

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

Donte Lansing Kidd,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 21, 2021

Court of Appeals Case No.
21A-CR-1053

Appeal from the Tippecanoe
Superior Court

The Honorable Steven P. Meyer,
Judge

Trial Court Cause No.
79D02-2008-F5-143

Bailey, Judge.

Case Summary

- [1] Donte Lansing Kidd (“Kidd”) challenges the sentence imposed upon his pleas of guilty to Possession of Methamphetamine¹ and Failure to Return to Lawful Detention,² as Level 6 felonies. He presents the issue of whether his aggregate two and one-half year sentence, with one year suspended to probation, is inappropriate. We affirm.

Facts and Procedural History

- [2] In 1999, Kidd was sentenced to seventy years imprisonment for two drug-related offenses, with one sentence enhanced because of Kidd’s status as a habitual offender. In 2015, after having obtained two college degrees, Kidd received a sentence modification. His sentence was reduced to a fifty-year aggregate sentence with five years to be spent in community corrections.
- [3] On August 11, 2020, Kidd was due to return to Tippecanoe County Community Corrections Work Release by 1:30 a.m. Kidd did not timely return and his electronic monitoring battery died, after showing that Kidd had last traveled to his girlfriend’s residence. At 10:24 p.m., Kidd was found lying in a public street, with indications that he had suffered a seizure. In Kidd’s

¹ Ind. Code § 35-48-4-6.1.

² I.C. § 35-44.1-3-4.

backpack, responding officers found a small baggie containing 0.02 ounces of methamphetamine.

- [4] On August 24, 2020, Kidd was charged with Failure to Return to Lawful Detention and Possession of Methamphetamine, as Level 6 felonies. The State also charged Kidd with one count of Possession of Methamphetamine, as a Level 5 felony, alleging that elevation was appropriate due to Kidd's prior conviction for Dealing Cocaine. On April 6, 2021, Kidd pled guilty to the Level 6 felonies, and the Level 5 felony charge was dismissed. The trial court sentenced Kidd to two concurrent sentences of two and one-half years, with one year suspended to probation. Kidd now appeals.

Discussion and Decision

- [5] A person who commits a Level 6 felony is subject to a sentence of six months to two and one-half years, with an advisory sentence of one year. Ind. Code § 35-50-2-7(b). Kidd argues that a maximum sentence is inappropriate and asks that we revise his sentence to an aggregate sentence of two years, with one year suspended to probation.
- [6] Indiana 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 offenses 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). The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). When reviewing the appropriateness of a sentence under Rule 7(B), we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

- [7] Kidd pled guilty to two Level 6 felonies, each having a statutory potential penalty of up to two and one-half years imprisonment. I.C. § 35-50-2-7(b). However, the trial court ordered that his sentences would be served concurrently, with one year suspended to probation. As such, contrary to Kidd’s claim, he did not receive a maximum sentence. In imposing the sentence upon Kidd, the trial court found that Kidd’s criminal history and history of probation revocations were aggravating circumstances. In mitigation, the trial court considered Kidd’s decision to plead guilty, the lack of harm to any person other than himself, his employment, and his failing health.
- [8] Regarding the nature of the offenses, Kidd did not return to lawful detention as scheduled and he was located many hours later with a small amount of methamphetamine in his possession. We find nothing particularly remarkable in the nature of the offenses.

[9] As for Kidd's character, he has a lengthy history of criminal convictions. He was convicted of the following misdemeanors: reckless driving in 1994, driving while suspended in 1994 and 1997, public intoxication in 1997, and conversion in 1999. He was convicted of the following felonies: theft in 1982, two instances of residential burglary in 1983, conspiracy to deliver a controlled substance in 1995, possession of a controlled substance in 1996, unlawful imprisonment in 1997, driving while suspended in 1999, dealing in a narcotic drug in 1999, and conspiracy to commit dealing in a narcotic drug in 1999. He committed these offenses in three states. In 1999, Kidd was adjudicated a habitual offender. He has had his probation revoked on multiple occasions and failed to comply with the rules of community corrections placements. We are not persuaded that Kidd's character renders his sentence inappropriate.

Conclusion

[10] Kidd has not shown that his sentence is inappropriate.

[11] Affirmed.

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