

STATEMENT OF THE CASE

Appellant-Defendant, Charles Pennington (Pennington), appeals his sentence following guilty pleas in three separate causes.

We affirm.

ISSUE

Pennington raises one issue on appeal, which we restate as: Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

FACTS AND PROCEDURAL HISTORY

This cause comes before us as a consolidated appeal involving three different events and plea agreements. On March 15, 2008, Aurora Police Officer Michael Prudenti (Officer Prudenti) responded to a complaint that a person was slumped over the steering wheel in his car. When the officer arrived, he noticed Pennington leaning halfway out of his vehicle, Pennington had urinated on himself, and his pants' zipper was undone. Pennington's eyes were red and glossy, his speech was slurred, and his breath smelled of alcohol. Officer Prudenti also saw alcoholic containers scattered about in the car. Pennington admitted that he had been drinking. On March 17, 2008, in Cause No. 15D02-0803-CM-155 (Cause CM-155), the State filed an Information, charging Pennington with public intoxication, a Class B misdemeanor, Ind. Code § 7.1-5-1-3.

On September 4, 2008, Pennington ran a red light and was stopped by Officer Prudenti. When checking Pennington's driver's license, Officer Prudenti was informed that it was suspended. The Officer noticed that Pennington's breath smelled of alcohol, and his

eyes were red and glossy. On September 5, 2008, in Cause No. 15D02-0809-FD-238 (Cause FD-238), the State filed an Information charging Pennington with Count I, operating a vehicle while intoxicated, a Class A misdemeanor, I.C. § 9-30-5-2(b); Count II, operating a vehicle with a BAC of .08 or higher, a Class C misdemeanor, I.C. § 9-30-5-1(a); and Count III, operating a vehicle while intoxicated with a prior conviction, a Class D felony, I.C. § 9-30-5-3.

On November 9, 2009, Pennington's father called the police for a domestic disturbance at his residence. Pennington's father told the officers that Pennington had a gun and pills in his room. The officers were given permission to search Pennington's room where they found six prescription pills. On November 10, 2009, in Cause No. 15D02-0911-FD-234 (Cause FD-234), the State filed an Information charging Pennington with Count I, possession of a controlled substance, a Class D felony, I.C. § 35-48-4-7(a) and Count II, possession of a legend drug, a Class D felony, I.C. § 16-42-19-13.

On April 9, 2010, Pennington entered into a plea agreement with the State in which he agreed to plead guilty to Class B misdemeanor public intoxication in Cause CM-155; to a Class D felony operating a vehicle while intoxicated with a prior conviction in Cause FD-238; and to a Class D felony possession of a controlled substance and a Class D felony possession of a legend drug in Cause FD-234. On May 17, 2010, the trial court sentenced Pennington to 100 days incarceration in Cause CM-155, to three years incarceration in Cause FD-238 to be served consecutively to CM-155, and to three years incarceration in Cause FD-234, with two years suspended on each count, and with one year to be served on in-home

incarceration, to be served consecutively to FD-238. Thus, Pennington's aggregate executed sentence was four years and 100 days incarceration.

Pennington now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Pennington contends that his sentence is inappropriate in light of the nature of the offense and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Indiana Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds 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 us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

With regard to the nature of the crimes, we note that all crimes are alcohol or drug related. With respect to the alcohol offenses, Pennington repeatedly endangered society at-large by insisting on driving while intoxicated.

Turning to Pennington's character, we note that Pennington was aware of his substance abuse problem when he acknowledged that he had "all these problems." (Transcript p. 42). Even though, at one point, he took substance abuse classes, he stopped attending. Furthermore, Pennington's criminal history is rife with substance-related offenses. Pennington was convicted of two counts of driving under the influence in Maryland in 2001; driving under the influence in Pennsylvania in 2003; driving under the influence in Maryland in 2004; two counts of operating a boat under the influence in Maryland in 2005; driving

under the influence in Maryland in 2005; and operating while intoxicated with a prior conviction in 2008 in Indiana. Pennington also has an active case for driving while under the influence in Maryland. In addition, Pennington has five probation violations. While we sympathize with Pennington's difficult childhood, the fact remains that Pennington has had several opportunities throughout the years to turn his life around; nevertheless, he has consistently failed to do so.

Based on the evidence before us, we find that Pennington's sentence is appropriate in light of his character and nature of the offense. As a result, we affirm the trial court's imposition of his sentence.

CONCLUSION

Based on the foregoing, we conclude that Pennington's sentence is appropriate in light of his character and nature of the offense.

Affirmed.

ROBB, C.J., and BROWN, J., concur.