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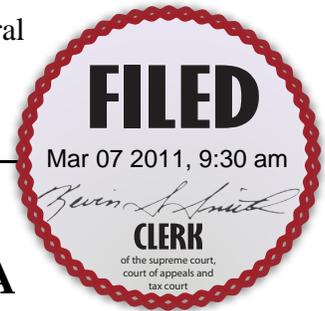
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**IN THE
COURT OF APPEALS OF INDIANA**

THOMAS WILLIAM DONALDSON,)

Appellant-Defendant,)

vs.)

No. 48A02-1007-CR-763

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MADISON SUPERIOR COURT
DIVISION IV

The Honorable David A. Happe, Judge
Cause No. 48D04-0904-FD-147

March 7, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Thomas William Donaldson (Donaldson), appeals the sentence imposed by the trial court following his guilty plea to resisting law enforcement, Class D felony, Ind. Code § 5-44-3-3(b)(1)(A).

We affirm.

ISSUE

Donaldson raises one issue on appeal, which we restate as follows: Whether the sentence of twenty-four months with eighteen months suspended and six months executed on work release imposed by the trial court is appropriate in light of the nature of the offense and Donaldson's character.

FACTS AND PROCEDURAL HISTORY

On March 20, 2009, the Madison County Police Department (MCPD) received a report of a possible intoxicated driver in a maroon Pontiac Grand Prix headed westbound on State Road 38 approaching Pendleton, Indiana. Officer James Enea (Officer Enea) spotted the vehicle driven by Donaldson, and got behind the vehicle as it was turning south onto State Road 67. After proceeding south for a short distance, Donaldson made a right turn onto Madison Avenue. As Donaldson turned, he crossed the center line on Madison Avenue, ran off the left side of the road, came back onto the road and continued westbound in the eastbound lane. Officer Enea activated his emergency lights in a fully marked police car. At that time, Donaldson tried to turn into a driveway but missed the turn and stopped in a yard instead. Donaldson then backed out of the yard and took off at a high rate of speed toward a

driveway leading to an apartment complex. Sergeant Shane Isaacs (Sergeant Isaacs) arrived to assist Officer Enea in the pursuit. Officer Enea and Sergeant Isaacs followed Donaldson as he pulled into the driveway at his residence. Donaldson ran into the overhead door of the garage causing considerable damage to his garage door. Officer Enea and Sergeant Isaacs approached and ordered Donaldson out of his vehicle. Donaldson complied at first by exiting the vehicle, then after looking at the officers he turned away and made an attempt to go into his residence. Donaldson had to be physically taken to the ground and handcuffed. Donaldson told the officers that he had taken several Xanax pills which he had bought off of an individual. The officers discovered several pills in Donaldson's coat pocket. Donaldson consented to a blood draw. After the blood draw, Donaldson was transported to the Madison County Jail.

On March 21, 2009, Donaldson was released from Madison County Jail on a \$5,000 bond. On April 29, 2009, the State filed an Information under Cause No. 48D04-0904-FD-147 charging Donaldson with Count I, operating a vehicle while intoxicated, a Class C misdemeanor, I.C. § 9-30-5-1(c); Count II, possession of a schedule II controlled substance, a Class D felony, I.C. § 35-48-4-7; Count III, resisting law enforcement, a Class D felony, I.C. § 35-44-3-3(b)(1)(A); and Count IV, operating a vehicle while intoxicated, a Class D felony, I.C. § 9-30-5-3(2). On May 19, 2010, the State filed a motion to *nolle prosequi* Counts I, II, and IV of the original charges after Donaldson produced a valid prescription for the substance alleged in Count II, and the State Department of Toxicology was unable to produce a report to conclusively establish the levels of the alleged controlled substances in

Donaldson's blood. On May 19, 2010, the trial court granted the State's motion. On May 24, 2010, Donaldson pled guilty to Count III, resisting law enforcement, a Class D felony. On June 1, 2010, Donaldson filed a motion requesting the trial court to enter the conviction as a Class A misdemeanor.

On June 7, 2010 while awaiting his sentencing hearing, Donaldson was arrested for operating a vehicle while intoxicated and resisting law enforcement by the Anderson Police Department. On June 14, 2010 at the sentencing hearing regarding the guilty plea entered into on May 24, 2010, the trial court denied Donaldson's motion to reduce the conviction to a misdemeanor. Donaldson was sentenced to twenty-four months, with eighteen months suspended, and six months executed to be served in a work release program.

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

DISCUSSION AND DECISION

Donaldson contends that his twenty-four month enhanced sentence, with eighteen months executed in the Department of Correction, is inappropriate in light of the nature of the offense and his character. Specifically, Donaldson argues that the crime he committed was "non-violent in nature," he "accepted responsibility" for his actions by pleading guilty "without the benefit of a plea agreement," and he also took responsibility for his treatment by "entering and completing an intensive outpatient program." (Appellant's Br. pp. 4-5).

A decision to deviate from the advisory sentence is within discretion the of the trial court. Ind. Code § 35-38-1-7.1. Independent appellate review of a sentence imposed by the trial court is governed by Article VII, Sections 4 and 6 of the Indiana Constitution. *Childress*

v. State, 848 N.E.2d 1073, 1080 (Ind. 2006) *clarified on reh'g*, 875 N.E.2d 218. When reviewing a sentence imposed by the trial court, 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.” Ind. Appellate Rule 7(B). “The principal role of appellate review should be an attempt to leaven the outliers and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). On appeal, it is Donaldson’s burden to persuade this court that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

With regard to the nature of the crime, we note that Donaldson’s actions involved driving under the influence of alcohol or drugs and resisting law enforcement. Donaldson repeatedly endangered both himself and society at large.

Turning to Donaldson’s character, we note that Donaldson was aware of his substance abuse problem by entering and completing an intensive outpatient treatment program at the Anderson Center that consisted of meetings three days a week for a period of more than seven weeks. (Transcript pp. 60-61). Furthermore, Donaldson’s criminal history includes two convictions for operating while intoxicated from 1996 and 2004. The instant case involves a similar occurrence of driving while intoxicated which was dismissed only due to “proof problems” incurred by the State. (Tr. p. 91). Despite the State’s dismissal, Donaldson did acknowledge during the sentencing hearing to driving under the influence of Xanax pills

that were not prescribed to him. Also, Donaldson violated the conditions of his bond by gaining a new arrest for operating a vehicle while intoxicated and resisting law enforcement. The new arrest again resulted from misuse of prescription medication as Donaldson admitted to taking twice the dosage of Ambien his physician had prescribed. Although Donaldson had worthwhile gainful employment and had “taken some steps to voluntarily address treatment,” his criminal history, coupled with both the facts of the instant case and those from the new arrest, indicate that the sentence imposed is in line with his character. (Tr. p. 92).

Although Donaldson notably took some responsibility for his treatment, he continued to misuse prescription medication and thereby placed his own safety and the lives of others at risk. While we sympathize with Donaldson’s lengthy list of health problems and history of treatment, the fact remains that Donaldson has consistently proved to have ongoing concerns related to substance abuse. Based on the evidence before us, we find that Donaldson’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 Donaldson’s sentence is appropriate in light of his character and nature of the offense.

Affirmed.

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