



## **Case Summary**

Paul Justice pled guilty to Class C felony operating a motor vehicle after forfeiture of license for life. He was sentenced to six years' incarceration followed by two years' probation. He appeals, challenging the appropriateness of his sentence. We conclude that Justice's sentence is not inappropriate in light of the nature of the offense and his character. We affirm.

## **Facts and Procedural History**

Justice was a habitual traffic violator, and his driving privileges were suspended for life by the Indiana Bureau of Motor Vehicles. On November 21, 2009, Justice drove his Ford Taurus in Cass County. He was involved in an accident with another vehicle.

The State charged Justice with Class C felony operating a motor vehicle after forfeiture of license for life. Ind. Code § 9-30-10-17.

Justice pled guilty pursuant to a plea agreement with the State.

At sentencing, Justice testified to the following:

- He drove his car on the day in question because his ten-year-old daughter was at school and running a fever, and his ex-wife had no way of picking her up. "I probably made a snap judgment and went too quick. . . . [W]ith her running a fever I just felt like I was doing the best thing I could do at that moment."
- Having said that, his decision was wrong and inexcusable, and he takes full responsibility for it.
- The highest level of education he completed was the tenth grade.
- He became employed as a painter at the age of eighteen.
- He was forced to stop painting in 2006 or 2007 due to his development of a rare blood disorder. Paint toxins aggravate his condition.

- He was hospitalized for roughly eighteen months and required a splenectomy.
- He has applied to other prospective employers, though his driver's license suspension, criminal history, and health problems make finding employment difficult.
- He used to struggle with alcoholism but no longer drinks.
- He lives with and cares for his mother, who suffers from emphysema, high blood pressure, and hip replacement issues.
- He has three minor children now ages eleven, thirteen, and seventeen, and any period of incarceration would result in hardship to them.
- He has at least two prior felony convictions for operating while a habitual traffic violator.

The trial court sentenced Justice to eight years with six years executed and two years suspended to probation. Justice now appeals.

### **Discussion and Decision**

Justice argues 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 imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “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.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. *Id.* (citing *Childress v.*

*State*, 848 N.E.2d 1073, 1080 (Ind. 2006)). In assessing whether a sentence is inappropriate, appellate courts may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

The sentencing range for a Class C felony is two to eight years with the advisory term being four years. Ind. Code § 35-50-2-6.

As for the nature of the offense, Justice stresses that he got behind the wheel this time only because his daughter was sick at school and needed to be picked up. We sympathize with Justice's situation and understand his intentions may have been pure, but we cannot ignore that he knowingly drove his car on a suspended license and could have sought any number of lawful alternatives. Moreover, his operation of a vehicle that day resulted in an accident with another motorist.

With regard to his character, we acknowledge Justice's acceptance of responsibility, expression of remorse, health difficulties, attempts at obtaining employment, and the hardship that incarceration may place on his dependents. But we remain particularly troubled by Justice's criminal record, which includes at least two prior felony convictions for operating while a habitual traffic violator. Justice's recidivism suggests that he has not learned from prior sanctions and is not taking his own safety or the safety of others seriously.

In light of the foregoing considerations, we cannot say that Justice's sentence of six years' incarceration followed by two years of probation is inappropriate. We therefore affirm the sentence imposed by the trial court.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.