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**IN THE
COURT OF APPEALS OF INDIANA**

EDDIE PATTERSON,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A05-0901-CR-16
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa Borges, Judge
Cause No. 49F15-0803-FD-56693

July 21, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Eddie Patterson appeals his conviction and sentence for Operating a Vehicle While Intoxicated (OWI), as a class D felony,¹ as well as his adjudication as a Habitual Substance Offender.² He presents the following restated issues for review:

1. Did the State present sufficient evidence to support Patterson's OWI conviction?
2. Is his eleven-year aggregate sentence inappropriate?

We affirm.

At approximately 1:40 a.m. on March 11, 2008, Indianapolis Metropolitan Police Officer Grady Copeland was traveling eastbound in the 2000 block of West Michigan Street when he observed a pickup truck on the north side of the street that appeared to have been involved in an accident. Officer Copeland saw a man, later identified as Patterson, sitting behind the truck's steering wheel. The front end of the truck was nose down on the sidewalk, perpendicular with the road, while the back end was several feet off the ground and resting on a concrete wall. It was later determined that Patterson had driven the truck through the vacant lot above and then off the concrete wall.

Officer Copeland made a U-turn, activated the lights on his police vehicle, and stopped at the scene. As he returned, Officer Copeland observed Patterson exit the driver's side of the truck, put keys in his pocket, and start walking eastbound. Upon seeing Officer Copeland, Patterson turned and walked the other direction. Officer Copeland ordered

¹ Ind. Code Ann. § 9-30-5-2 (West, PREMISE through 2008 2nd Regular Sess.); I.C. § 9-30-5-3 (West, PREMISE through 2008 2nd Regular Sess.).

² Ind. Code Ann. § 35-50-2-10 (West, PREMISE through 2008 2nd Regular Sess.).

Patterson to stop, which he did. At the time, Officer Copeland noted that there were three men about thirty yards away who appeared to have been walking away from the truck. Therefore, he handcuffed Patterson and radioed for backup, indicating that there might be three other men involved and noting their location. Patterson, however, informed the officer that the men were not involved and were only trying to help push the truck off the wall. This was later verified by police, and the men were allowed to leave. Patterson also told Officer Copeland that he had indeed driven the truck off the wall, claiming that he was attempting to turn around in the vacant lot and his brakes went out.

Officer Nikolas Layton, an accident investigator, responded to the scene within fifteen minutes of being dispatched. Although it was a very cold night, he observed that the truck's hood was still warm, indicating that the engine had recently been running. There was also no dew or condensation on the hood of the truck.

At the scene, Officer Copeland and Officer Layton observed signs that Patterson was intoxicated, including unsteady balance, bloodshot eyes, aggressive demeanor, and odor of alcohol on his breath. In fact, Patterson admitted to Officer Copeland that he had had a few beers. Both officers looked inside the truck's cab and did not see any alcohol containers. Officer Copeland then transported Patterson to the police station, where Patterson failed all three sobriety tests that were administered. Patterson agreed to take a chemical test. The first test was invalid due to an insufficient breath sample. The second, administered at 2:53 a.m., indicated a blood alcohol content of .11. When Officer Copeland placed Patterson under

arrest for OWI, Patterson became belligerent, argumentative, and threatening.³

The State subsequently charged Patterson with class A misdemeanor OWI and class C misdemeanor operating a vehicle with a blood alcohol level between .08 and .151. The State filed enhancements for each count, elevating both to class D felonies. The State also alleged that Patterson was a habitual substance offender. At his bench trial on November 7, 2008, Patterson was found guilty of class D felony OWI and adjudicated a habitual substance offender. On December 5, 2008, the trial court sentenced him to three years in prison for the OWI conviction, enhanced by eight years for being a habitual substance offender. Patterson now appeals his conviction and sentence.

1.

