

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Steven Carter,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



April 15, 2024

Court of Appeals Case No.
23A-CR-2611

Appeal from the Vanderburgh Circuit Court

The Honorable David D. Kiely, Judge

Trial Court Cause No.
82C01-2306-F2-3476

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

- [1] Steven Carter appeals his sentence for dealing in a narcotic drug as a level 4 felony, dealing in methamphetamine as a level 2 felony, and dealing in marijuana as a level 6 felony. Carter argues his sentence is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

- [2] On June 6, 2023, Carter knowingly or intentionally possessed, with the intent to deliver, cocaine having a weight of at least ten grams, methamphetamine having a weight of at least ten grams, and marijuana weighing more than thirty grams. In particular, a police officer initiated a traffic stop of Carter for riding a bicycle on the sidewalk in violation of the municipal code in Evansville, Carter provided a false name and consented to a search of his backpack, Carter then began to run from the officer, and the police pursued and apprehended him.¹ The backpack contained a substance which field tested positive for cocaine and weighed 11.5 grams, a crystal-like substance which field tested positive for methamphetamine and weighed 12.5 grams, a substance which tested positive for THC and weighed 58.6 grams, and a small digital scale.
- [3] On June 9, 2023, the State charged Carter with: Count I, dealing in a narcotic drug as a level 2 felony; Count II, dealing in methamphetamine as a level 2

¹ In his appellant's brief, Carter cites the probable cause affidavit.

felony; Count III, dealing in a schedule I controlled substance as a level 3 felony; Count IV, dealing in marijuana as a level 6 felony; Count V, intimidation as a level 6 felony; and Count VI, resisting law enforcement as a level 6 felony. On September 18, 2023, Carter pled guilty to the lesser included offense of dealing in a narcotic drug as a level 4 felony under Count I, dealing in methamphetamine as a level 2 felony under Count II, and dealing in marijuana as a level 6 felony under Count IV, and the State dismissed Counts III, V, and VI. At sentencing, the court stated that Carter pled guilty which was a mitigating circumstance, is a high risk to reoffend, was on parole when he committed the offenses, has a prior controlled substance or controlled delivery conviction, violated community corrections, had a prior escape charge, and previously removed a monitoring device. The court sentenced Carter to concurrent terms of six years on Count I, seventeen years and 182 days on Count II, and 547 days on Count IV.

Discussion

[4] Carter argues that his sentence is inappropriate. With respect to the nature of the offenses, he argues “[t]he record does not show that [he] was en route to a drug deal or had a willing buyer,” “[t]here is no evidence of text messages between [him] and another individual and no individual was on scene,” “there is no evidence that [he] was armed,” he “consented [to] the search of his backpack (before attempting to flee the police),” “[t]he State’s case would have hinged on the weight of the drugs and presence of a digital scale,” and “[n]othing indicates that this crime required more than the minimum sentence.”

Appellant's Brief at 9. With respect to his character, he argues that, "[w]hile the record shows criminal history and court orders requiring [him] to refrain from intoxicating substances, it does not show that he has ever been offered substance abuse treatment" and, "[i]n fact, during the pre-sentence investigation, [he] admitted he needed substance abuse treatment." *Id.* at 9-10.

[5] Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute 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." The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Ind. Code § 35-50-2-4.5 provides that a person who commits a level 2 felony shall be imprisoned for a fixed term of between ten and thirty years with the advisory sentence being seventeen and one-half years. Ind. Code § 35-50-2-5.5 provides that a person who commits a level 4 felony shall be imprisoned for a fixed term of between two and twelve years with the advisory sentence being six years. Ind. Code § 35-50-2-7 provides that a person who commits a level 6 felony shall be imprisoned for a fixed term of between six months and two and one-half years with the advisory sentence being one year.

[6] Our review of the nature of the offenses reveals that Carter knowingly or intentionally possessed, with the intent to deliver, cocaine with a weight of 11.5 grams, methamphetamine with a weight of 12.5 grams, and marijuana with a weight of 58.6 grams. After initially consenting to the search of his backpack, Carter ran from the police.

[7] Our review of Carter’s character reveals that, on the day of his jury trial, he pled guilty to the lesser included offense of dealing in a narcotic drug as a level 4 felony under Count I, dealing in methamphetamine as a level 2 felony under Count II, and dealing in marijuana as a level 6 felony under Count IV, and the State dismissed Counts III, V, and VI. The presentence investigation report (“PSI”) states that Carter was born in February 1990 and had juvenile adjudications for two counts of “Larceny from the Person” and one count of “Gross Indecency Between Male & Female” in Michigan in 2006. Appellant’s Appendix Volume II at 73-74. The PSI indicates Carter has prior felony convictions for home invasion as a third degree felony in Michigan in 2009, “Controlled Substance – Delivery/Manufacture – Marijuana/Synthetic Equivalents” as a fourth degree felony in Michigan in 2011, theft as a level 6 felony in 2017, possession of cocaine and maintaining a common nuisance as level 6 felonies in 2020, and escape as a level 6 felony in 2021. *Id.* at 70. It also states he has a number of prior misdemeanor convictions including possession of marijuana in 2008; possession of marijuana or synthetic equivalents and trespass in 2009; aggravated assault in 2010; possession of marijuana or synthetic equivalents, attempted assault with a dangerous weapon, and operating a motor vehicle without ever receiving a license in 2011; “Sex Offender – Failure to Comply with Registration Act, Misdemeanor (Attempt to Commit)” in 2016; “Operator Never Licensed - Prior, Misdemeanor,” domestic battery as a class A misdemeanor, and false informing as a class B misdemeanor in 2018; and battery and criminal mischief as class B misdemeanors in 2022. *Id.* at 69-70. It states that Carter “was on Parole when

he committed the instant offense,” “has active holds for Parole,” and “has an active warrant in Kalamazoo, Michigan.” *Id.* at 65. It states that Carter admitted to a violation of community corrections placement in 2020 by removing his monitoring device and that he violated the terms of community corrections in 2022 and 2023. It also indicates that he violated the terms of his probation on several occasions. It further states “Cocaine - First used age 22 or 23; Daily at age 25; At the time of his arrest he was snorting less than 1/2 gram daily” and “Mr. Carter stated he feels he is in need of substance abuse treatment.” *Id.* The PSI also indicates that Carter’s overall risk assessment score using the Indiana risk assessment tool places him in the high risk to reoffend category. After due consideration, we conclude that Carter has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.

[8] For the foregoing reasons, we affirm Carter’s sentence.

[9] Affirmed.

Riley, J., and Foley, J., concur.

ATTORNEY FOR APPELLANT

Yvette M. LaPlante
Gonterman & Meyer, LLC
Evansville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Steven J. Hosler
Deputy Attorney General
Indianapolis, Indiana