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IN THE
COURT OF APPEALS OF INDIANA

TIMOTHY L. MATSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 04A03-0903-CR-85
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BENTON CIRCUIT COURT
The Honorable Rex W. Kepner, Judge
Cause No. 04C01-0401-CM-31

July 7, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Timothy L. Matson ("Matson") was convicted in Benton Circuit Court of Class C misdemeanor operating a vehicle with a blood alcohol content of .08, Class C misdemeanor operating with a Schedule I substance, two counts of Class D felony resisting law enforcement, and Class D felony battery. The trial court determined that Matson was a habitual substance offender and that Matson had violated the terms of his probation under another cause number. The trial court sentenced Matson to an aggregate term of twelve and a half years with one year suspended to probation. Matson appeals and argues both that the trial court abused its discretion when it failed to consider his guilty plea as a mitigator and that his sentence is inappropriate based on the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On February 8, 2008, Indiana State Police ("ISP") Trooper Travis Waling ("Trooper Waling") attempted to stop Matson on suspicion of operating a vehicle while intoxicated. Matson refused to stop, leading several ISP officers on an hour-long car chase reaching speeds of approximately ninety miles per hour. Matson finally stopped his vehicle and attempted to flee through a nearby field. Trooper Waling followed and caught up with Matson. A struggle ensued that resulted in a cut below Trooper Waling's eye. Matson was eventually subdued and arrested. Blood samples taken from Matson established that his blood alcohol content ("BAC") was approximately 0.136.

On February 15, 2008, the State charged Matson with Class A felony attempted murder, Class D felony operating a vehicle with BAC of at least .08 with a prior offense,

Class D felony operating a vehicle while intoxicated in a manner that endangers a person, Class D felony operating a vehicle with a Schedule I substance or metabolite in his body, Class D felony operating a vehicle with a Schedule II substance or metabolite in his body, two counts of Class D felony resisting law enforcement, and Class D felony battery. The State also filed two additional informations alleging that Matson was a habitual offender and a habitual substance offender.

On August 29, 2008, a jury acquitted Matson of Class A felony attempted murder. The jury found Matson guilty on the remaining charges. Prior to the jury reconvening to hear the allegations related to Matson's prior convictions, Matson pleaded guilty to the elevated felony charge of operating while intoxicated and to the habitual offender and habitual substance offender enhancements.

On October 14, 2008, the trial court set aside Matson's admission to the habitual offender enhancement and the jury's guilty verdict on the Class D felony battery. The trial court imposed a twelve and one-half year aggregate sentence, with one year suspended to probation. The court also revoked Matson's probation on an unrelated conviction.. Matson now appeals.

Discussion and Decision

As an initial matter, Matson argues that the trial court abused its discretion when it failed to take into account his admission to the underlying offense that supported the habitual offender, habitual substance offender, and elevating his driving while intoxicated charge to a D felony as a mitigating circumstance. Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007),

clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Id. at 491 (citations omitted).

A trial court can abuse its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. Id. at 490-91. If the trial court abuses its discretion in one of these or any other way, remand for resentencing may be the appropriate remedy "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491.

In the case before us, following a two-day jury trial in which he was acquitted on one count, and convicted on the remaining counts, Matson admitted to being a habitual offender, habitual substance offender and admitted to having a prior OWI outside the presence of the jury. Indiana courts have long held that a defendant who pleads guilty extends a benefit to the State and accepts some responsibility for the crime; thus, the defendant deserves to have some mitigating weight extended to him at sentencing based upon the plea. See Cotto v. State, 829 N.E.2d 520 (citing, Widener v. State, 659 N.E.2d 529 (Ind. 1995); Scheckel v. State, 655 N.E.2d 506 (Ind. 1995); Williams v. State, 430

N.E.2d 759 (Ind. 1982)). Here, the trial court did not mention the guilty plea or explain that it should not be accorded mitigating weight under the particular circumstances despite Matson raising the potentially mitigating nature of his admissions.

However, in Francis v. State, 817 N.E.2d 235 n.2 (Ind. 2004), our Supreme Court noted that the trial court is inherently aware that a guilty plea is a mitigating factor. Such is the case here. Accordingly, Matson was entitled to have some mitigating weight extended to his guilty plea. However, a guilty plea is not necessarily a significant mitigating factor. See Cotto v. State, 829 N.E.2d 520. In this case, the benefit to the State is nominal. Matson only admitted to the habitual offender enhancement, the habitual substance offender enhancement and a previous OWI after a two-day jury trial.

While the trial court abused its discretion in failing to mention Matson's guilty plea as a mitigating factor, that error is harmless. Where we find an irregularity in a trial court's sentencing decision, we have the option to remand to the trial court for a clarification or new sentencing determination, to affirm the sentence if the error is harmless, or to reweigh the proper aggravating and mitigating circumstances independently at the appellate level. Merlington v. State, 814 N.E.2d 269, 273 (Ind. 2004). Here, the error is harmless because the record supports the finding of the two aggravating circumstances identified by the trial court. Further, the mitigating circumstance that the trial court failed to identify was to have been accorded little weight. Accordingly, we can state with confidence that the trial court would have imposed the same sentence if it considered the proper aggravating and mitigating circumstances. See

Neale v. State, 826 N.E.2d 635 (Ind. 2005); Hart v. State, 829 N.E.2d 541 (Ind. Ct. App. 2005).

Matson next argues that his sentence was inappropriate. A defendant may challenge his sentence under Indiana Appellate Rule 7(B) which provides: "The 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." The Anglemyer Court explained:

> It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007). "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Id.

It is extremely fortunate that the nature of the offense is not more serious. Matson led law enforcement on an hour-long car chase reaching speeds of 90 miles per hour. When Matson's vehicle stopped, Matson continued to run. Matson then fought with and injured a law enforcement officer despite opportunities to surrender. During this entire ordeal, Matson showed a blatant disregard for the safety of the officers and the other persons with who he shared the road.

Matson's character also supports the appropriateness of the trial court's sentence. Matson has been involved in the criminal justice system since 1979 when he was juvenile. Since then he has amassed nine felonies and thirteen felonies. The felonies

include two Class D felony thefts, two Class B felony burglaries, two Class C felony non-support of a dependent, one Class D felony non-support of a dependent, one Class D felony operating while intoxicated, and one Class D felony intimidation. The misdemeanors include one Class B misdemeanor criminal trespass, one Class A misdemeanor intimidation, three Class A misdemeanor operating while intoxicated, one Class B misdemeanor failure to stop, two Class B misdemeanor public intoxication, one Class A misdemeanor possession of marijuana, one Class A misdemeanor resisting law enforcement, two Class A misdemeanor batteries, and one Class A misdemeanor operating while under the influence of a controlled substance. During this time, the only gaps in his criminal record were attributable to his time spent in prison. His criminal history is not that of a man with only crimes related to substance abuse, but rather, includes a number of property crimes and crimes of violence. Additionally, as noted in the Pre-sentence investigation report, Matson has "served time in jail, prison, on probation, on parole, in community corrections, as a juvenile, as an adult, for misdemeanor and felony offenses. [Matson] has violated every type of rehabilitative effort given him. [Matson] has a massive criminal history and no lengthy period of good behavior, except when incarcerated." Appellant's App. p. 11. Under these facts and circumstances, we cannot say that Matson's aggregate twelve and one-half year sentence was inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and KIRSCH, J., concur.