MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Kelly Starling
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jennifer Anwarzai
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

James D. Jarvis,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 22, 2023

Court of Appeals Case No. 23A-CR-791

Appeal from the Marion Superior Court

The Honorable Jennifer Harrison, Judge

Trial Court Cause No. 49D20-2102-F2-5819

Memorandum Decision by Judge Riley
Judges Crone and Mathias concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, James Daniel Jarvis (Jarvis), appeals his sentence for dealing in methamphetamine, a Level 2 felony, Ind. Code § 35-48-4-1.1(a)(2).

[2] We affirm.

ISSUE

[3] Jarvis presents this court with one issue on appeal, which we restate as: Whether Jarvis' twenty-year sentence is inappropriate in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

[4] Around midnight on February 24, 2021, Officer Brandon Shipley with the Beech Grove Police Department (Officer Shipley) performed a traffic stop of a vehicle driven by Jarvis. As the officer waited near the driver's side window for Jarvis to find his driver's license and bill of sale for the vehicle, he noticed a digital scale with a white powdery substance on the lid sitting in plain view in front of the cupholder. Officer Shipley confiscated the scale, Mirandized Jarvis, and requested backup.

[5] After more officers arrived, Jarvis was ordered to exit the vehicle. A search of his front pants pockets revealed a baggie containing a light tan powder, which Jarvis confirmed as being heroin. He also advised the officers that he had more narcotics in the center console of the car. During the search of the vehicle, officers located a firearm, glass pipes, a crystalline rock substance, bags

containing a green, leafy substance, and a large number of pills. Jarvis explained that "[h]e was going to a party. He was going to supply the narcotics, not sell them." (Transcript Vol. II, p. 136). In total, Jarvis had approximately thirty grams of methamphetamine in pill and powder form in his possession. Some of the pills, which initially were believed to be oxycodone and alprazolam based on their physical markings, tested negative for any controlled substances.

[6] On February 25, 2021, the State filed an Information, charging Jarvis with Level 2 felony dealing in methamphetamine, Level 2 felony dealing in a narcotic drug, Level 4 felony dealing in a narcotic drug, Level 4 felony unlawful possession of a firearm by a serious violent felon, Level 6 felony dealing in a schedule IV controlled substance, and Class B misdemeanor possession of marijuana. On April 20, 2021, the State amended the Information, adding Level 5 felony possession of a narcotic drug.

[7] Shortly after Jarvis posted bond and was released on pre-trial home detention with electronic monitoring, the State filed a pre-trial release violation, alleging that Jarvis had violated the terms of his electronic monitoring by leaving his residence without authorization, traveling to unauthorized locations, allowing his GPS device to be compromised, and being charged in a new case with burglary, theft, and possession of marijuana. After a bond hearing, Jarvis was returned to home detention with GPS monitoring. A mere month later, the State filed a second notice of pre-trial release violation, alleging that Jarvis had failed to comply with electronic monitoring by visiting several unauthorized

locations. The trial court took this violation under advisement and Jarvis remained out on bond. While out on bond, Jarvis continued to violate the conditions of electronic monitoring by visiting several unauthorized locations and by allowing his electronic monitor to lose signal for extended periods of time.

[8] On May 15, 2022, the trial court issued a warrant for his arrest with a no-bond hold. During this time, Jarvis absconded for three months, fled Marion County, Indiana, and was arrested, charged, and convicted in Lee County, Florida, for Level 3 felony possession of a controlled substance, misdemeanor possession of paraphernalia, and misdemeanor giving a false name. On August 16, 2022, Jarvis was transported from Florida to Marion County, Indiana, where he remained in custody until his trial.

[9] On January 24, 2023, the State filed a notice that it intended to seek an habitual offender enhancement. On the eve of trial, the State dismissed the Level 2 felony dealing in a narcotic drug, Level 6 dealing in a schedule IV controlled substance, and Class B misdemeanor possession of marijuana. On January 30, 2023, the trial court conducted Jarvis' jury trial. At the close of the evidence, the jury found Jarvis guilty of dealing in methamphetamine, a Level 2 felony, but returned not-guilty verdicts on the remaining charges. On March 16, 2023, the trial court conducted a bench trial on the habitual offender enhancement, of which the trial court found Jarvis not guilty. That same day, the trial court proceeded to sentence Jarvis on the Level 2 felony dealing in methamphetamine conviction and imposed a twenty-year sentence in the

Department of Correction (DOC), with purposeful incarceration and the ability to petition the court for a modification of the sentence upon successful completion of the clinically appropriate substance abuse treatment, as determined by the DOC.

[10] Jarvis now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

[11] Jarvis contends that the trial court abused its decision by sentencing him to an aggravated twenty-year sentence and maintains that considering the nature of the offense and his character a downward revision of the sentence is warranted. Sentencing is primarily "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). Nevertheless, although a trial court may have acted within its lawful discretion in fashioning a sentence, our court may revise the sentence "if, after due consideration of the trial court's decision, [we] find[ ] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "The principal role of appellate 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,* 895 N.E.2d at 1225. Ultimately, "whether we regard a sentence as appropriate 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. Our court does

"not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is 'inappropriate.'" *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*. Jarvis bears the burden of persuading our court that his sentence is inappropriate. *King v. State*, 894 N.E.2d 265, 267 (Ind. Ct. App. 2008). The trial court's judgment should prevail unless it is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 111-12 (Ind. 2015).

[12] The advisory sentence is the starting point selected by the General Assembly as a reasonable sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). The sentencing range for a Level 2 felony is between ten to thirty years, with an advisory sentence of seventeen-and-one-half years. I.C. § 35-50-2-5(b). Here, the trial court imposed an aggravated sentence of twenty years.

