

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Autumn Bolinger,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 10, 2024

Court of Appeals Case No.
23A-CR-2559

Appeal from the Allen Superior Court

The Honorable Frances Gull, Judge

Trial Court Cause No.
02D04-2203-F6-368

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

- [1] Autumn Bolinger appeals her sentence following her convictions of Level 6 felony possession of methamphetamine,¹ Class B misdemeanor possession of marijuana,² and Class C misdemeanor possession of paraphernalia.³ Bolinger presents one issue for our review, which we revise and restate as whether her sentence is inappropriate given the nature of her offenses and her character. We affirm.

Facts and Procedural History

- [2] On March 24, 2022, officers from the Fort Wayne Police Department responded to a 911 call reporting “that a female driver kept passing out while driving a black pickup truck.” (App. Vol. 2 at 19.) The officer found the vehicle “parked incorrectly in a handicap parking space” in the parking lot of an apartment complex on Ardmore Avenue. (*Id.*) The vehicle was still running, and its license plate was expired. Bolinger was sitting in the driver’s seat of the vehicle and Lawrence Evans was sitting in the front passenger’s seat. As the officers spoke with Bolinger, they observed that her “eyes were pinpoint and her head kept bobbing up and down as if she was struggling to stay awake.” (*Id.*) They also saw Evans trying to swallow an unknown substance. The officers

¹ Ind. Code 35-48-4-6.1(a).

² Ind. Code 35-48-4-11(a).

³ Ind. Code 35-48-4-8.3(b).

successfully intervened and the substance “was recovered and positively identified as cocaine.” (*Id.*) During the officers’ subsequent search of the vehicle, they found a black purse located behind the vehicle’s center console. When the officers searched the purse, they found 1.4 grams of methamphetamine, 2.2 grams of marijuana, a knotted clear plastic bag, and a pen tube “commonly used to aid in the ingestion of illegal narcotics.” (*Id.*) The purse belonged to Bolinger, and the police arrested her.

[3] On March 29, 2022, the State charged Bolinger with Level 6 felony possession of methamphetamine, Class B misdemeanor possession of marijuana, and Class C misdemeanor possession of paraphernalia. The trial court released Bolinger on her own recognizance with court-ordered supervision. One of the pre-trial release conditions required Bolinger to report to the Court Pretrial Services Officer, but Bolinger failed to do so. The trial court then issued a bench warrant for her arrest on April 14, 2022. On April 18, 2022, Bolinger appeared before the trial court and expressed interest in participating in the drug court program. The trial court recalled the bench warrant and admonished Bolinger to comply with the pretrial services reporting conditions. The trial court also ordered Bolinger to appear for drug court on April 25, 2022.

[4] Bolinger was late for her court date on April 25, 2022. During that court hearing, Bolinger reported that she was homeless and admitted using drugs the previous day. The trial court ordered Bolinger remanded into custody. On May 2, 2022, Bolinger entered a guilty plea with respect to all three charges, and the trial court arranged for Bolinger to enter an in-patient drug treatment

program the following day. Bolinger failed to return to her in-patient treatment program on July 24, 2022, and the program unsuccessfully discharged her on July 25, 2022. Bolinger also failed to appear for drug court on August 8, 2022, and the trial court issued a bench warrant for her arrest.

[5] On August 25, 2023, Bolinger was arrested on unrelated charges. On September 5, 2023, the State filed a verified petition to terminate Bolinger's participation in the drug court program. The trial court granted the State's motion and scheduled Bolinger's sentencing hearing for October 6, 2023. At the sentencing hearing, Bolinger asked the trial court to impose a one-year sentence suspended to probation. The State noted that Bolinger had a criminal history that included three misdemeanor convictions and that while Bolinger was participating in the drug court program, she gave four positive drug screens, missed three drug screens, and provided a diluted sample at one screen. The trial court found aggravators in Bolinger's criminal history, including her arrest on new charges after absconding from the drug court program, and her failures to abide by her release conditions. The trial court also found Bolinger's decision to plead guilty and her expression of remorse to be mitigating factors. The trial court sentenced Bolinger to a term of 1.5 years in jail for Level 6 felony possession of methamphetamine, 180 days for Class B misdemeanor possession of marijuana, and 60 days for Class C misdemeanor possession of drug paraphernalia. The trial court ordered the three sentences to be served concurrently for an aggregate term of one-and-a-half years.

