

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Christopher Paul Smith,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 23, 2023

Court of Appeals Case No.
23A-CR-768

Appeal from the
Tippecanoe Superior Court

The Honorable
Steven P. Meyer, Judge

Trial Court Cause No.
79D02-2101-F2-1

Memorandum Decision by Senior Judge Shepard.
Chief Judge Altice and Judge Mathias concur.

Shepard, Senior Judge.

- [1] Police officers discovered Christopher Smith in a stolen car with almost thirty grams of methamphetamine on his person that he admitted he planned to sell. Smith pleaded guilty to Level 3 felony dealing in meth and to being an habitual offender. He asks us to review and revise his sentence. Concluding Smith has not shown grounds to reduce his sentence, we affirm.

Facts and Procedural History¹

- [2] On January 5, 2021, an officer with the Lafayette Police Department encountered a vehicle and checked its license plate online. The officer learned the plate had been reported as stolen. Several officers stopped the vehicle. Smith was the driver, and the officers discovered his license had been suspended for life. They arrested him.
- [3] During the arrest, one of the officers saw a baggie in a door pocket. The baggie contained smaller baggies, which in turn contained a crystalline substance. The officers also found additional baggies, razor blades, and digital scales in the car.

¹ The circumstances of this case are largely set forth in the probable cause affidavit, which is attached to the presentence investigation report. During the sentencing hearing, Smith did not object to the trial court's use of the report and its attachments. Instead, Smith objected to the report only as to its description of past substance abuse treatment opportunities that had been offered to him. He claimed the report incorrectly stated he had been ordered to complete treatment programs on several occasions, when in fact no trial court had ever ordered him to complete treatment.

The blades and the scales contained crystalline residue, and the residue on the scales field-tested positive for methamphetamine.

- [4] Officers took Smith to jail and during the booking process, Smith produced a glass pipe. The pipe contained residue that tested positive for methamphetamine. Smith also turned over another baggie containing a crystalline substance. Subsequent testing revealed the substance consisted of 29.78 grams of meth. While being interviewed by detectives after booking, Smith conceded he knew his driving privileges had been suspended and admitted he had planned to sell some of the meth.
- [5] The State charged Smith with Level 2 felony dealing in methamphetamine, Level 3 felony possession of methamphetamine, Level 5 felony operating a motor vehicle after forfeiture of license for life, Class C misdemeanor possession of paraphernalia, and Class A misdemeanor theft. The State also filed an habitual offender sentencing enhancement.
- [6] Smith and the State negotiated a plea agreement. Smith agreed to plead guilty to dealing in methamphetamine as a Level 3 felony and to being an habitual offender. In exchange, the State would dismiss the other charges. The parties further agreed to a minimum sentence of seventeen years, to be served in the Indiana Department of Correction (“DOC”). But the agreement further stated the trial court could order Smith to serve any portion of his sentence above seventeen years but below twenty-five years in the DOC, through Tippecanoe County Community Corrections, or on probation. The parties further agreed:

(1) Smith would serve the sentence in this case consecutively to a sentence in a case in Clinton County; and (2) Smith would admit to violating the terms of his probation in another pending Tippecanoe County case and would be unsatisfactorily discharged from probation.

[7] The trial court accepted the plea agreement and Smith's guilty plea. The court sentenced Smith to twenty years, with nineteen years to be served at the DOC and one year suspended to community corrections. This appeal followed.

Discussion and Decision

[8] Smith claims his sentence is too severe and asks the Court to reduce it. Article 7, section 6 of the Indiana Constitution authorizes this Court to review and revise sentences. We implement this authority through Indiana Appellate Rule 7(B), which states we may revise a sentence "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."

[9] The principal role of sentencing review under Appellate Rule 7(B) is to "attempt to leaven the outliers, . . . but not to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Id.* at 1222. "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). “[A] defendant must persuade the appellate court that his or her sentence has met this inappropriateness standard of review.” *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[10] At the time Smith committed his offense, the maximum sentence for a Level 3 felony was sixteen years, with a minimum sentence of three years and an advisory sentence of nine years. Ind. Code § 35-50-2-5 (2014). And if a trial court determined a person who was guilty of a Level 3 felony was also an habitual offender, the court could add a fixed term of between six and twenty years as a sentencing enhancement. Ind. Code § 35-50-2-8(i) (2017).

[11] The court sentenced Smith to fourteen years for Level 3 felony dealing in methamphetamine, plus six years for the habitual offender enhancement, for a total sentence of twenty years, with one year suspended. Smith’s sentence for the Level 3 felony is above the advisory amount, but he received the minimum sentencing enhancement. Taken as a whole, his aggregate sentence is: (1) well short of the maximum possible sentence of thirty-six years; and (2) only three years higher than the minimum sentence to which he agreed.

[12] “The nature of the offenses is found in the details and circumstances of the commission of the offenses and the defendant’s participation.” *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). Smith claims he fully cooperated with the officers, as shown by his compliance during the traffic stop and by his admission to driving without a license and possessing methamphetamine with

the intent to sell. We disagree with Smith’s claim of full cooperation, because he hid contraband on his person until he was undergoing the booking process at jail. Further, his admission of wrongdoing appears to have been pragmatic, based on the evidence of his offenses. Smith possessed 29.78 grams of meth, which is well above the five-gram minimum necessary for his dealing offense to qualify as a Level 3 felony. *See* Ind. Code § 35-48-4-1.1 (2017) (setting forth the levels of the offense of dealing in methamphetamine). And as the State notes, at the time of the traffic stop Smith “was dealing out of a stolen car that he was driving while his license was suspended for life.” Appellee’s Br. p. 8.

[13] “The character of the offender is found in what we learn of the offender’s life and conduct.” *Croy*, 953 N.E.2d at 664. Smith was forty-one years old at sentencing. His adult criminal history consists of seven felony convictions including Class B felony burglary, Class B felony dealing in methamphetamine, Class D possession of methamphetamine, Class D failure to return to lawful detention, Level 5 felony operating a motor vehicle after license was suspended for life, Level 6 felony failure to return to lawful detention, and Level 6 felony identity deception (committed after the current offense). And Smith is an habitual traffic offender and an habitual substance offender.

[14] Smith has also accrued six misdemeanor convictions, including two convictions of Class A misdemeanor operating while intoxicated, Class A misdemeanor resisting law enforcement, Class A misdemeanor battery resulting in bodily injury, Class B misdemeanor operating a motor vehicle without receiving a license, and Class B misdemeanor false informing.

[15] Smith was on probation at the time he committed the current offense, and he admitted to a probation violation. In addition, on fourteen prior occasions, a trial court determined Smith had violated the terms of his probation. Finally, while Smith was in jail during this case, he was placed in segregation for twelve days after violating four jail rules. Smith's extensive criminal record and repeated failures to comply with the terms of probation and incarceration reflect poorly on his character.

[16] Smith states he had a difficult childhood, including being abused by his mother and being introduced to controlled substances by his father. The Indiana Supreme Court "has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight." *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007). Smith further claims he has a long history of addiction to controlled substances, as well as symptoms of other mental illnesses. But his lengthy history of addiction carries little mitigating weight against a conviction of dealing in controlled substances. In summary, Smith has failed to show his twenty-year sentence is inappropriate.

Conclusion

[17] For the reasons stated above, we affirm the judgment of the trial court.

[18] Affirmed.

Altice, C.J., and Mathias, J., concur.