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FILED
Feb 02 2011, 9:00 am
CLERK
of the supreme court, court of appeals and tax court

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IN THE
COURT OF APPEALS OF INDIANA

TRA HIBBARD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 28A05-1008-CR-537
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GREENE SUPERIOR COURT
The Honorable Dena A. Martin, Judge
Cause No. 28D01-0910-FC-500

February 2, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Tra Hibbard appeals following his pleas of guilty to two counts of operating a vehicle with a controlled substance in blood causing death, Class B felonies, and one count of criminal recklessness with a deadly weapon resulting in serious bodily injury, a Class C felony. He raises the sole issue of whether his aggregate sentence of forty-five years is inappropriate. Concluding that it is not inappropriate in light of the nature of his offenses and his character, we affirm.

Facts and Procedural History

On October 2, 2009, Hibbard was driving his GMC pickup truck with his teenage sister in the passenger seat. He did not have a valid driver's license nor legally required insurance for this truck. He affixed a black cloth over his license plate prior to filling $39 worth of gas at a gas station, and then drove off without paying. The gas station attendant told Steven and Debra Dean, other customers at the register, that Hibbard had not paid and the Deans returned to their vehicle to pursue Hibbard. The nearly half-hour car chase reached sixty to seventy miles per hour; meanwhile the Deans called 911 on a cellular phone. The 911 dispatcher discouraged their pursuit, but they continued nonetheless. Hibbard did not stop as he approached a stop sign. As he went through the intersection he collided with a van, hitting the driver's side squarely with the front of his pickup truck. At impact, Hibbard was traveling about seventy miles per hour and the van was traveling about sixty miles per hour.

The van was driven by seventy-one-year-old Victor Newton, who was killed in the crash. Victor's seventy-year-old wife, Violet, who was in the front passenger seat, sustained fractures in her hip, pelvis, ribs, and skull, lost vision in one eye, and suffered

cranial bleeding and substantial neck, back, and brain injuries. Violet was no longer able to drive, work, or live independently. The Newtons' daughter, Debra Doyle, sat in a rear passenger seat and was killed in the crash. Doyle's sons, a five-year-old and a two-year-old, were both ejected from a rear passenger seat and landed in the woods near the wreckage. Doyle's five-year-old son suffered a compound fracture in his leg. Doyle's two-year-old son sustained several lacerations and a concussion. Hibbard's sister suffered a broken arm and significant facial injuries that required reconstructive surgery. Hibbard, who was not wearing his seatbelt, was ejected from his truck and was found with his face implanted in the ground. The Deans did not collide with either Hibbard's truck or the van.

Hibbard later reported having drunk up to ten beers immediately before he left his home. Approximately two hours after the crash, officers administered a blood test that showed his blood alcohol content to be 0.076, slightly below the legal limit of 0.08. Laboratory reports showed he also had methamphetamine and marijuana in his blood.

Hibbard was charged with the following sixteen felonies and one misdemeanor: two counts of reckless homicide, Class C felonies, three counts of criminal recklessness with a deadly weapon resulting in serious bodily injury, Class C felonies, theft, a Class D felony, driving while suspended, a Class A misdemeanor, two counts of operating a vehicle while intoxicated causing death, Class C felonies, three counts of operating a vehicle while intoxicated causing serious bodily injury, Class D felonies, two counts of operating a vehicle with a controlled substance in blood causing death, Class B felonies, and three counts of operating a vehicle with a controlled substance in blood causing serious bodily injury, Class D felonies.

Hibbard entered into a plea agreement with the State, and in exchange for his pleas of guilty to two counts of operating a vehicle with a controlled substance in blood causing death, Class B felonies, and one count of criminal recklessness with a deadly weapon resulting in serious bodily injury, a Class C felony, the State dismissed all other charges. The trial court held a sentencing hearing and subsequently sentenced Hibbard to nineteen years for each of the two Class B felonies and seven years for the Class C felony, all to be served consecutively for a total of forty-five years. Hibbard now appeals his sentence.

Discussion and Decision

I. Standard of Review

This court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. Nevertheless, the defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

II. Inappropriate Sentence

Hibbard's teenage sister testified Hibbard was like a father to her. As a father figure, he brought her along to steal gasoline and lead a high-speed car chase. Although

he had cellular phones in his truck to call authorities for assistance in diffusing the dangerous situation, he did not do so for fear of arrest for stealing gasoline and driving without car insurance or a valid driver's license. He sped through a stop sign at about seventy miles per hour, apparently without making a meaningful attempt to stop – there were no skid marks on the roadway – and upon colliding with the van he irreparably fractured several families. In addition to causing two deaths and severe injuries to a seventy-year-old woman, he also caused but did not plead guilty to causing severe injuries to a five-year-old boy, a two-year-old boy, and his teenage sister.

As to the nature of the offenses, Hibbard argues his sentence "should not be justified based upon the perceived value of the lives he took." Brief of Defendant-Appellant at 11. Even if we were to agree, our agreement would not make his aggregate sentence inappropriate considering the totality of the nature of his offenses.

Hibbard also argues his aggregate sentence is inappropriate because his culpability was mere recklessness and he did not intend harm. However, because his sentences are within the range the General Assembly designated for reckless conduct, and recklessness already presumes he did not intend harm, we do not find his limited culpability makes his sentence inappropriate.

The trial court acknowledged as mitigating circumstances that Hibbard accepted responsibility for his actions, pleaded guilty, and has expressed remorse. And although the record reveals some evidence of his remorse, it is also notable that the trial court was reluctant to "place great weight" on this circumstance because "[Hibbard] expressed more concern for his injuries and even laughed at his 'crocked [sic] teeth' . . . during the interview with police after the crash when [Hibbard] was aware of the seriousness of the

injuries to all those involved." Appendix of Defendant-Appellant at 8-9. Because we defer to the trial court in its assessment of a defendant's credibility, we are also reluctant to place great weight on his expression of remorse. Further, even if we were, for the sake of argument, to consider him remorseful it would not be sufficient to overcome the nature of these offenses.

