

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Travis Dean Stephens,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

April 25, 2024

Court of Appeals Case No.
23A-CR-2696

Appeal from the Bartholomew Circuit Court

The Honorable Kelly S. Benjamin, Judge

Trial Court Cause Nos.
03C01-2108-F6-4050
03C01-2209-F6-4383

Memorandum Decision by Judge Bailey
Judges Crone and Pyle concur.

Bailey, Judge.

Case Summary

- [1] Travis Stephens challenges his sentence for possession of methamphetamine, as a Level 6 felony,¹ and the revocation of his probation. We affirm.

Issues

- [2] Stephens raises the following two issues:
- I. Whether his sentence is inappropriate in light of the nature of the offenses and his character.
 - II. Whether the trial court abused its discretion when it revoked his probation.

Facts and Procedural History

- [3] On July 10, 2021, Stephens had three active felony warrants from Shelby County when a call was made to dispatch reporting that Stephens was observed driving a blue Chevrolet truck from the Edinburgh area to Patterson Road. Officer Grant Carlson observed Stephens's vehicle and noticed it had no plate lights. Officer Carlson followed Stephens, who parked in a driveway on Dell Road. Stephens exited the vehicle and identified himself, and Officer Carlson

¹ Ind. Code § 35-48-4-6.1(a).

placed him in handcuffs. Stephens stated he had a blue straw in his vehicle and that it was covered in methamphetamine residue. In Officer Carlson's subsequent searches of Stephens's person and vehicle, he discovered methamphetamine, oxycodone, and drug paraphernalia.

[4] Under cause number 03C01-2108-F6-4050 (hereinafter, "F6-4050), the State charged Stephens with Level 6 felony possession of methamphetamine, Level 6 felony possession of a controlled substance,² and Class C misdemeanor possession of paraphernalia.³ On December 6, 2021, Stephens pled guilty to Level 6 felony possession of methamphetamine, and the remaining charges were dismissed. Stephens was sentenced to 547 days, with four days executed in jail and 543 days suspended to probation, and he was ordered to be placed on community corrections as a condition of probation.

[5] On August 27, 2022, while Stephens had an active warrant from Shelby County and was still on probation in F6-4050, Officer Jackson Shepherd observed a vehicle registered to Stephens parked outside a residence on Grand Avenue and saw Stephens standing outside the residence. Officer Shepherd told Stephens to "come here," and Stephens then fled on foot. App. at 34. Officer Shepherd pursued and apprehended Stephens. The officer's subsequent search of Stephens revealed methamphetamine in Stephens's pocket.

² I.C. § 35-48-4-7(a).

³ I.C. § 35-48-4-8.3(b).

[6] Under cause number 03C01-2209-F6-4383 (hereinafter, “F6-4383”), the State charged Stephens with Level 6 felony possession of methamphetamine and Class A misdemeanor resisting law enforcement.⁴ The State subsequently filed a petition to revoke Stephens’s probation under F6-4050, alleging that Stephens violated his probation by committing the new criminal offenses under F6-4383, by committing the new criminal offense of felony failure to reside at his registered address with a prior conviction, and by failing to report to scheduled appointments with probation.

[7] On September 25, 2023, Stephens pled guilty to Level 6 felony possession of methamphetamine under F6-4383, in exchange for a sentence open to argument but not to exceed 545 days on the initial executed portion of the sentence, and a dismissal of the remaining count. As an additional term of the plea agreement, Stephens agreed to admit that he violated his probation under F6- 4050; specifically, Stephens admitted that, by committing possession of methamphetamine under F6-4383, he violated his probation.

[8] A pre-sentencing investigation report that outlined Stephens’s criminal history was submitted to the court at sentencing. As a juvenile, Stephens was adjudicated delinquent for felony auto theft and felony residential entry, was placed on suspended commitment to the Indiana Department of Correction (“DOC”), and was ordered to complete one year of probation and fifty hours of

⁴ I.C. § 35-44.1-3-1(a)(3).

community service. As an adult, Stephens accumulated a number of convictions in Louisiana, including: pleading guilty to twenty-eight counts of felony auto burglary (2002), for which he was sentenced to seven years in prison and subsequently violated his parole; felony theft (2001), for which he was sentenced to five years, all suspended to probation; felony pornography involving juveniles (2008), for which he was sentenced to eight years in prison; and felony domestic battery (2008), for which the length of the sentence is “unknown.” App. at 51.

