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ATTORNEY FOR APPELLANT:

DONALD C. SWANSON, J.,
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JESSICA A. MEEK
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

JERNARD A. FREEMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A03-0801-CR-16
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0703-FD-236

May 8, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Jernard Freeman appeals the sentence he received following his conviction of Resisting Law Enforcement,[1] a class D felony, which was entered upon his plea of guilty. Freeman presents the following restated issue for review: Was the sentence inappropriate in light of Freeman's character and the nature of his offense?

We affirm.

Freeman admitted at the guilty plea hearing that on March 9, 2007, Officer Darrick Engelman of the Fort Wayne Police Department observed Freeman committing a crime while operating his (Freeman's) vehicle. The officer activated his lights and siren and ordered Freeman to stop. Freeman further admitted that he ignored the officer and attempted to flee. In exchange for Freeman's guilty plea, the State dismissed three other charges stemming from the incident. Sentencing was left to the trial court's discretion. Following a hearing at which the court considered a presentence investigation report[2] and argument by the parties, the trial court imposed the advisory one-and-one-half-year sentence, to be served consecutive to the sentence imposed for an unrelated federal conviction.

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[1] Ind. Code Ann. § 35-43-2-1 (West, PREMISE through 2007 1st Regular Sess.).

[2] We note that Freeman included in his appendix a copy of the presentence investigation report on white paper. We remind Freeman that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential". T.R. 5(G)(1).

Freeman challenges the appropriateness of his sentence. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemeyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, "we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Freeman bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

We begin with the nature of the offense. We infer from Freeman's silence on the subject that he would agree with the State's assessment that this was "an average class D felony resisting law enforcement" incident. *Appellee's Brief* at 4. We see it that way as well. That is, there are no facts before us that render Freeman's conduct on the night in question deserving of a sentence deviating in either direction from the starting point that the advisory sentence represents. *See, e.g.*, *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006) ("the advisory sentence … is the starting point the Legislature has selected as an appropriate sentence for the crime committed").

Turning now to the "character of the offender" component, Freeman notes on his behalf that he (1) is a high school graduate with steady employment, (2) has a young, dependent child, (3) has a limited criminal history, (4) admitted his conduct by pleading guilty, (5) had a substantiated chronic drug problem dating back to 2000, and (6) "[t]he offense in question involved the Appellant fleeing from a police officer while using a vehicle, which but for the use of the vehicle, would have been a misdemeanor charge." *Appellant's Brief* at 4.

Having a young, dependent child to support is indeed a valid consideration in favor of imposing a reduced sentence. This is not to say, however, that it constitutes evidence of good character. Similarly, it is not entirely clear that factors (3) through (6) reflect a strength of character that Freeman claims is deserving of a lesser sentence. With respect to (3), although Freeman is correct in noting that he does not have an extensive criminal history, we note that at the time he committed the instant offense, he was on supervised release for a felony armed robbery conviction. Moreover, he had a previous conviction for domestic battery and a juvenile adjudication for conversion. Viewed as a whole, Freeman's criminal history does not support his argument for a reduced sentence.

The same can be said of (4), i.e., the persuasive value of Freeman's guilty plea. Although Freeman's guilty plea no doubt saved the State time and expense, we are mindful that defendants sometimes plead guilty for pragmatic reasons that are not related to conscience or remorse. That is especially true where, as here, the evidence of guilt is overwhelming. *See Wells v. State*, 836 N.E.2d 475 (Ind. Ct. App. 2005), *trans. denied*.

In such cases, we may properly downplay the significance of the guilty plea as is relates to the "nature of the offender" component of the appropriateness analysis.

Freeman contends that his substance abuse problem counsels in favor a reduced sentence. We note, however, that trial courts sometimes find a history of substance abuse to be an aggravating factor, which means for our purpose here that it reflects negatively on the defendant's character. *See Iddings v. State*, 772 N.E.2d 1006 (Ind. Ct. App. 2002), *trans. denied*. This fact does not support Freeman's request for a reduced sentence.

Finally, Freeman claims a reduced sentence is appropriate because the instant offense would have been a mere misdemeanor but for the fact that he committed it by using a vehicle. Frankly, the logic of this argument escapes us.

In summary, we find no compelling reason inherent in the nature of this offense or Freeman's character that renders the advisory sentence imposed by the trial court inappropriate.

Judgment affirmed.

BAILEY, J., and KIRSCH, J., concur.