MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Miana M. McKinley,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 12, 2024

Court of Appeals Case No.
23A-CR-2524

Appeal from the
Ripley Superior Court

The Honorable
Jeffrey Sharp, Judge

Trial Court Cause No.
69D01-2309-F6-90

Memorandum Decision by Senior Judge Robb
Judges Mathias and Felix concur.

Robb, Senior Judge.

Statement of the Case

[1] Miana M. McKinley pleaded guilty to one count of Level 6 felony possession of methamphetamine ("meth"). The trial court sentenced McKinley to 545 days. On appeal, she asks the Court to revise her sentence. Concluding McKinley has not shown grounds to reduce her sentence, we affirm.

Facts and Procedural History[1]

[2] McKinley, a resident of Ripley County, was serving a sentence on home detention for a Madison County case. A probation officer and a police officer searched McKinley's home after she failed two consecutive drug screens by testing positive for meth. An officer found a foil strip in the bottom of a trash can, and the strip tested positive for meth. McKinley admitted to the officer that she had smoked meth several days before the search.

[3] The State charged McKinley with Level 6 felony possession of meth. McKinley pleaded guilty as charged during the initial hearing. The trial court

[1] The circumstances of this case are largely set forth in the probable cause affidavit. McKinley did not object to the State's reference to the affidavit during sentencing.

accepted McKinley's plea and sentenced her to 545 days, all executed. This appeal followed.

Discussion and Decision

[4] McKinley asks the Court to reduce her sentence to six months. Article 7, section 6 of the Indiana Constitution authorizes the Court to review and revise sentences. Indiana Appellate Rule 7(B) implements this authority, stating the Court 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."

[5] Our review under Appellate Rule 7(B) is "deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate." *George v. State*, 141 N.E.3d 68, 73 (Ind. Ct. App. 2020), *trans. denied*. "We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record." *Id.* The defendant must persuade the reviewing court that the sentence imposed is inappropriate. *Guthery v. State*, 180 N.E.3d 339, 351 (Ind. Ct. App. 2021), *trans. denied*.

[6] At the time McKinley possessed meth, the maximum sentence for a Level 6 felony was two and one-half years, the minimum sentence was six months, and the advisory sentence was one year. Ind. Code § 35-50-2-7(b) (2019). The trial court sentenced McKinley to an enhanced sentence of 545 days, or one and one-half years, well short of the maximum sentence.

[7] "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). Officers searched McKinley's home after she twice tested positive for meth while on probation. They found meth residue, and McKinley admitted she had recently smoked it. McKinley notes she did not obstruct the officers or cause harm to anyone. But violence and obstructive behavior are not elements of the offense of Level 6 possession of meth. If she had engaged in such conduct, she likely would have faced more severe charges.

[8] "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. McKinley was thirty-two years old at sentencing. She was serving a sentence on home detention for a Madison County case, in which she had been convicted of Level 3 felony dealing in a narcotic drug. And she was facing charges in Ripley County for theft and exploitation of a dependent. McKinley had been convicted of possession of marijuana in 2022, but she claimed she had completed probation as to that conviction. Even so, McKinley was already facing several cases when she consumed meth, demonstrating an unwillingness to comply with the law or to benefit from alternatives to incarceration. *Cf. Combs v. State*, 851 N.E.2d 1053, 1062 (Ind. Ct. App. 2006) (enhanced sentence for possession of meth was inappropriate; Combs' criminal history consisted of one misdemeanor and was remote in time), *trans. denied*.

[9] McKinley told the trial court she was investigating inpatient treatment options, and she has a sponsor. The court determined McKinley had taken responsibility for her actions and determined that her substance abuse issues were a mitigating factor. But the court also noted, "[t]he problem the Court has is every tool that has been offered to Mrs. McKinley has failed, that being a stint at D.O.C., Community Corrections, probation." Tr. Vol. 2, p. 14. We agree that McKinley's attempts to address her substance abuse issues do not outweigh her recent criminal history. Under these circumstances, McKinley has failed to show that her enhanced sentence is inappropriate and should be reduced to the statutory minimum. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009) (rejecting challenge to appropriateness of sentence for possessing meth and cocaine, among other offenses; Jenkins' attempts to seek treatment for his substance abuse issues did not outweigh his prior criminal history and recent history of failed drug screens), *trans. denied*.

Conclusion

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

[11] Affirmed.

Mathias, J., and Felix, J., concur.

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