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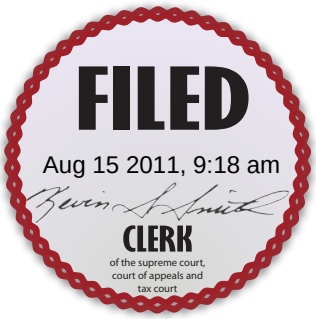

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IN THE
COURT OF APPEALS OF INDIANA

CESAR SANCHEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 06A01-1103-CR-111
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BOONE SUPERIOR COURT
The Honorable Rebecca S. McClure, Judge
Cause No. 06D02-1006-FC-456

August 15, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Cesar Sanchez appeals his eight-year sentence for Class C felony operating a vehicle after forfeiture of license for life ("OVFLL") and Class D felony operating a vehicle while intoxicated ("OWI"). We reverse and remand.

Issue

The sole issue before us is whether Sanchez's sentence is inappropriate.

Facts

On June 27, 2010, Sanchez drove a motor vehicle while intoxicated. Sanchez has a previous OWI conviction from 2005 and also had his license forfeited for life earlier in 2010. The State charged Sanchez with Class C felony OVFLL, Class D felony OWI on the basis of the prior OWI conviction, Class C misdemeanor OWI, and Class B misdemeanor public intoxication.

A bifurcated jury trial was held on January 18-19, 2011. At the conclusion of the first portion of the trial, the jury found Sanchez guilty of Class C misdemeanor OWI and Class B misdemeanor public intoxication. Sanchez then pled guilty to Class C felony OVFLL and Class D felony OWI. The trial court entered judgments of conviction on only the last two offenses. It then sentenced Sanchez to a term of six years for Class C felony OVFLL and two years for Class D felony OWI to run consecutively, for a total of eight years. None of that sentence was suspended. Sanchez now appeals.

Analysis

Sanchez argues that his sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of the offenses. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The principal role of Rule 7(B) review "should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived 'correct' result in each case." Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We "should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count." Id. Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case. Id. at 1224. When reviewing the appropriateness of a sentence under Rule 7(B), we may consider all aspects of the penal consequences imposed by the trial court in sentencing the defendant, including whether a portion of the sentence was suspended. Davidson v. State, 926 N.E.2d 1023, 1025 (Ind. 2010).

Regarding the nature of the offenses, we know almost nothing about them. Sanchez's jury trial was not transcribed. In any event, there is nothing in the record to indicate that there was anything exceptional about these offenses, i.e. that they were worse than an "average" case of Class C felony OVFLL or Class D felony OWI. There is no evidence that anyone was harmed or threatened with harm on this occasion by Sanchez's conduct, anymore than in a typical OWI case.

Turning to Sanchez's character, his criminal history since moving to Indiana from Mexico in 1999 is substantial. He was convicted in 2000 of Class D felony resisting law enforcement, and was convicted of Class B misdemeanor battery in 2010, shortly before the trial in this case; Sanchez was out on bond for that offense when he committed the present offenses. As for driving offenses, Sanchez was convicted in 2004 of Class C misdemeanor operating a vehicle having never received a license and in 2005 of Class A misdemeanor OWI, and he has convictions from 2007, 2009, and 2010 for Class D felony operating a vehicle after being adjudged an habitual traffic offender.

Sanchez also contends, and the trial court found, that incarceration will be a hardship upon his four children. Although Sanchez is under no court order to pay child support, he testified that he provides monetary support to his children equaling nearly half of his pay and often visits them on weekends. Sanchez also has worked steadily for a painting company in Lebanon since 2004.

After careful consideration, we conclude that a sentence of eight years, all executed, is inappropriate in light of the nature of the offenses and Sanchez's character.

