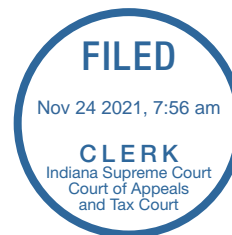


MEMORANDUM DECISION

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.



ATTORNEY FOR APPELLANT

Chad A. Montgomery
Montgomery Law Office
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Sierra A. Murray
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Robert L. Jackson, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 24, 2021
Court of Appeals Case No.
21A-CR-1044
Appeal from the
Tippecanoe Superior Court
The Honorable
Randy J. Williams, Judge
Trial Court Cause No.
79D01-2002-F2-5

Molter, Judge.

- [1] Robert L. Jackson, Jr. pleaded guilty to dealing in a lookalike substance as a Level 5 felony. He was sentenced to four and one-half years of incarceration,

with one year and 215 days executed in the Indiana Department of Correction, one year and 150 days in Tippecanoe County Community Corrections, and one and one-half years suspended to probation. Jackson 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 February 12, 2020, law enforcement officers executed a search warrant at 1501 South Street in Lafayette, Indiana. Appellant’s App. Vol. 2 at 29–30. Earlier that day, and a couple of weeks prior on January 22 and 30, an undercover detective visited the residence to pick up “spice,” a synthetic drug. *Id.* at 29. During his first, second, and third visits to the residence, the detective retrieved 224 grams, 177 grams, and 414 grams of spice. *Id.*
- [3] While executing the search warrant, officers found Jackson and his fiancée in the residence and identified them as its tenants. *Id.* at 30. Officers also found several items of contraband in a bedroom, including: a Ziploc bag containing 330 grams of a synthetic drug; Ziploc bags with residual amounts of synthetic drugs; empty Ziploc bags; digital scales; numerous pipes and other paraphernalia; a wallet with a large amount of U.S. currency; and a cell phone with text messages from Jackson discussing the drug buy earlier that day. *Id.*
- [4] Additionally, during the search, Jackson spoke with an officer and told him that he and his fiancée recently moved into 1501 South Street. *Id.* He stated that he used the bedroom in which the contraband was found and admitted to having a

quarter pound of spice. *Id.* Further, Jackson stated that he used spice and would give the drug away to other people. *Id.* He even described how people would visit his residence to purchase spice from him or how he and his fiancée used special nicknames when selling spice. *Id.*

[5] Jackson was arrested, and the State charged him with two counts of dealing in a lookalike substance as Level 5 felonies, one count of possession of a controlled substance as a Class A misdemeanor, one count of possession of paraphernalia as a Class C misdemeanor, one count of maintaining a common nuisance as a Level 6 felony, one count of possession of a controlled substance as a Level 6 felony, and one count of dealing in a Schedule I controlled substance as a Level 2 felony.

[6] In March 2021, Jackson entered into a plea agreement with the State. He pleaded guilty to dealing in a lookalike substance, and the State dismissed the remaining six charges. The trial court accepted Jackson's guilty plea and entered a sentencing order on April 16, 2021. It sentenced Jackson to four and one-half years of incarceration, with one year and 215 days executed in the Indiana Department of Correction, one year and 150 days in Tippecanoe County Community Corrections, and one and one-half years suspended to probation. At the sentencing hearing, the trial court identified several aggravating and mitigating factors. As mitigators, it noted that Jackson pleaded guilty and had the support of others. And, as aggravators, the trial court found that Jackson's adult criminal history included six petitions to revoke his probation (three of which were found to be true), Jackson was unsuccessfully

discharged from probation twice, Jackson failed to appear three times, Jackson had a history of substance abuse, and previous attempts to rehabilitate Jackson had failed. Jackson 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 5 felony is a fixed term of imprisonment between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. So, Jackson’s sentence was one and one-half years over the advisory sentence.
- [10] Jackson first argues his sentence was inappropriate in light of the nature of his offense because there is nothing particularly egregious about his actions. He asserts that nothing sets his offense apart from an ordinary dealing offense and that no guns or threats of violence were involved. Analyzing the nature of the offense requires us to consider “whether there is anything more or less egregious about the offense as committed by the defendant that ‘makes it different from the typical offense accounted for by the legislature when it set the advisory sentence.’” *Moyer v. State*, 83 N.E.3d 136, 142 (Ind. Ct. App. 2017) (quoting *Holloway v. State*, 950 N.E.2d 803, 807 (Ind. Ct. App. 2011)), *trans. denied*.
- [11] Here, the trial court reasonably considered that Jackson’s offense was more egregious because Jackson dealt 815 grams of spice and possessed at least 1,145 grams of spice over the course of this incident. Appellant’s App. Vol. 2 at 29–30. Also, Jackson admitted to using spice and having a large quantity of the drug. He further described how he sold or gave spice away to other people. And he was found with several items in his possession related to drug use or

dealing—Ziploc bags, digital scales, and numerous pipes and other paraphernalia.

[12] As to his character, Jackson acknowledges his criminal history, but he argues that it should not be used against him because he accepted responsibility for his misconduct by pleading guilty. The trial court reasonably gave minimal weight to Jackson’s guilty plea because he already received a substantial benefit from the State dismissing his six other charges. The law is also well-established that it was proper for the trial court to consider Jackson’s criminal history. *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013).

[13] Here, that history is extensive. Jackson was thirty-nine years old at sentencing, and his criminal history goes back to at least when he was seventeen years of age. Appellant’s Conf. App. Vol. 2 at 33, 36. Omitting the offense at issue here, his criminal history includes two prior felony convictions and one misdemeanor conviction for drug-related offenses, as well as six petitions to revoke his probation. *Id.* at 36–38. Also, Jackson was unsuccessfully discharged from probation twice and has a long history of substance abuse. *Id.* at 41–42, 55. Further, Jackson has had multiple opportunities to change his behavior, and his attempts at rehabilitation have failed.

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

Jackson has not shown that his sentence is inappropriate in light of the nature of the offense and his character.

[15] Affirmed.

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