MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Michael A. Kirn,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

October 27, 2025

Court of Appeals Case No.
25A-CR-1241

Appeal from the Lake Superior Court

The Honorable Samuel L. Cappas, Judge

Trial Court Cause No.
45G04-2409-F2-71

Memorandum Decision by Judge Foley
Chief Judge Altice and Judge May concur.

Foley, Judge.

[1] Michael A. Kirn ("Kirn") pleaded guilty to Level 2 felony dealing in a schedule II controlled substance[1] and received a sentence of fifteen years in the Indiana Department of Correction ("the DOC"), which was the maximum sentence allowed under his plea agreement but less than the advisory sentence. Kirn now appeals, claiming his fifteen-year sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On September 17, 2024, the State charged Kirn with Level 2 felony dealing in a Schedule II controlled substance. At that time, Kirn faced charges in three additional criminal matters. Kirn and the State reached a plea agreement under which Kirn would plead guilty to the Level 2 felony in the instant cause, the charges in the three separate criminal causes would be dismissed, and there would be "a maximum cap of fifteen (15) years as to the sentence which may be imposed by the Court." Appellant's App. Vol. II p. 45. Kirn stipulated to a factual basis, admitting that in September 2024, he sold sixty pills of Adderall in a transaction conducted in a Tractor Supply parking lot in St. John, Indiana. Kirn also admitted to having "arranged multiple illegal drug sales." *Id.* at 47. The trial court took the plea under advisement, scheduled the sentencing

[1] Ind. Code § 35-48-4-2(a)(1), (f)(1).

hearing for April 23, 2025, and sought a presentence investigation report ("the PSI").

[3] The PSI indicated that Kirn was fifty-seven years old at the time of sentencing and had seven prior felony convictions in Illinois, including theft in 1994, theft in 2003, possession of a controlled substance in 2008, and forgery on four separate occasions. Kirn also had several prior misdemeanor convictions. Kirn reported that he began using cocaine at the age of twenty-one. Kirn began smoking crack at the age of forty and quickly fell into daily use, noting that the drug "controls you." *Id.* at 68. Kirn received treatment for drug abuse on three occasions in Illinois, and he "expressed a willingness to get some help." *Id.*

[4] At the sentencing hearing, Kirn told the trial court that he had been "locked up nine months now" and did not "even miss smoking." Tr. Vol. 2 p. 25. Kirn asked the trial court to place him on probation and, "[i]f [he] mess[ed] up," to "lock [him] up for a long time[.]" *Id.* at 26. The trial court pointed out that Kirn had many prior contacts with the criminal justice system and had been smoking crack since he was forty years old. The court asked Kirn why this time was different, and Kirn replied: "I'm getting older. I'm done with it." *Id.* at 27.

[5] The trial court found in mitigation that Kirn pleaded guilty "thus saving the county and taxpayers the time and expense of a trial," *id.* at 28–29, but the court gave that mitigator "little weight" because, due to the plea agreement, Kirn "had a substantial reduction in [his] exposure to . . . jail time" and was "getting three other cases dismissed." *Id.* at 29. In aggravation, the trial court

observed that Kirn had extensive prior contacts with the criminal justice system, which led to seven felony convictions along with several misdemeanor convictions. The trial court concluded that the aggravators substantially outweighed the mitigators and imposed a sentence of fifteen years in the DOC, which was the maximum sentence allowed under the plea agreement. Kirn now appeals.

Discussion and Decision

[6] Kirn seeks appellate revision of his sentence under Appellate Rule 7(B), arguing that his fifteen-year sentence is inappropriate. In general, sentencing "is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008)). Pursuant to Appellate Rule 7(B), we have authority to revise a 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." The defendant bears the burden of proving the sentence is inappropriate. *Konkle v. State*, 253 N.E.3d 1068, 1092 (Ind. 2025).

[7] As our Supreme Court recently explained, the nature of the offense and the character of the offender "are 'separate inquiries to ultimately be balanced in determining whether a sentence is inappropriate.'" *Lane v. State*, 232 N.E.3d 119, 126 (Ind. 2024) (quoting *Connor v. State*, 58 N.E.3d 215, 218 (Ind. Ct. App. 2016)). Moreover, we revise sentences only in exceptional cases. *See id.* at 129.

Therefore, the trial court's sentencing decision will generally prevail "unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson*, 29 N.E.3d at 122.