- [9] In Indiana, Stephens was convicted of: felony domestic battery on a person less than fourteen years old and felony domestic battery committed in the presence of a child less than sixteen years old (2021), for which he was sentenced to the DOC with both counts running concurrently; felony failure to register as a sex offender (2021), for which Stephens served time in jail and on home detention; misdemeanor invasion of privacy (2021), for which Stephens served jail time; misdemeanor invasion of privacy and domestic battery (2021), for which Stephens served jail time; felony possession of methamphetamine (2021), for which Stephens served time in jail and was on home detention; and felony possession of methamphetamine (2021), for which Stephens was placed on probation under F6-4050. While on probation under F6-4050, Stephens was charged with: felony failure to register as a sex or violent offender; felony possession of methamphetamine; and resisting law enforcement. In total, Stephens was placed on probation three times, had six petitions to revoke probation filed, and had one probation violation adjudication.

[10] During sentencing, Stephens testified that he is a drug addict, but he has “never been given help of any type.” Tr. at 21. He further stated: that the one time he did receive substance abuse treatment there were no beds; that he has “never been able to get into any place” for treatment; and that he had been turned away for treatment in Louisiana “every time” he sought it. *Id.* at 24. Stephens could identify only three total attempts at treatment while in Louisiana. Stephens and his ex-wife attributed this failed ability to receive treatment to Stephens’s sex offender status and prior drug usage. Stephens stated that he previously attended counseling, but it did not last long, due to “lifestyle changes.” *Id.* at 20. Stephens acknowledged that, at the time of sentencing, he had nowhere to reside locally.

[11] The sentencing court found the aggravators to be Stephens’s criminal history; that Stephens was previously placed on probation, which he violated; that Stephens was on probation at the time he committed the current offense; that Stephens previously had opportunities for treatment; that Stephens had a pending case in Shelby County; and that the circumstances of the new possession of methamphetamine offense involved Stephens fleeing from the police. The court found Stephens’s guilty plea to be a mitigator.

[12] The court sentenced Stephens to 545 days in the DOC under F6-4383, revoked 543 days of his suspended sentence under F6-4050, and ordered both sentences to run consecutively. The Court recommended that Stephens participate in the Recovery While Incarcerated program, if available, with the possibility of a sentence modification in the future if he completed both mental health and

substance abuse treatment and engaged in other available services, “such as life skills” training. *Id.* at 36. This appeal ensued.

Discussion and Decision

Appellate Rule 7(B)

[13] Stephens contends that his sentence is inappropriate in light of the nature of the offense and his character. Article 7, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration in original). This appellate authority is implemented through Indiana Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is “inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B); *see also Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

[14] Indiana’s flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court’s judgment “should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The principal role of appellate review is to attempt to “leaven the outliers.” *Id.* at 1225. Whether we regard a sentence as inappropriate at the end of the day 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 question is not whether another

sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

Deference to the trial court “prevail[s] 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).

[15] In 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.” *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). For Stephens’s Level 6 felony conviction, the sentencing range is between six months and two and one-half years, with an advisory sentence of one year. I.C. § 35-50-2-7(b). By sentencing Stephens to 545 days—i.e., one and one-half years—the trial court imposed only the slightly enhanced sentence that the parties’ plea agreement provided would be the maximum executed sentence imposed. “[A] defendant’s conscious choice to enter a plea agreement that limits the trial court’s discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness.” *Merriweather v. State*, 151 N.E.3d 1281, 1286 n.2 (Ind. Ct. App. 2020) (quoting *Childress*, 848 N.E.2d at 1081 (Dickson, J., concurring)).

[16] When considering the nature of the offense, we look at the defendant’s actions in comparison to the elements of the offense. *Cannon v. State*, 99 N.E.3d 274,

280 (Ind. Ct. App. 2018), *trans. denied*. Here, while having an arrest warrant active on another case and while on probation for possession of methamphetamine, Stephens committed another crime of possession of methamphetamine. That is, Stephens did not merely commit the crime charged, but did so while on probation for another case involving the same crime—i.e., possession of methamphetamine—and while a fugitive for yet a different criminal offense. Moreover, Stephens fled from law enforcement while committing the current drug charge. *See Bethea v. State*, 983 N.E.2d 1134, 1145 (Ind. 2013) (holding that the trial court may consider facts and circumstances surrounding the case, even those that pertain to underlying charges that were dismissed). Thus, the nature of the offense in this case does not suggest that the sentence was inappropriate.