[13] Jarvis fails to persuade us that this twenty-year sentence is "inappropriately harsh." (Appellant's Br. p. 9). Turning to the nature of the crime, Jarvis contends that "[n]othing about the circumstances of [his] offense make it more exceptional as compared to other dealing cases." (Appellant's Br. p. 12). We disagree. Jarvis was in possession of approximately thirty grams of methamphetamine, which is well over the minimum ten grams required for a Level 2 offense. *See* I.C. §§ 35-48-4-1.1(a)(2); -(e)(1). When he was pulled over, he was on his way to a party where, apparently, he was going to hand out free samples as he denied any intent to sell these illegal drugs. Although he was

compliant with the officers on the scene, we also note that he committed the current offense while out on bond in a previous possession of methamphetamine case.

[14] Focusing on Jarvis' character, we note that he has an extensive criminal history that spans much of his juvenile and adult life. *See Rutherford v State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (a defendant's criminal history is relevant in assessing his character). As a juvenile, Jarvis accumulated eight referrals, including four misdemeanor and four felony adjudications for felony possession of a controlled substance, two instances of felony theft, and felony escape. His placements on probation and home detention were unsuccessful multiple times. As his juvenile delinquent behavior progressed, Jarvis was first placed on a suspended commitment to the DOC, which he violated, and then he was placed in the DOC twice. As an adult, Jarvis was arrested in Indiana, Kentucky, and Florida. He has been convicted of seven felonies and three misdemeanors. Specifically, Jarvis was convicted of four felony theft convictions, felony dealing in a controlled substance, felony possession of a controlled substance, felony escape, misdemeanor possession of hash oil, misdemeanor possession of paraphernalia, and misdemeanor giving a false name. As a result of these prior convictions, Jarvis was placed on probation three times, which all ended in unsatisfactory completion or revocation, he was placed on community corrections, which was revoked, and he was on parole twice prior to reoffending.

[15] Jarvis has taken advantage of the court's leniency multiple times. Prior to being arrested in the current cause, Jarvis was out on bond in another felony drug case. Throughout the pendency of this cause, he collected numerous pre-trial release violations, repeatedly violated his home detention conditions and electronic monitoring, and was charged in a new case with burglary, theft, and possession of marijuana. His pre-trial release violations resulted in the trial court's issuance of a warrant with a no-bond hold. Despite the issuance of the warrant, Jarvis absconded to Florida for three months, where he was arrested, charged, and convicted for felony possession of a controlled substance, misdemeanor possession of paraphernalia, and misdemeanor giving a false name.

[16] Jarvis now points to his mental health, history of substance abuse, and remorse as an argument against an aggravated sentence. Jarvis' Pre-Sentence Investigation report (PSI) reflects that he began counseling at the age of five and continued to receive mental health treatment at various institutions throughout the years. However, although there is evidence of Jarvis' previous mental health treatment for bi-polar disorder, depression, and anxiety, his history does not provide a nexus that would explain his criminal actions in this case. *Rawson v. State*, 865 N.E.2d 1049, 1057 (Ind. Ct. App. 2007) (holding that where a defendant fails to identify a nexus between his mental illness and his offense, the trial court is not required to give significant mitigating weight to a diagnoses of mental illness), *trans. denied*. Along with his mental health treatment, Jarvis received substance abuse treatment through Valle Vista and the DOC, yet he

failed to take advantage of these programs. We cannot find that Jarvis' own substance abuse issues mitigate his decision to become a supplier of illegal substances to an unknown number of individuals at a party, thereby placing others in a position to either develop similar substance abuse issues or to further fuel their own existing addictions.

[17] In discussing his childhood, Jarvis highlights the medical and mental health struggles of his mother and emphasizes that he grew up in a poor and rough neighborhood. However, many people suffer similar setbacks in life without becoming criminals. *See Lewis v. State*, 116 N.E.3d 1144, 1155 (Ind. Ct. App. 2018) (holding that the defendant's difficult childhood, in which his mother was a drug addict, was diagnosed with bi-polar disorder, and was mentally ill, warranted "little, if any, mitigating weight."). Moreover, Jarvis himself has done little to surround himself with positive influences. The PSI reflects that the majority of Jarvis' acquaintances have been arrested due to gang involvement and Jarvis himself is an active member of the Imperial Gangsters.

[18] During sentencing, Jarvis acknowledged that he has "been messing up for a long time." (Tr. Vol. III, p. 21). Despite his expressed remorse, the trial court did not accept the proffered mitigator, and neither do we. *See Corralez v. State*, 815 N.E.2d 1023, 1025 (Ind. Ct. App. 2004) ("The trial court, which has the ability to directly observe the defendant and listen to the tenor of his voice, is in the best position to determine whether the remorse is genuine.").

[19] Given Jarvis' lengthy criminal history, his inability to comply with court orders when released on bond and pre-trial release, his numerous violations when given the opportunity to serve a sentence in a placement less restrictive than the DOC, and the large quantity of methamphetamine that Jarvis was delivering, we cannot say that the trial court's judgment is "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *See Stephenson*, 29 N.E.3d at 111-12. Accordingly, as we find Jarvis' sentence not inappropriate in light of the nature of the offense and his character, we affirm the trial court's imposition of the twenty-year sentence.

CONCLUSION

[20] Based on the foregoing, we hold that Jarvis' twenty-year sentence is not inappropriate in light of the nature of the offense and his character.

[21] Affirmed.

[22] Crone, J. and Mathias, J. concur