[8] Here, Kirn was convicted of Level 2 felony dealing in a Schedule II controlled substance, which carried a sentencing range of ten to thirty years with an advisory sentence of seventeen and one-half years. *See* Ind. Code § 35-50-2-4.5. Kirn received a sentence of fifteen years, which was the maximum sentence authorized by the plea agreement but less than the advisory sentence. The advisory sentence is "the starting point the Legislature selected as appropriate for the crime committed." *Kelly v. State*, 257 N.E.3d 782, 805 (Ind. 2025) (quoting *Brown v. State*, 10 N.E.3d 1, 4 (Ind. 2014)). Thus, when the defendant receives the advisory sentence, he "bears a particularly heavy burden in persuading us that his sentence is inappropriate[.]" *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*. It follows that where, as here, the defendant received less than the advisory sentence, he also bears a particularly heavy burden in persuading us the sentence is inappropriate. *Cf. id.*

[9] When reviewing the nature of the offense, we look to "the details and circumstances surrounding the offense and the defendant's participation therein." *Morris v. State*, 114 N.E.3d 531, 539 (Ind. Ct. App. 2018), *trans. denied*. In this case, the nature of the offense is that Kirn sold sixty pills of Adderall in a transaction conducted in a Tractor Supply parking lot in St. John, Indiana, and

admitted to having "arranged multiple illegal drug sales." Appellant's App. Vol. II p. 47. There is nothing compelling about the nature of the offense that warrants downward revision of Kirn's sentence.

[10] Next, "[t]he character of the offender is found in what we learn of the offender's life and conduct." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). In reviewing the character of the offender, we consider the defendant's criminal history. *See, e.g.*, *Harris v. State*, 897 N.E.2d 927, 930 (Ind. 2008). "The significance of a defendant's criminal history 'varies based on the gravity, nature[,] and number of prior offenses as they relate to the current offense.'" *Id.* (quoting *Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004)). Here, Kirn has an extensive criminal history, having been convicted of seven felony offenses in Illinois, i.e., theft in 1994, theft in 2003, possession of a controlled substance in 2008, and forgery on four separate occasions. Kirn has also committed several misdemeanor offenses. Moreover, Kirn has struggled with substance abuse for many years. The instant offense relates to substance abuse in that Kirn was convicted of dealing in a controlled substance and, at sentencing, admitted "[h]e sold his [prescribed] Adderall . . . for cocaine." Tr. Vol. 2 p. 21.

[11] On appeal, Kirn focuses on his addiction. Kirn asks us to revise his sentence "to include a referral to Purposeful Incarceration, allowing [him] to petition for [sentence] modification upon completion of the program." Appellant's Br. p. 9. Kirn relies on *Hoak v. State*, 113 N.E.3d 1209 (Ind. 2019) (per curiam), where, in a span of approximately six months, the defendant committed and pleaded guilty to two offenses indicative of substance abuse—Class B felony possession

of methamphetamine and Level 5 felony possession of methamphetamine. The Court observed that the defendant had "multiple drug-related contacts with the criminal justice system over many years," but had yet to receive court-ordered substance abuse treatment. *Hoak*, 113 N.E.3d at 1209. The Court ultimately exercised its authority under Appellate Rule 7(B) and remanded the case to the trial court to determine whether the defendant was eligible for substance abuse treatment in a Community Corrections placement, and if so, to order half of the three-year sentence to be executed in Community Corrections. *Id.* at 1209–10.

[12] Kirn acknowledges that he "has undergone substance abuse treatment in the past," but argues that "the sentiment of *Hoak* is still pertinent to the facts at hand" in light of "the decade plus gap between his last treatment" and "the time of sentencing[.]" Appellant's Br. p. 9. We note that, at sentencing, Kirn's counsel did not seek substance abuse programming in the DOC, instead arguing for less time in prison. Indeed, counsel said he "d[id not] want to see [Kirn] locked up for a long period of time," adding: "To go into [the] DOC and get a drug program, you have to be in there a substantial period of time because there's a waiting list. I don't think a drug program's going to work for [Kirn]. He's had an opportunity three times before." Tr. Vol. 2 pp. 22–23. Regardless of counsel's assertions, Kirn has not persuaded us of compelling character evidence that warrants disturbing the trial court's sentence, particularly in light of Kirn's extensive criminal history and prior opportunities for treatment.

[13] All in all, we are not persuaded that Kirn's fifteen-year sentence—which is less than the advisory sentence—is inappropriate in light of the nature of the offense and the character of the offender. We therefore affirm the sentence imposed.

[14] Affirmed.

Altice, C.J. and May, J., concur.

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