There is no evidence in the record to suggest that the offenses were more egregious in nature than other, similar offenses. Although Sanchez's criminal history is lengthy, much of that history is directly related to the present offenses; that is, the prior history was necessary to elevate the present offenses to a Class C and a Class D felony for repeated conduct. Sanchez's behavior in repeatedly driving without a license, or driving while intoxicated, is problematic, but the legislature accounted for problematic behavior such as Sanchez's by creating the Class C felony OVFLL and Class D felony OWI offenses.

Still, Sanchez does have two non-driving related convictions, and was on bond awaiting trial for one of those offenses when he committed these offenses. He also not only drove without a license on this occasion, but also was intoxicated as well. Prior attempts at being more lenient in addressing Sanchez's refusal to comply with our state's driving laws have not been successful. Thus, an extended period of incarceration for Sanchez, though one less than eight years, is appropriate. We direct that Sanchez's sentence be revised to an advisory term of four years for the Class C felony OVFLL conviction and two years for the Class D felony OWI conviction, to be served consecutively for a total sentence of six years.

Conclusion

We reverse Sanchez's sentence of eight years and remand with instructions for the issuance of a revised sentence as detailed above.

Reversed and remanded.

ROBB, C.J., concurs.

BRADFORD, dissents with opinion.

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	)	
STATE OF INDIANA,	)	
	)	
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BRADFORD, Judge, dissenting.

Because I do not believe that the eight-year sentence imposed by the trial court is inappropriate, I respectfully dissent. Indiana Appellate Rule 7(B) provides that we "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 defendant bears the burden of persuading

us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

Here, with respect to the nature of the instant offenses, the record reflects that Sanchez was convicted of Class C felony operating a vehicle after receiving a lifetime suspension and Class D felony operating a vehicle while intoxicated endangering a person. While I agree that the record is devoid of evidence relating to whether anyone was harmed or threatened with harm as a result of Sanchez's actions, I believe that driving while intoxicated, especially after having one's driving privileges revoked for life, is a very serious offense and should be punished as such, regardless of whether anyone else was harmed or threatened with harm.

With respect to Sanchez's character, the record reflects that Sanchez has amassed a substantial criminal history, including five felony and two misdemeanor convictions, since moving to Indiana in 1999. Specifically, Sanchez's criminal history includes three Class D felony convictions for operating a vehicle after being a habitual traffic offender, a Class D felony conviction for resisting law enforcement, a Class D felony for domestic battery, a Class A misdemeanor conviction for operating a vehicle while intoxicated, and a Class C misdemeanor conviction for operating a motor vehicle having never received a license. The majority notes that although Sanchez's criminal history is lengthy, much of that history is directly related and was necessary to elevate the present offenses to the instant felony levels. While I would agree that some of Sanchez's criminal history, including his Class A misdemeanor conviction for operating a vehicle while intoxicated

and one of his Class D felony convictions for operating a vehicle after being a habitual traffic offender, were used to elevate the present offenses to the instant felony levels, I would note that the remaining two Class D felony convictions for operating a vehicle after being a habitual traffic offender, as well as his a Class D felony convictions for resisting law enforcement and domestic battery were unrelated to elevation of the present offenses. *See* Indiana Code section 9-30-10-16(c) (providing that a person who is convicted of operating a vehicle as a habitual traffic violated as *a felony* forfeits the privilege of operating a motor vehicle for life).

In addition, I believe that Sanchez's actions demonstrate a reckless disregard for his fellow citizens as well as the laws of this state. The record reveals that Sanchez has continued to operate a motor vehicle, in this case while intoxicated, after being labeled as a habitual traffic offender and having his driving privileges revoked for life. The record also reveals that Sanchez was out on bond awaiting trial for one of the above-mentioned felony convictions at the time he committed the instant offenses. While I would commend Sanchez for maintaining steady employment and providing for his four children, I cannot say that the eight-year sentence imposed by the trial court is inappropriate in light of Sanchez's apparent disregard for the laws of this state and repeated inability to refrain from driving. Accordingly, I would affirm the judgment of the trial court.