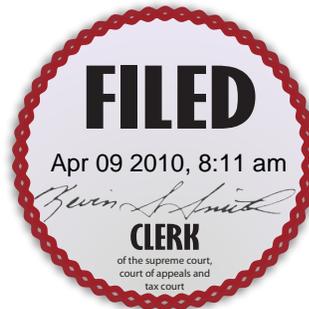


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL J. GREIG,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A02-0908-CR-797
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marc T. Rothenberg, Judge
Cause No. 49F09-0809-FD-204860

April 9, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Michael Greig appeals his 730-day sentence, with 365 days served on home detention and 365 days suspended to probation, for Class D felony resisting law enforcement. Specifically, he contends that his sentence is inappropriate. Concluding that Greig's sentence thoughtfully takes into account his family situation and his extensive criminal history, we conclude that it is not inappropriate and therefore affirm.

Facts and Procedural History

On September 2, 2008, Greig knowingly fled from Indianapolis Metropolitan Police Department Officer David Moore after Officer Moore identified himself by visible or audible means and ordered Greig to stop. Greig committed the offense by operating his vehicle in a manner that created a substantial risk of bodily injury to two motorists. As a result of this incident, the State charged Greig with Class D felony resisting law enforcement. Ind. Code § 35-44-3-3. In June 2009 Greig and the State entered into a plea agreement whereby Greig pled guilty to Class D felony resisting law enforcement, and the State agreed to dismiss three counts of Class D felony auto theft and one count of Class D felony theft that were pending in an unrelated cause number. The parties agreed that Greig's sentence would be left to the trial court's discretion except that the executed portion could not exceed 365 days. The trial court accepted Greig's guilty plea.

At the sentencing hearing, Greig testified that he and his wife had been married six years and that he had four children, she had two children, and they had four children together. Of the ten children in their blended family, they had eight minor children living with them. The youngest child, who was eighteen months old at the time of the

sentencing hearing, had several health issues. Specifically, this child, who had surgeries on the horizon, had a tethered spinal cord, tumors on his vertebra, a neurogenic bladder, and an imperforate anus. Greig testified that he was responsible for taking this child to the numerous medical appointments because his wife “can’t physically do it” on account of her back problems and fibromyalgia. Tr. p. 13. Greig also expressed to the trial court how remorseful he was for his actions. At the time of the sentencing hearing, Greig did not have a job and was receiving unemployment. However, he testified that he had a job offer “pending the outcome of today.” *Id.* at 15-16. As such, Greig asked the trial court for alternate misdemeanor sentencing (“AMS”) and requested that any executed time be served on home detention. In response, the State commented that Greig “tells a very sad tale” but noted that “he is the one who put himself in this situation.” *Id.* at 22. The State pointed out that Greig had two prior felony convictions and therefore asked the trial court to enter the conviction as a felony and sentence him to 365 days in the Department of Correction.

The trial court ruled as follows:

Mr. Greig . . . I sympathize with your current plight however I can’t ignore your criminal history. I mean this is your eighth conviction and mostly over the past ten years. You’ve had one probation that’s been revoked. And I’m not sure you’re a good candidate for probation. Here’s what I’m going to do. I’m going to give you the carrot and I’m going to give you the stick. Although the carrot’s not really going to seem like a carrot. Although it’s . . . going to seem more like a stick so, that being said I’m not going to give you AMS on this. It[’]s going to be a felony because I feel you[r] criminal history warrants the felony conviction. Your sentence is going to be a [730-]day sentence. . . . [365] days will be served on Marion County Community Corrections Home Detention. You’ll be placed on probation for [365] days. Now I said you weren’t a good candidate for probation, well here’s what’s going to be the trick with this probation. The probation will terminate automatically upon successful completion of your

home detention. Now here's why it[']s sort of a trick, because if you violate your home detention in the State of Indiana even though technically [you] haven't started your probation, it's a violation of your probation as well. So if you violate your home detention not only are you going to do the remainder of what[ever] home detention you have in the Department of Correction[], probation is likely to file a violation on you, you're likely to be revoked, and I'll be honest . . . with your criminal history you[']re likely to go to jail for an additional year. So here's what's going to happen. Your initial sentence will be [365] days Marion County Community Corrections Home Detention. You do that you're completely fine. All right you[']re done, everything's fine. You violate that however and then you're looking at additional time.

Id. at 22-24; *see also* Appellant's App. p. 17 (Abstract of Judgment). Greig now appeals his sentence.

Discussion and Decision

Greig contends that his sentence for Class D felony resisting law enforcement is inappropriate.¹ "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years." Ind. Code § 35-50-2-7(a). Here, the trial court sentenced Greig to 730 days, with 365 days to be served on home detention and 365 days suspended to probation.

"Although a trial court may have acted within its lawful discretion in determining a sentence, Article [7], Sections 4 and 6 of the Indiana Constitution 'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'"

Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848

¹ Greig makes a very brief argument on appeal concerning restitution, implying that "there is nothing in the record to suggest that [it] has anything to do with the instant case." Appellant's Br. p. 5. However, we point out that Greig agreed to restitution in his plea agreement. Because Greig makes no argument on appeal that the trial court abused its discretion in the *amount* of restitution that it ordered, the fact that the trial court awarded restitution is not reviewable in this appeal.

N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Our appellate authority is implemented through Indiana Appellate Rule 7(B), which allows us to “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.”

As for the nature of the offense, the factual basis does not provide much detail other than Greig fled from a law enforcement officer in a car and, in so doing, endangered two motorists.

As for the character of the offender, as detailed by the trial court, Greig has a significant criminal history consisting of five misdemeanors, including patronizing a prostitute, refusal to identify, resisting law enforcement, and conversion, and two felonies, including theft. Contrary to Greig’s argument on appeal, the trial court did not state at the sentencing hearing that Greig accumulated these convictions in the past ten years. Rather, the court stated that his convictions have come “mostly over the past ten years.” Tr. p. 22. This is true. In addition, Greig has received the benefit of AMS in the past for a battery conviction concerning his stepson and has had his probation revoked. In other words, this conviction does not come from an overstressed father who has no criminal history. Rather, Greig is very familiar with our criminal justice system.

It is true that Greig expressed remorse at his sentencing hearing and has a child with extraordinary medical needs who depends on him. However, we think that the trial court crafted a sentence for Greig that takes into account both his extensive criminal history and his family hardship by placing him on home detention (which he requested)

for 365 days and probation for 365 days, with the opportunity for probation to automatically terminate. While this Court is not unsympathetic to Greig's family's needs, this sentence accounts for them and is not inappropriate.

Affirmed.

NAJAM, J., and BROWN, J., concur.