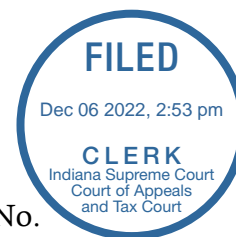


In the
Indiana Supreme Court



Joseph Kellams,
Appellant(s),

v.

State Of Indiana,
Appellee(s).

Court of Appeals Case No.
22A-CR-00200

Trial Court Case No.
59C01-1505-F2-397

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 12/6/2022.

FOR THE COURT

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

Massa, Slaughter, and Molter, JJ., concur.

Rush, C.J., dissents from the denial of transfer with separate opinion, in which Goff, J., joins.

Rush, Chief Justice, dissenting.

Addiction is a disease that wreaks havoc on the lives of many Hoosiers—Joseph Kellams is one such individual. After a dirt-bike accident when he was a teenager, Kellams was prescribed pain medication to subdue his injuries. He became addicted and, left untreated, eventually turned to methamphetamine. To sustain his disease-level addiction to meth, he turned to selling the drug, which culminated in a conviction for Level 3 felony dealing. This conviction carried a potential sentence of three to sixteen years with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). In imposing a maximum, sixteen-year, fully executed sentence with no required treatment, the trial court reasoned that Kellams’s addiction issues were separate from his decision to deal methamphetamine. I disagree.

Kellams’s addiction to meth, a substance use disorder, puts his criminal behavior in perspective. *See Kovats v. State*, 982 N.E.2d 409, 417 (Ind. Ct. App. 2013). And that perspective is relevant in determining—under our unique constitutional authority to revise a sentence, implemented through Appellate Rule 7(B)—whether Kellams’s maximum sentence is inappropriate. Because I believe it is, I respectfully dissent from the Court’s decision to deny transfer.

This case highlights the disparity among Indiana counties with respect to meaningful sentencing alternatives for those suffering from a substance use disorder. It is no secret that addiction often leads individuals to engage in criminal behavior. As a result, the criminal justice system has become the largest referral source for substance use disorder treatment aside from self-referral.¹ Thus, alternatives like problem-solving courts—of which there are currently 125 certified statewide—are invaluable tools

¹ See, e.g., U.S. Dep’t of Health & Human Servs., *Treatment Episode Data Set (TEDS) 2020: Admissions to and Discharges from Publicly Funded Substance Use Treatment Facilities* 9 (2022), https://www.samhsa.gov/data/sites/default/files/reports/rpt38665/2020_TEDS%20Annual%20Report-508%20compliant_10242022_FINAL.pdf [<https://perma.cc/7P7A-M8TZ>].

for rehabilitating drug offenders and reducing recidivism.² These courts address the unique needs of eligible offenders, often allowing them to remain in their communities while taking part in intensive treatment programs under direct court supervision. Unfortunately, however, not every county—including where Kellams was charged and convicted—has adopted this avenue for justice. This disparity perpetuates a justice-by-geography anomaly that disadvantages individuals like Kellams.

Additionally, though sentence modification under Rule 7(B) is reserved for “a rare and exceptional case,” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam), maximum sentences “are generally most appropriate for the worst offenders,” *Buchanan v. State*, 767 N.E.2d 967, 973 (Ind. 2002) (citations omitted). This record does not show that Kellams is one of the “worst offenders.” His criminal history—though not insignificant—largely shares a nexus with his substance abuse issues. And he has taken positive steps to address those issues, including availing himself of rehabilitative programming while incarcerated. Kellams also expressed remorse for his offense and admitted that he not only wants but needs help with his disease.

At the same time, there is no question that methamphetamine exacts a devastating toll on individuals, families, and our communities. And Kellams exacerbated that toll by choosing to deal methamphetamine. This serious offense requires a commensurate sentence. Reflecting the gravity of his offense, Kellams’s sentence should remain above the advisory; but reflecting the impact of his addiction, his sentence should include treatment. Thus, believing this to be a rare and exceptional case warranting sentence modification, I would grant transfer and impose a twelve-year sentence with ten years executed, two years suspended to community corrections, and require substance abuse treatment.

Goff, J., joins.

² In 2017, when Kellams was sentenced, there were ninety-five certified problem-solving courts.