[17] Nor does Stephens’s character warrant a sentence reduction. He has an extensive criminal history that includes approximately eight felony convictions encompassing a 28-count auto burglary conviction and convictions for theft, juvenile pornography, domestic battery against women and children, failure to register as a sex offender, and possession of methamphetamine. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citation omitted) (observing that even a minor criminal history reflects poorly on a defendant’s character). In addition, Stephens had been placed on probation three times and was on probation at the time he committed the instant offense. He has had seven probation revocation petitions filed against him in the past and has one prior probation violation adjudication. At the time Stephens committed the instant

offense, he had a warrant out for his arrest in yet another active criminal case. Furthermore, there was no evidence that Stephens has “substantial virtuous traits or persistent examples of good character.” *Stephenson*, 29 N.E.3d at 122. Stephens has failed to demonstrate that his sentence is inappropriate in light of his character.

Probation Revocation

[18] Stephens challenges the trial court’s decision to sanction him for his admitted probation violation by revoking it and ordering him to serve his suspended sentence. “Placement under either probation or a community corrections program is ‘a matter of grace and a conditional liberty that is a favor, not a right.’” *State v. Vanderkolk*, 32 N.E.3d 775, 777 (Ind. 2015) (quoting *Cox v. State*, 706 N.E.2d 547, 549 (Ind.1999)). We review probation violation sanctions for an abuse of discretion. *Heaton v. State*, 984 N.E.2d 614, 616 (Ind. 2013). “An abuse of discretion occurs where the decision is clearly against the logic and effect of the facts and circumstances, or when the trial court misinterprets the law.” *Id.* (citations omitted). “As with other sufficiency issues, we do not reweigh the evidence or judge the credibility of witnesses.” *Jenkins v. State*, 956 N.E.2d 146, 148 (Ind. Ct. App. 2011) (citation and quotation omitted), *trans. denied*.

[19] A probation revocation proceeding is a two-step process. *Heaton*, 984 N.E.2d at 616. First, the trial court must determine whether the preponderance of the evidence showed that a probation violation occurred. *Id.*; I.C. § 35-38-2-3.

Second, the trial court must determine whether the probation violation warrants revocation of probation or some lesser sanction. *Heaton*, 984 N.E.2d at 616. In making the latter determination, the trial court may consider such factors as the defendant’s criminal history. *See, e.g., Slater v. State*, 223 N.E.3d 298, 307 (Ind. Ct. App. 2023) (holding the defendant’s criminal history supported the sanction for probation violation).

[20] Indiana Code Section 35-38-2-3(h) provides:

If the court finds that the person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may impose one (1) or more of the following sanctions:

(1) Continue the person on probation, with or without modifying or enlarging the conditions.

(2) Extend the person’s probationary period for not more than one (1) year beyond the original probationary period.

(3) Order execution of all or part of the sentence that was suspended at the time of initial sentencing.

Our Supreme Court has held that this statute “permits judges to sentence offenders using any one of or any combination of the enumerated powers.”

Prewitt v. State, 878 N.E.2d 184, 187 (Ind. 2007). And, while probationers must be given the opportunity to present mitigating factors, *Woods v. State*, 892 N.E.2d 637, 640 (Ind. 2008), the trial court is not required to consider aggravating and mitigating factors when deciding whether to revoke probation,

Porter v. State, 117 N.E.3d 673, 675 (Ind. Ct. App. 2018). Moreover, a single violation of a condition of probation is sufficient to permit the trial court to revoke probation. *Pierce v. State*, 44 N.E.3d 752, 755 (Ind. Ct. App. 2015).

[21] Here, Stephens admitted to violating the terms of his probation by committing possession of methamphetamine under F6-4383. Stephens has an extensive criminal history that includes numerous felony convictions, and he has been placed on probation three times in the past, with multiple petitions to revoke probation and one prior probation violation adjudication. The trial court acted well within its discretion when it revoked Stephens's probation and ordered him to serve a portion of his previously imposed sentence. Stephens's contentions to the contrary are simply requests that we reweigh the evidence and judge witness credibility, which we may not do. *See, e.g., Jenkins*, 956 N.E.2d at 148.

Conclusion

[22] Stephens's sentence is not inappropriate in light of the nature of his offense and his character. And the trial court did not abuse its discretion when it revoked Stephens's probation.

[23] Affirmed.

Crone, J., and Pyle, J., concur.

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