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IN THE
COURT OF APPEALS OF INDIANA

JEFFREY L. TURNMIRE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A01-1101-CR-41
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Kathleen T. Coriden, Judge
Cause No. 03D2-1008-FC-981

August 16, 2011

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Judge

Appellant-defendant Jeffrey L. Turnmire appeals the sentence that was imposed following his conviction for Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury,[1] a class C felony, and Operating a Vehicle as a Habitual Traffic Violator,[2] a class D felony. Specifically, Turnmire claims that the trial court failed to identify his decision to plead guilty and his acceptance of responsibility for the offense as significant mitigating factors, and that the aggregate ten-year sentence that was imposed is inappropriate in light of the nature of the offense and his character. Concluding that Turnmire was properly sentenced, we affirm the judgment of the trial court.

FACTS

On August 2, 2010, Turnmire was operating his motor vehicle on State Road 58 in Bartholomew County. Turnmire was intoxicated and had previously been adjudicated a habitual traffic violator. At some point, Turnmire struck a vehicle "head-on" that Stephanie Horn was driving. Tr. p. 35. Horn sustained numerous bodily injuries that nearly killed her. Turnmire registered .25 grams of alcohol per two ten liters of his breath.

In addition to the above offenses, Turnmire was charged with one count of operating a motor vehicle with a BAC of .15 or more, a class D felony, and operating a motor vehicle while intoxicated, a class D felony. Pursuant to a plea agreement, Turnmire pleaded guilty to Count I, operating a vehicle while intoxicated, a class C

[1] Ind. Code § 9-30-5-4(a)(1).

[2] I.C. § 9-30-10-16(a)(1).

felony, and to Count IV, the habitual traffic violator count. Sentencing was left to the trial court's discretion, and the State agreed to dismiss the other charges.

At the sentencing hearing on January 18, 2011, the trial court heard evidence that Turnmire knew of his driver's license suspension. Prior to this incident, Turnmire had accumulated three prior convictions for driving while intoxicated (DWI), and two for public intoxication or illegal consumption of alcohol. Turnmire also had an adjudication for possession of marijuana as a juvenile.

Turnmire acknowledged that he likely had a problem with alcohol as a result of this incident. The evidence showed that even though Turnmire had completed an intensive outpatient program (IOP) at some point, he never sought any inpatient treatment and has not actively searched for employment. Turnmire acknowledged that he spent about four dollars per day on beer, but he did not have $100 to pay for a GED. Moreover, it was determined that Turnmire had failed to pay probation fees in another case.

Horn wrote a letter to the trial court that described her life since the accident. Horn's husband assisted in writing the letter because her hand was injured. Horn indicated, among other things, that Turnmire accused her of "faking" her injuries when she was lying unconscious on the ground immediately after the accident. Tr. p. 35. Horn sustained nearly twenty injuries in the accident, including a broken right femur, a shattered right hand, a severe concussion, a collapsed lung, a fractured bone below her left knee, burns, fractured ribs, memory loss, double vision, and numerous sprains.

Horn endured several surgeries, including one for the removal of a rod and metal plate from her right hand. Horn also spent two weeks in a hospital and three weeks in a rehabilitation center. Horn underwent speech, occupation, and physical therapy three times per week. Her medical bills totaled more than $250,000.

Horn was forced to close her business, and she was not able to perform routine housework. Horn's husband also quit his job to care for her. In light of the concern about the inability to pay the medical bills, Horn has suffered from depression and anxiety.

The trial court found no mitigating factors and determined that Turnmire's criminal record is "deplorable." Tr. p. 54. At the conclusion of the sentencing hearing, Turnmire was sentenced to seven years on Count I, and to three years, with one year executed with two years suspended, on Count IV. The sentences were ordered to run consecutively, for an aggregate term of ten years. Turnmire was to serve a total of eight years of incarceration. The trial court also ordered that Turnmire's operator's license be suspended for life. Turnmire now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Turnmire first argues that the trial court abused its discretion in sentencing him. Specifically, Turnmire maintains that his sentence must be set aside because the trial court failed to properly consider his decision to plead guilty as a mitigating factor.

Turnmire also claims that the trial court should have identified his acceptance of responsibility for the offense as a mitigating circumstance.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). However, even "where a plea agreement sets forth a sentencing cap or a sentencing range, the court must still exercise some discretion in determining the sentence it will impose." Childress v. State, 848 N.E.2d 1073, 1078 (Ind. 2006). A trial court abuses its sentencing discretion if its decision is clearly against the logic and effect of the facts and circumstances before it, or the reasonable, probable, and actual deductions to be drawn therefrom. Id.

