

# MEMORANDUM DECISION

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# IN THE COURT OF APPEALS OF INDIANA

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Christopher Kirtley,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

November 15, 2023

Court of Appeals Case No.  
23A-CR-1158

Appeal from the  
Tippecanoe Superior Court

The Honorable  
Michael Bergerson, Sr. Judge

The Honorable  
Steven P. Meyer, Judge

Trial Court Cause No.  
79D02-2205-F5-85

**Memorandum Decision by Judge Vaidik**  
Judges Bradford and Brown concur.

**Vaidik, Judge.**

## Case Summary

- [1] Christopher Kirtley pled guilty to Level 6 felony possession of methamphetamine and being a habitual offender, and the trial court sentenced him to four years. Kirtley now appeals, arguing the court erred in finding an aggravator. We affirm.

## Facts and Procedural History

- [2] In May 2022, the State charged Kirtley with Level 5 felony possession of methamphetamine, Level 6 felony possession of methamphetamine, Class A misdemeanor possession of marijuana, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. The State also filed a habitual-offender enhancement. Kirtley was released on bond. While on bond, Kirtley was arrested and charged with Class A misdemeanor domestic battery. Kirtley's bond was revoked.
- [3] In February 2023, Kirtley and the State entered into a plea agreement under which he agreed to plead guilty to Level 6 felony possession of methamphetamine and being a habitual offender and the State agreed to dismiss the remaining charges in this case as well as the domestic-battery charge in the other case. At sentencing, the trial court found four aggravators: (1) Kirtley failed to cooperate with the preparation of the presentence investigation report; (2) he has a criminal history (seven felonies and five misdemeanors); (3)

he has a “disdain for the judicial system,” as evidenced by nine petitions to revoke probation being filed against him (eight of which were found to be true); and (4) he was on probation when he committed this offense. Tr. Vol. II p. 49. The court found two mitigators: (1) Kirtley has family support and (2) he pled guilty. Finding the aggravators to outweigh the mitigators, the trial court sentenced Kirtley to two years for the Level 6 felony, enhanced by two years for being a habitual offender.

[4] Kirtley now appeals.

## Discussion and Decision

[5] Kirtley contends the trial court erred in finding as an aggravator that he was on probation when he committed this offense. The State acknowledges that Kirtley was not on probation but says the trial court misspoke and meant to say that he violated the conditions of his bond based on his arrest for domestic battery. Because both are statutory aggravators, *see* Ind. Code § 35-38-1-7.1(a)(6) (“The person has recently violated the conditions of any **probation**, parole, pardon, community corrections placement, or **pretrial release** granted to the person.” (Emphases added)), the State claims the misstatement was “inconsequential,” Appellee’s Br. p. 8. We agree.

[6] At sentencing, the State argued that the fact that Kirtley was “on bond in [t]his case when he picked up a new offense” was aggravating. Tr. Vol. II p. 37. When the trial court then orally identified as an aggravator that Kirtley was on

probation, Kirtley didn't correct the court. And on appeal, Kirtley doesn't acknowledge that his bond was revoked based on the new offense or that the State argued to the court that this was aggravating. He also didn't file a reply brief responding to the State's argument that the misstatement doesn't matter. Presumably no reply brief was filed because Kirtley was on bond in this case when he was arrested and charged with a new offense. We therefore affirm the trial court.

[7] Affirmed.

Bradford, J., and Brown, J., concur.