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IN THE
COURT OF APPEALS OF INDIANA

CHARLES F. NEWBY,	)	
	)	
Appellant- Defendant,	)	
	)	
vs.	)	No. 36A04-1012-CR-814
	)	
STATE OF INDIANA,	)	
	)	
Appellee- Plaintiff,	)	

APPEAL FROM THE JACKSON SUPERIOR COURT
The Honorable Bruce Markel, III, Judge
Cause No. 36D01-0909-CM-905

August 26, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a jury trial, Charles F. Newby was convicted of driving while suspended and resisting law enforcement, both Class A misdemeanors, and sentenced to one year for each conviction, with the sentences to be served consecutively. For our review, Newby raises one issue: whether the sentence is inappropriate in light of the nature of his offenses and his character. Concluding the aggregate sentence of two years executed is not inappropriate, we affirm.

Facts[1] and Procedural History

On August 26, 2009, Jackson County Police Officer Tom Hanner observed Newby traveling on his motorcycle in excess of the posted fifty-miles-per-hour speed limit and began to pursue him. Rather than pulling over on noticing Officer Hanner's patrol car, Newby sped up. As Officer Hanner closed the distance, Newby abandoned his motorcycle and fled on foot. After Newby refused to obey Officer Hanner's repeated verbal commands to stop, the chase ended when Newby collapsed from exhaustion, and Officer Hanner handcuffed and escorted him back to his patrol car.

The State charged Newby with driving while suspended and resisting law enforcement, both Class A misdemeanors. On June 24, 2010, Newby was tried in absentia by a jury and found guilty of both counts. After a sentencing hearing on November 30, 2010, the trial court sentenced Newby to 365 days in jail on each count to run consecutively. Newby now appeals his sentence.

[1] Newby did not request the transcript of his jury trial, and the facts are therefore taken largely from the probable cause affidavit.

Discussion and Decision

I. Standard of Review

Under Indiana Appellate Rule 7(B) "[t]he 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." A defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Newby was convicted of Class A misdemeanor driving while suspended, and Class A misdemeanor resisting law enforcement. A person who commits a Class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-2. Newby requested that he be allowed to serve the maximum sentence on house arrest with probation. The State recommended that Newby not be given probation or home detention. The trial court sentenced Newby to one year in jail on each count and ordered that Newby serve the sentences consecutively.

II. Nature of the Offense

Newby operated a motorcycle while his driver's license was suspended, and attempted to speed away upon sight of Officer Hanner. This offense should not be taken lightly, considering the number of times and reasons Newby's license has been suspended. From 1989 to 2008, Newby's license was suspended thirty-four times. Further, Newby's license has been suspended because of possession of a controlled substance, failure to appear for a safety program, chemical test failure, no insurance, operating while intoxicated, driving while suspended, and failure to pay. Newby's

driving record indicates that Newby is a risk to the public while driving, yet he continues to defy the laws that protect Indiana citizens.

In this instance, Newby's reckless conduct could have endangered the public. Officer Hanner averred in the probable cause affidavit that it was 5:30 p.m. on a Wednesday evening when "he observed [Newby] . . . gaining speed rapidly in excess of the posted 50 M.P.H zone" on a state road and he "pac[ed] the motorcycle at an approximate speed of 80 M.P.H." Appellant's Appendix at 5. He further averred that he observed Newby "look over his left shoulder twice . . . while we were traveling at this speed [and] observed the motorcycle to only have [one] rearview mirror . . . ." Id. Newby's actions at a time when there could have been high traffic indicates his cavalier attitude and the seriousness of his offense.

The record also reveals that Officer Hanner was in a fully marked patrol car when he pursued Newby on his motorcycle, and Newby looked over at the patrol car as if to acknowledge the presence of the officer. Further, Newby laid his motorcycle on the ground and subsequently ran away from Officer Hanner after the officer exited his patrol car, in full uniform, and gave a loud verbal command to "stop police." Id. Although Officer Hanner continued to give Newby loud verbal commands to stop, Newby kept running and endangered the officer's safety by crossing a barbed wire fence and causing Officer Hanner to jump into a nearby creek. Thus, the aggregate sentence of two years is not inappropriate in light of the nature of Newby's offenses.

III. Character of Offender

Newby's extensive criminal history indicates his poor character. He has been convicted of illegal consumption, public intoxication, possession of marijuana, and

operating a vehicle while intoxicated. Significantly, in 1997, 2004, and 2006 Newby was arrested for driving while suspended and convicted of the same offense in 2005 and 2007. See Bryant v. State, 841 N.E.2d 1154, 1156-57 (Ind. 2006) (holding that the significance of a criminal history in assessing a defendant's character and an appropriate sentence is based on the gravity, nature, and number of prior offenses in relation to the current offense).

Newby contends "the criminal justice system must afford an opportunity for rehabilitation of the offender where reasonably possible." Brief of Appellant at 5 (citing Fointno v. State, 487 N.E.2d 140, 144 (Ind. 1986)). He further contends "a suspended sentence with strict terms of probation as to alcohol and drugs and requiring a good faith attempt by [Newby] to clear his driving record would afford [Newby] an opportunity for rehabilitation." Id. However, Newby has been shown leniency by the courts and given opportunities to rehabilitate, yet has failed to refrain from these types of offenses or rehabilitate himself. For example, in 1990, Newby had his sentences suspended and received probation for his respective illegal consumption and public intoxication offenses. In 1997, Newby also had his sentences suspended, his probation extended, and was placed on home detention, and ordered to complete community service and pay fines and costs for possession of marijuana, disorderly conduct and criminal recklessness, and operating a vehicle while intoxicated and driving while suspended. Newby failed to complete his home detention due to incompletion of community service and non-payment of his fines. In 2004, Newby was given one year probation, ordered to pay fines and costs along with a 180-day license suspension for possession of marijuana. However, Newby failed to take advantage of this opportunity. Instead, in 2004, he continued his

previous criminal conduct and had a warrant for his arrest for possession of marijuana, possession of an unattached plate, and was charged with driving while suspended. Moreover, in 2006, Newby was charged with theft, and arrested for driving while suspended, resisting law enforcement, and possession of methamphetamine.

After Newby's current offense, Newby was arrested less than a month later for Class D felony resisting law enforcement, reckless driving, and driving while suspended. Further, Newby was arrested in January 2010 for Class D felony possession of methamphetamine. In short, Newby has not responded positively to probation or other sentencing alternatives; rather he has continued to commit crimes and abuse the opportunities extended to him.

Newby's lengthy criminal history coupled with his commission of a crime that he had been convicted of twice and arrested for three times before indicates that Newby has not been deterred by his encounters with the law nor will he refrain from engaging in this type of conduct in the future if granted the freedom to do so. See Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2005) (holding a record of arrests, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State). A two-year sentence is not inappropriate given Newby's character

Conclusion

Newby's aggregate sentence of two years executed is not inappropriate in light of the nature of his offenses and his character.

Affirmed.

BARNES, J., and BRADFORD, J., concur.