When imposing the sentence, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). An allegation that the trial court failed to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Anglemyer, 868 N.E.2d at 493. A trial court does not abuse its discretion by failing to consider a mitigating factor not argued at sentencing, and it has no obligation to weigh aggravating and mitigating factors. Id. at 491–92.

A defendant who pleads guilty generally deserves "some" mitigating weight to be afforded to the plea. Anglemyer, 875 N.E.2d at 220. However, a trial court does not necessarily abuse its discretion by failing to recognize a defendant's guilty plea as a

significant mitigating circumstance. Id. at 221. In other words, a guilty plea is not automatically a significant mitigating factor. Mull v. State, 770 N.E.2d 308, 314 (Ind. 2002). When the defendant has already received a substantial benefit from the plea agreement, a guilty plea may not be a significant mitigator. Brown v. State, 907 N.E.2d 591, 594 (Ind. Ct. App. 2009).

In this case, Turnmire received a benefit from his plea when the State agreed to dismiss Counts II and III. Moreover, we cannot say that the plea agreement shows that Turnmire accepted responsibility for his actions in light of his failure to seek out any education, counseling, or support group meetings to assist with his drinking problem. Tr. p. 30. Turnmire has been equivocal about his needs for alcohol treatment. Id. at 53. Turnmire also did not actively seek employment to pay the fees from his previous probation. Id. at 30-31.

In light of these circumstances, we cannot say that the trial court erred when it did not identify Turnmire's guilty plea or his acceptance of responsibility for the offense as significant mitigating factors. Thus, we conclude that the trial court did not abuse its discretion in sentencing him.

II. Inappropriate Sentence

Turnmire next claims that his sentence is inappropriate. Specifically, Turnmire argues that even though his criminal history includes prior felony convictions, a seven-year executed sentence for a class C felony was not warranted when considering the nature of the offense and his character.

We have the authority to "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." Ind. Appellate Rule 7(B). When reviewing a sentence under Appellate Rule 7(B), we remain deferential to the trial court's decision and refrain from merely substituting our judgment for that of the trial court. Howard v. State, 873 N.E.2d 685, 692 (Ind. Ct. App. 2007). Although Appellate Rule 7(B) does not require that we be "extremely" deferential to the trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations and thus "exercise with great restraint our responsibility to review and revise sentences." Hurst v. State, 890 N.E.2d 88, 97 (Ind. Ct. App. 2008). The defendant has the burden of persuading us that his sentence has met the inappropriateness standard of review. Anglemyer, 868 N.E.2d at 494.

As for the nature of the offense, the record shows that Turnmire operated a vehicle while intoxicated while his driver's license was suspended and hit Horn's automobile "head-on." Tr. p. 35. Horn sustained many life-threatening and permanent injuries as a result of Turnmire's actions. Horn has undergone two surgeries, suffers from depression, and has crippling leg and hand injuries. Id. at 35-37.

With regard to Turnmire's character, the trial court observed that Turnmire did not admit to an alcohol problem until he realized that he had almost killed Horn in the accident. Id. at 54. As noted above, Turnmire accused Horn of "faking" her injuries at the accident scene. Id. at 35-37.

Turnmire had accumulated three prior DWI convictions and had been arrested six times for public intoxication and/or illegal consumption of alcohol. Id. at 19. Two of those arrests resulted in convictions. Id. Turnmire also has another pending case regarding his failure to pay probation fees. Id. at 21. Although Turnmire makes the point that his prior offenses are nonviolent and some consist of misdemeanor charges that were never prosecuted, the record shows that he was not convicted of all those charges because several were dismissed pursuant to plea agreements. Appellee's App. p. 4-6; Tr. p. 28-29.

If prior convictions are significant to the current offense, they may be considered as aggravating factors. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). Determining whether the convictions are "significant" depends on the gravity, nature, and number of prior offenses as they relate to the current offense. Id. Here, the fact that Turnmire had three prior convictions for driving while intoxicated indicates that he had several opportunities to obtain help with his alcohol problem before putting others in danger.

When considering the above, including Turnmire's criminal history and his failure to take additional action to address his alcohol problem, we cannot say that a ten-year sentence was not warranted in these circumstances. In short, Turnmire has failed to demonstrate that his sentence was inappropriate in light of the nature of the offense and his character.

The judgment of the trial court is affirmed.

MAY, J., and BRADFORD, J., concur.