actual or constructive. *Sargent v. State*, 27 N.E.3d 729, 733 (Ind. 2015). "Actual possession occurs when a person has

direct physical control over the item." *Id*. (citing *Gee v. State*, 810 N.E.2d 338, 340 (Ind. 2004)). "A person constructively possesses [an item] when the person has (1) the capability to maintain dominion and control over the item; and (2) the intent to maintain dominion and control over it." *Id*. (citation omitted and brackets original).

[21] Here, Scott admitted several times that the bag belonged to him, and Craig testified that Scott brought the bag with him that day. In addition, Officer Brinkman identified Scott in the bathroom "directly off of the bedroom" where the bag was located. Tr. Vol. II p. 155. The evidence is sufficient to find Scott had the capability of maintaining control over the bag and its contents.

[22] As for Scott's intent to maintain dominion and control over the bag, "[w]hen a defendant's possession of the premises on which drugs are found is not exclusive, then the inference of intent to maintain dominion and control over the drugs 'must be supported by additional circumstances pointing to the defendant's knowledge of the nature of the controlled substances and their presence.'" *Gee*, 810 N.E.2d at 341 (citation omitted).

> "The additional circumstances have been shown by various means: (1) incriminating statements made by the defendant, (2) attempted flight or furtive gestures, (3) location of substances like drugs in settings that suggest manufacturing, (4) proximity of the contraband to the defendant, (5) location of the contraband within the defendant's plain view, and (6) the mingling of the contraband with other items owned by the defendant.

Id. (citing *Henderson v. State*, 715 N.E.2d 833, 836 (Ind. 1999)).

[23] Here, there are ample circumstances that support a finding that Scott had knowledge of the contraband in his bag and that he had the capability of maintaining control over the bag and its contents. The contraband was found intermingled with Scott's personal items in a bag Scott admitted belonged to him. *See Shorter v. State*, 144 N.E.3d 829, 834 (Ind. Ct. App. 2020) (affirming convictions where contraband was found in backpack "co-mingled with other items belonging to Shorter, *i.e.*, a men's belt, men's cologne, doo-rag, and legal documents and mail belonging to Shorter"); *trans. denied*. Moreover, the contraband was found "[m]ixed in with the other articles towards the bottom" of the bag. Tr. Vol. II p. 108

[24] In addition, Scott made several incriminating statements that indicated he had knowledge of the contraband. First, during his interview with Officer Brinkman, Scott admitted the green plant material was marijuana and he claimed ownership of it. Further, Scott called Kohler from prison to tell her, "Jeff definitely rolled on me" and "[t]hey had to unzip my bag before anything was found, then Jeff proceeded to tell on me." State's Ex. 9 at 1:44-1:47; 4:03-4:10. These statements could reasonably be understood as admissions that the contraband did in fact belong to Scott, especially because neither Scott nor Kohler suggested otherwise during the call. Scott's argument that the contraband could have been placed in his bag by someone else merely requests us to reweigh the evidence, which we will not do. The jury could reasonably infer that Scott knowingly possessed the contraband in the bag. Thus, we find

the evidence sufficient to support Scott's convictions for knowingly possessing the contraband.

II. Inappropriate Sentence

[25] Scott next argues his sentence is inappropriate in light of the nature of the offense and his character. The Indiana Constitution authorizes independent 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). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when it is "inappropriate in light of the nature of the offense and the character of the offender."[1] Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946 (Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (per curiam) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[1] Though we must consider both the nature of the offense and the character of the offender, an appellant need not prove that each prong independently renders a sentence inappropriate. *See, e.g., State v. Stidham*, 157 N.E.3d 1185, 1195 (Ind. 2020) (granting a sentence reduction based solely on an analysis of aspects of the defendant's character); *Connor v. State*, 58 N.E.3d 215, 219 (Ind. Ct. App. 2016); *see also Davis v. State*, 173 N.E.3d 700, 707-09 (Tavitas, J., concurring in result).

[26] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id.* "Whether a sentence should be deemed inappropriate 'turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[27] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, possession of methamphetamine, when charged as a Level 6 felony, carries a sentencing range of six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). For Level 6 felonies, a habitual offender enhancement carries a range of two and six years. *Id*. § 35-50-2-8(i)(2). Possession of marijuana, when charged as a Class A misdemeanor, carries a maximum sentence of one year. *Id*. § 35-50-3-2. Finally, possession of paraphernalia is a class C misdemeanor that carries a maximum sentence of sixty days. *Id*. § 35-50-3-4. The trial court sentenced Scott to: two years on

Count 1, which it enhanced by three years based on its habitual offender finding; one year for Count 2; and sixty days for Count 3; all to be served concurrently, for an aggregate sentence of five years.

[28] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Scott took marijuana, methamphetamine, and paraphernalia to the residence of his friend on house arrest. Scott argues the offenses "are not particularly egregious due to the fact that the 'victim' of the crime is Scott himself." Appellant's Br. p. 18. But that is true of almost all pure possession-related drug crimes. Scott refers us to no compelling evidence that portrays his offense in a positive light. We decline to revise his sentence based on the nature of the offense.

[29] Alternatively, we look to Scott's character. Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince*

v. State, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*).

[30] Scott argues his sentence is inappropriate because he desires treatment for his substance abuse disorder.[2] We commend Scott on his interest in seeking treatment, but we do not find it warrants a revision of his sentence. Scott has an extensive criminal history, including five prior drug convictions. In addition, Scott has thirteen petitions to revoke probation, and the instant offenses occurred while he was on probation. Accordingly, we cannot say Scott's sentence is inappropriate in light of the nature of the offense and his character.

Conclusion

[31] The evidence is sufficient to sustain Scott's convictions, and his sentence was not inappropriate in light of the nature of the offense and his character. Accordingly, we affirm.

[32] Affirmed.

Brown, J., and Altice, J., concur.

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[2] Scott also argues his admission that the bag was his and his stipulation to the underlying crimes for the purposes of the habitual offender enhancement demonstrate good character.