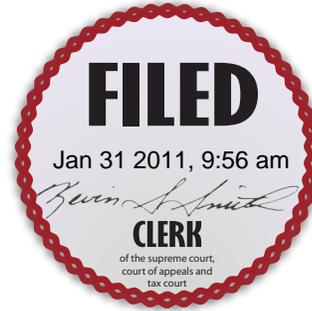


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

VIRGIL AUSTIN,)
)
Appellant/Defendant,)
)
vs.) No. 49A02-1007-CR-868
)
STATE OF INDIANA,)
)
Appellee/Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
The Honorable Anne Flannelly, Commissioner
Cause Nos. 49G22-0910-FC-90116, 49G22-0903-FC-36012

January 31, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Virgil A. Austin appeals the sentence imposed by the trial court following his guilty plea to two counts of Class C felony Operating a Motor Vehicle After License Forfeited for Life,¹ one count of Class D felony Resisting Law Enforcement,² and Class A misdemeanor Criminal Recklessness.³ We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the June 3, 2010 plea hearing, on or about March 27, 2009, Austin knowingly operated a motor vehicle in the area of East 25th Street and North Parker Avenue in Indianapolis after his driver's license had been forfeited for life. On March 30, 2009, the State charged Austin under Cause Number 49G22-0903-FC-36012 ("Cause No. FC-36012") with Class C felony operating a motor vehicle after his license was forfeited for life.

Approximately seven months later, on or about October 22, 2009, while Austin was released on bond for Cause No. FC-36012, Austin again knowingly operated a motor vehicle in the area of Udell Street and Annette Street in Indianapolis after his driver's license had been forfeited for life. On this date, Austin also knowingly fled in his vehicle from a law enforcement officer after the officer identified himself and ordered Austin to stop. While fleeing from the law enforcement officer, Austin knowingly or intentionally drove his vehicle at "highly excessive speeds through stop signs, over curbs or off-road while evading law enforcement." Tr. p. 10. On October 23, 2009, the State charged Austin under Cause

¹ Ind. Code § 9-30-10-17 (2008).

² Ind. Code § 35-44-3-3 (2009).

³ Ind. Code § 35-42-2-2 (2009).

Number 49G22-0910-FC-90116 (“Cause No. FC-90116”) with Class C felony operating a motor vehicle after his license was forfeited for life, Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class A misdemeanor criminal recklessness, and Class B misdemeanor reckless driving.

On June 3, 2010, Austin pled guilty as charged under both cause numbers.⁴ On July 8, 2010, the trial court conducted a sentencing hearing at which it sentenced Austin to a term of four years executed under Cause No. FC-36021 and an aggregate term of six years executed under Cause No. FC-90116. The trial court ordered that the sentence imposed for Cause No. FC-90116 run consecutive to the sentence imposed for Cause No. FC-36012, all executed, for a total term of ten years of incarceration.

DISCUSSION AND DECISION

Austin contends on appeal that his sentence is inappropriately harsh. Indiana Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute 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.” The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of Austin’s offenses, the record indicates that Austin

⁴ Although Austin pled guilty under Cause No. FC-90116 to Class C felony operating a motor vehicle after his license was forfeited for life, Class D felony resisting law enforcement, Class A misdemeanor resisting law enforcement, Class A misdemeanor criminal recklessness, and Class B misdemeanor reckless driving, upon accepting Austin’s guilty plea, the trial court only sentenced for the Class C felony, Class D felony, and Class A misdemeanor criminal recklessness charges under Cause No. FC-90116.

knowingly operated a motor vehicle on two separate occasions after his driver's license had been forfeited for life. The record also indicates that during the second occasion, Austin fled law enforcement officers by driving his vehicle erratically at a high rate of speed down city streets. Austin disregarded stop signs and drove off the road and over curbs while fleeing the law enforcement officers. Austin attempts to downplay the seriousness of his offenses by arguing that he was "desperate" to provide for his family. However, nothing in the record indicates that Austin was en route to work during either occasion. Further, Austin's actions in fleeing law enforcement officials in a vehicle at a high rate of speed show a complete disregard for his fellow citizens' and motorists' safety. Moreover, Austin committed the second offense while out on bond for the first.

With respect to Austin's character, our review reveals that Austin, who was forty-four years old at the time he committed the instant offenses, has amassed a substantial criminal record that includes numerous felony and misdemeanor convictions. Austin's previous misdemeanor convictions include convictions for a violation of the 1935 Firearms Act, public intoxication, operating a vehicle while intoxicated, battery, criminal mischief, and disorderly conduct. Austin's criminal history also includes two prior misdemeanor convictions for possession of marijuana, three prior misdemeanor convictions for resisting law enforcement, and six prior misdemeanor convictions for driving while his license was suspended. His previous felony convictions include battery, operating a vehicle while a habitual traffic violator, as well as four prior convictions for operating a motor vehicle after his driver's license had been forfeited for life. In addition, Austin has previously been placed on

probation but has failed to modify or reform his behavior to conform to the laws of this state. Austin's criminal history indicates that Austin has frequently disregarded the laws of this state by driving a vehicle after losing his driving privileges and has a history of fleeing from law enforcement officers. Moreover, the trial court was statutorily obligated to run Austin's sentence in Cause No. FC-90116 consecutive to his sentence in Cause No. FC-36012 because Austin committed the second offense while out on bond for the first offense. *See* Indiana Code § 35-50-1-2 (2008). Based on our review of the evidence, we see nothing in Austin's character or in the nature of his offenses that would suggest that his sentence is inappropriate.

The judgment of the trial court is affirmed.

KIRSCH, J., and CRONE, J., concur.