Hibbard next refers us to Newkirk v. State, 898 N.E.2d 473, 479 (Ind. Ct. App. 2008), trans. denied, wherein we affirmed as appropriate a defendant's sentence following an horrific automobile accident, in which the defendant ran his car into several parked motorcyclists while staring straight ahead with a blank facial expression. A toxicology report indicated the defendant in Newkirk had methamphetamine in his system. Hibbard, despite conceding he likewise had methamphetamine and marijuana in his system, attempts to contrast Newkirk by arguing that the evidence in this case does not show a connection between the methamphetamine or marijuana in his system and his resulting offenses. Therefore, he argues, he should be treated as if neither methamphetamine nor marijuana was in his system and he were convicted of two Class C felonies rather than two Class B felonies.

We make several observations in response. First, Hibbard pled guilty to the charges and he does not challenge those convictions. We will not entertain any invitation to renegotiate a valid plea agreement. Second, his charges explicitly stated they involved marijuana without mention of methamphetamine. He admitted at the sentencing hearing that he had marijuana and methamphetamine in his system. The trial court stated "I am not even going to put in the sentencing order that you were under the influence of methamphetamine . . . [;] all of the information before [today] showed you were under

the influence of alcohol and marijuana and the combination of all of that led to a tragic conclusion . . . ." Transcript at 129. It appears, therefore, Hibbard was treated as if methamphetamine was not in his system. We acknowledge we are reviewing his sentence for appropriateness, not whether the trial court abused its discretion, and therefore independently determine whether he should be treated as if methamphetamine – which he admits to consuming – was in his system. See Roney, 872 N.E.2d at 206 (stating we may look to any factors appearing in the record).

We find it suitable to consider the methamphetamine in Hibbard's system because it displays his egregious substance abuse at the time of the incident. He admitted to drinking up to ten beers immediately before leaving his home that afternoon, and also to having taken Vicodin pills without a valid prescription and consuming marijuana within two days before the incident. Hibbard has a severe substance abuse problem, which he concedes has led to his poor decisions, including his conduct on the day of the incident.

Further, acknowledging that Hibbard also argues we should not consider the marijuana in his system, we note that our opinion in Newkirk did not explicitly articulate there was a connection between the methamphetamine and the offenses. Without Newkirk articulating a connection, we do not read it to require a finding of a connection between drug use and the concurrent behavior. Neither does the relevant statute explicitly require a connection, other than concurrence in time of a specified drug in a defendant's blood and operating a motor vehicle. See Ind. Code § 9-30-5-5(b). We therefore decline Hibbard's invitation to revise his sentences for these Class B felonies to reflect sentences for Class C felonies. Indeed, Hibbard's conduct that day involved

several successive acts of egregious recklessness, and his sentence is not inappropriate as to the nature of his offenses.

As to Hibbard's character, we appreciate his honest self-assessment that he has a substance abuse problem and acknowledge that his father set the dreadful foundation for this problem: Hibbard's father gave him alcohol as an infant and introduced him to marijuana at eight, crack cocaine at eleven, and methamphetamine at fifteen. However, the facts remain that Hibbard has continued to consistently use illegal drugs and admitted to having on occasion manufactured methamphetamine for his own use. Hibbard argues for a lesser sentence because his substance abuse problem will not be treated while he is in prison. We disagree because even aside from the various substance abuse treatment programs that may be available to him in prison, his imprisonment alone will be indirect drug treatment by preventing his access to drugs.

Hibbard's criminal history is also significant, especially considering his relative youth of twenty-three years at the time of sentencing. When Hibbard was a juvenile in 2004, a court entered a true finding of paint sniffing, and ordered probation and substance abuse evaluation and treatment. As an adult in 2005, Hibbard was found guilty of possession of paraphernalia, a Class A misdemeanor, and resisting law enforcement, a Class D felony, and again served time in prison and received probation. In 2007, he was convicted of illegal consumption of alcohol, a Class C misdemeanor, and possession of marijuana, a Class A misdemeanor. He also violated the terms and conditions of his probation, although the State chose not to file a petition to revoke. In 2008, he was convicted of battery resulting in bodily injury, a Class A misdemeanor, and pursuant to a plea agreement, a charge of driving while suspended, a Class A misdemeanor, was

dismissed and a petition to revoke his probation was denied. In 2009, he was convicted of interfering with a drug or alcohol screening test, a Class B misdemeanor, and had his probation revoked. He was released from prison less than four months before the fatal crash.

Hibbard's driver's license was suspended six times and as of the day of the incident he was not eligible to seek a new one. Considering his concessions of his substantial substance abuse problem and having drunk ten beers prior to the accident, we do not find compelling his argument that his sentence is inappropriate because he has no prior convictions for driving under the influence.

We find Hibbard's ongoing severe substance abuse problem, his failure to change his behavior despite numerous interactions with law enforcement, his failure to successfully complete probation, his driving record, and his egregious recklessness in this case to be significant, and accordingly, his sentence is not inappropriate as to his character.

Hibbard has been given numerous opportunities to change his behavior and work through his substance abuse problems. He has failed to do so, and his reckless conduct has dreadfully resulted in two deaths and severe injury to four others. We do not find his consecutive sentences for recklessly causing two deaths and serious injury to one other to be inappropriate.

Conclusion

Hibbard's aggregate sentence of forty-five years is not inappropriate in light of the

nature of his offenses or his character, and is therefore affirmed.

Affirmed.

RILEY, J., and BROWN, J., concur.