Patterson initially argues that the State failed to present sufficient evidence to support his OWI conviction. He notes that no one saw him driving prior to the accident and no testimony was offered to demonstrate precisely when he consumed alcohol. His argument, then, boils down to a claim that “[he] could have consumed beer after his brakes failed and he hit the concrete wall.” *Appellant’s Brief* at 7. Further, to explain why the hood of his car was still warm, Patterson essentially contends that it is not unreasonable to conclude that he had the heater running while he sat inside the precariously perched truck, drinking beer and waiting for assistance.

We reject Patterson’s blatant invitation to reweigh the evidence. It is well settled that

³ He challenged the officers to a fight and told Officer Copeland to kiss his wife and children good-bye for the last time because he owned a gun and there was no bulletproof vest for a head.

when reviewing the sufficiency of the evidence, we will not reweigh the evidence or judge the credibility of witnesses. *Alkhalidi v. State*, 753 N.E.2d 625 (Ind. 2001). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. *Corbin v. State*, 840 N.E.2d 424 (Ind. Ct. App. 2006). Moreover, we will affirm if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. *Alkhalidi v. State*, 753 N.E.2d 625.

In the instant case, Patterson admitted that he was driving his truck when it went off the concrete wall and that he had had a few beers. When Officer Copeland came upon the accident, he observed Patterson sitting behind the wheel of the truck. Further, there were three men present who were apparently trying to help Patterson remove his truck from the wall. The men walked away as Officer Copeland approached. Patterson then exited the truck with his keys and, instead of asking the officer for assistance, turned and walked away. The evidence indicated that the truck's engine had recently been running. Further, neither of the responding officers observed empty beer cans in the truck. The most reasonable inference from the evidence is that Patterson was intoxicated at the time he drove his truck off the three-foot cement wall.⁴ Therefore, sufficient evidence supported his conviction.

⁴ This case is clearly distinguishable from *Flanagan v. State*, 832 N.E.2d 1139 (Ind. Ct. App. 2005), where Flanagan's car had not been in an accident, Flanagan and his passenger had been stranded on the side of the highway with the disabled car for a significant period of time, and empty beer cans were found inside the car. Here, there is simply no evidence to indicate that Patterson may have become intoxicated after he stopped driving (that is, after he drove his truck through a vacant lot and over a cement wall).

2.

Patterson also challenges the eleven-year aggregate sentence imposed. He argues that this maximum sentence was inappropriate in light of his character and the nature of the offense. He notes that he is a forty-six-year-old man who has struggled with alcohol addiction for a number of years and is in need of long-term treatment. Further, with respect to the nature of the offense, Patterson asserts that he caused no injury to himself or anyone else.

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); *Anglemyer 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). On appeal, Patterson bears the burden of persuading us that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

The maximum sentence was clearly appropriate in the instant case. In and of itself, the nature of this OWI offense would not warrant the maximum sentence. This becomes irrelevant when one looks to Patterson's extensive criminal history. In the last twenty-eight years, he has amassed at least twenty-four prior convictions, eleven of which are felonies and

eight of which are OWI offenses.⁵ In fact, Patterson was on parole for an OWI and a resisting law enforcement conviction at the time of the instant offense. He has been given the benefit of probation on twelve separate occasions, with probation being revoked six of those times. Patterson has been referred to intensive outpatient treatment programs in the past but on each occasion has failed to report. In sum, Patterson's criminal record reflects a total disregard for the law and the lives of other motorists on the roadways. The fact that he has not killed another motorist yet is simply fortuitous. There is nothing inappropriate about Patterson's sentence.

Judgment affirmed.

NAJAM, J., and VAIDIK, J., concur.

⁵ After going on for pages in the transcript detailing Patterson's criminal history, the trial court stated: I went through all this because I want it to be very clear on the record that you have probably one of the most significant histories of abusing alcohol and abusing the trust of the Court that I've seen. You have previously been given a break ... and I just have no confidence that you will now change your ways and follow whatever orders that I might give you on any suspended portion of any sentence that I might impose.... I don't think that prison is a great thing, but attempts at rehabilitating you outside of prison haven't worked and – you just haven't responded to anything that the Court has tried to get you to do and so I just don't believe that any kind of probation would be helpful....

Transcript at 139-40.