

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Eric M. Roberts,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 26, 2024

Court of Appeals Case No.
23A-CR-2472

Appeal from the Elkhart Superior Court
The Honorable Gretchen S. Lund, Judge

Trial Court Cause No.
20D04-2301-F6-19

Memorandum Decision by Judge Kenworthy
Judges May and Vaidik concur.

Kenworthy, Judge.

Case Summary

- [1] Eric M. Roberts appeals his two-year aggregate sentence for Level 6 felony possession of methamphetamine¹ and Class B misdemeanor possession of marijuana,² raising one issue for our review: does his sentence warrant revision under Indiana Appellate Rule 7(B)? Concluding Roberts’ sentence is not inappropriate, we affirm.

Facts and Procedural History

- [2] Elkhart County Police Officer Kyle Macumber was on patrol around 11:00 p.m. on January 1, 2023. As Officer Macumber approached a black pickup truck, he saw the driver—Roberts—react to seeing his police vehicle. Roberts turned suddenly without activating his turn signal and “jerked” his vehicle into an empty parking lot. *Tr. Vol. 2* at 49. After following Roberts into the lot, Officer Macumber observed Roberts exit his vehicle and toss something under the rear of his truck.
- [3] Officer Macumber smelled a strong odor of marijuana emanating from Roberts and patted him down. Officer Macumber discovered a small baggie containing marijuana in Roberts’ pocket. After handcuffing Roberts, Officer Macumber

¹ Ind. Code § 35-48-4-6.1(a) (2014).

² I.C. § 35-48-4-11(a)(1) (2018).

searched under the rear of Roberts' vehicle. There, he found a small baggie containing a clear, crystal-like substance which later tested positive for methamphetamine. After being read his *Miranda* rights, Roberts admitted he had turned into the parking lot to avoid police.

- [4] Following a jury trial, Roberts was found guilty of Level 6 felony possession of methamphetamine and Class B misdemeanor possession of marijuana. The trial court sentenced Roberts to concurrent sentences of two years for Level 6 felony possession of methamphetamine and 180 days for Class B misdemeanor possession of marijuana.³ Roberts was to serve his aggregate two-year sentence at Elkhart County Community Corrections.

Roberts' Sentence Does Not Warrant 7(B) Revision

- [5] Roberts asks us to review and revise his sentence. The Indiana Constitution authorizes this Court to review and revise a trial court's sentencing decision as provided by rule. Ind. Const. art. 7, § 6. Indiana Appellate Rule 7(B) provides we 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 principal role of appellate review is to leaven the outliers, not to achieve a perceived correct sentence in each case. *Conley v. State*, 183 N.E.3d 276, 288

³ See I.C. § 35-50-2-7(b) (2019) (providing for a sentence of six months to two and one-half years for a Level 6 felony, with a one year advisory sentence); see also I.C. § 35-50-3-3 (1977) (providing for a sentence of up to 180 days for a Class B misdemeanor).

(Ind. 2022). Thus, “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) (per curiam).

[6] “[S]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “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). The question “is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” *Helsley v. State*, 43 N.E.3d 225, 228 (Ind. 2015) (quoting *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008)) (emphasis omitted).

[7] 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). We consider whether a portion of the sentence is suspended or otherwise crafted using any variety of sentencing tools—such as community corrections—available to a trial court. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). We focus on “the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of sentence on any individual count.” *Cardwell*, 895 N.E.2d at 1225. Whether we regard a sentence as 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.* at 1224. The defendant bears the burden of persuading us a revised sentence is warranted. *See Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021).

[8] Beginning with the nature of his offenses, Roberts claims his offenses were non-violent and highlights he possessed less than one gram of methamphetamine. Thus, in Roberts’ view, his above-advisory sentence is inappropriate. While classifying his offenses as “mundane” and “simple possession,” Roberts ignores the steps he took to avoid culpability. *Appellant’s Br.* at 10. Upon seeing Officer Macumber’s police vehicle, Roberts immediately turned into the parking lot to evade law enforcement. More importantly, Roberts attempted to hide the methamphetamine by tossing it under his vehicle. *See Wright v. State*, 168 N.E.3d 244, 269 (Ind. 2021) (noting a defendant’s attempts to conceal evidence of his or her crime weighs against sentence revision), *cert. denied*. Further, even though Roberts possessed only a small amount of methamphetamine, “possessing even small amounts of drugs threatens society.” *State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021). The nature of Roberts’ offenses weighs against 7(B) revision.

[9] Turning to Roberts’ character, Roberts directs our attention to his educational attainment, past employment, mental health diagnoses, and the seriousness with which he has approached this case to argue his character weighs in favor of revising his sentence. Even so, Roberts has a lengthy criminal history including six prior convictions—two felony, four misdemeanor—and several

juvenile adjudications. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023) (recognizing even a minor criminal history reflects poorly on a defendant's character). Plus, much of Roberts' criminal history involves drug-related offenses, including prior convictions for possession of methamphetamine and possession of marijuana. *See Hape v. State*, 903 N.E.2d 977, 1002 (Ind. Ct. App. 2009) (explaining sentence revision is unwarranted when a defendant is aware of his or her substance use problem but does not take appropriate steps to treat it), *trans. denied*. Roberts' character does not weigh in favor of revising his sentence.

[10] In sum, Roberts has not presented compelling evidence to overcome the substantial deference we afford the trial court. We therefore cannot say Roberts' sentence is inappropriate in light of the nature of his offenses or his character. We do, however, remand with instructions to correct Parts I and II of the abstract of judgment and portions of the sentencing order to accurately reflect Roberts' conviction for Class B, instead of Class A, possession of marijuana and accompanying 180-day sentence.

Conclusion

[11] Roberts' two-year aggregate sentence is not inappropriate and does not warrant 7(B) revision. Accordingly, we affirm Roberts' sentence and remand with instructions to correct errors in Roberts' abstract of judgment and sentencing order.

[12] Affirmed and remanded.

May, J., and Vaidik, J., concur.

ATTORNEY FOR APPELLANT

Donald R. Shuler
Barkes, Kolbus, Rife & Shuler, LLP
Goshen, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Indiana Attorney General
Justin F. Roebel
Supervising Deputy Attorney General
Indianapolis, Indiana