Discussion and Decision

[6] Our standard of review for inappropriate-sentence claims is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Our review 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. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating [a] sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[7] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When the trial court imposes a sentence above the advisory term, we consider whether there is anything more egregious about the offense as committed by the defendant that distinguishes it from the typical offense considered by the General Assembly when it set the advisory sentence. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). A Level 6 felony is punishable by a term of imprisonment between six months and two and one-half years, with the advisory sentence being one year. Ind. Code § 35-50-2-7(b). Thus, Bolinger's one-and-a-half-year sentence exceeds the advisory term for her

level of offense, but it is below the maximum.⁴ Bolinger asserts the nature of her offenses does not merit more than the advisory term. However, while drug possession is a nonviolent offense, “distributing or possessing even small amounts of drugs threatens society.” *State v. Timbs*, 169 N.E.3d 361, 373 (Ind. 2021). Moreover, in addition to possessing methamphetamine, marijuana, and drug paraphernalia, officers found Bolinger sitting in the driver’s seat of a running vehicle after receiving a 911 call that reported Bolinger was repeatedly losing consciousness while driving a truck, and Bolinger appeared to the officers to be under the influence of illegal narcotics. The circumstances surrounding Bolinger’s arrest indicate she presented a danger to the public because she likely either had already or was about to drive on public roads while intoxicated. Thus, we cannot say that her above-advisory sentence is inappropriate given the nature of her offenses. *See, e.g., Turkette v. State*, 151 N.E.3d 782, 787 (Ind. Ct. App. 2020) (holding defendant’s sentence was not inappropriate when defendant’s drug dealing and usage endangered her children), *trans. denied*.

[8] Next, we move to Bolinger’s character. “When considering the character of the offender, one relevant fact is the defendant’s criminal history.” *Williams v.*

⁴ The trial court also sentenced Bolinger to the maximum term for each of her misdemeanor convictions. *See* Ind. Code § 35-50-3-3 (Class B misdemeanor punishable by a fixed term of imprisonment of not more than 180 days) & Ind. Code § 35-50-3-4 (Class C misdemeanor punishable by a fixed term of imprisonment of not more than 60 days). Nonetheless, the trial court ordered Bolinger to serve these sentences concurrent with her Level 6 felony sentence, and therefore, Bolinger’s aggregate sentence equals the sentence she received for her conviction of Level 6 felony possession of methamphetamine. *See Gleason v. State*, 965 N.E.2d 702, 712 (Ind. Ct. App. 2012) (“Our review of the sentence should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.”).

State, 170 N.E.3d 237, 246 (Ind. Ct. App. 2021). Bolinger was convicted of Class C misdemeanor operating a vehicle without having ever received a license⁵ in 2018. With respect to that conviction, she twice violated the terms of her suspended sentence and eventually served thirty days in the Allen County jail. She was also convicted of misdemeanor driving under the influence in Ohio in 2019, and after Bolinger ceased participating in the drug court program in the instant case, she was arrested for and later convicted of a new misdemeanor offense. While this is Bolinger’s first felony conviction, “[e]ven a minor criminal history is a poor reflection of a defendant’s character.” *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). In addition, a defendant’s failure to abide by the terms of probation or pretrial release reflects disrespect for the law and the court’s authority. *See, e.g., Eisert v. State*, 102 N.E.3d 330, 335 (Ind. Ct. App. 2018) (holding defendant’s failure to abide by the terms of his pretrial release and commission of additional crimes while awaiting trial demonstrated a lack of respect for court authority and the law), *trans. denied*. Here, Bolinger failed to meet with pretrial services after she was initially released on her own recognizance, continued using drugs while participating in the drug court program, and ultimately absconded.

[9] Bolinger notes that she “suffered a traumatic childhood” and has “significant mental health issues[.]” (Appellant’s Br. at 8.) However, our Indiana Supreme

⁵ Ind. Code § 9-24-18-1.

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), *reh’g denied*. Moreover, while Bolinger’s presentence investigation report indicates she received some mental health treatment in 2021, she did not report receiving any treatment or being prescribed any medications at the time of her interview with the probation officer compiling the report. The failure to seek medical treatment when necessary does not reflect well on a defendant’s character. *See Webb v. State*, 941 N.E.2d 1082, 1091 (Ind. Ct. App. 2011) (“The effects of [the defendant’s] mental disorders on his character are exacerbated by his willful conduct in stopping his prescribed course of treatment and instead using illegal drugs.”), *trans. denied*. While Bolinger’s employment history includes some periods of steady employment, that consideration does not indicate she deserves a lesser sentence. *See Jones v. State*, 218 N.E.3d 3, 16 (Ind. Ct. App. 2023) (“We have held before that most people are employed such that this consideration does not warrant a lesser sentence.”), *trans. denied*. Bolinger also points out that “[s]he plead guilty, was remorseful, and accepted responsibility for her actions.” (Appellant’s Br. at 9.) Nonetheless, considering Bolinger’s criminal history, failure to abide by the terms of the drug court program, and additional criminal behavior after absconding from the drug court program, we cannot say Bolinger’s sentence is inappropriate given her character. *See, e.g., Webb*, 941 N.E.2d at 1091 (holding defendant’s character did not render his sentence inappropriate in light of his lengthy criminal history, multiple revocations of probation, and failure to comply with mental health treatment).

Conclusion

[10] Bolinger’s aggregate one-and-a-half-year sentence is not inappropriate given the nature of her offenses and her character. Bolinger endangered the public, and her criminal history, failure to abide by the terms of the drug court program, and additional criminal behavior while the instant case was pending render her above-advisory sentence not inappropriate. We affirm the trial court.

[11] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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