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IN THE
COURT OF APPEALS OF INDIANA

RANDALL E. LESH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 35A02-1103-CR-282
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HUNTINGTON SUPERIOR COURT
The Honorable Jeffrey R. Heffelfinger, Judge
Cause No. 35D01-1010-FD-250

August 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Randall Lesh appeals his two-and-half-year sentence for Class D felony resisting law enforcement. We affirm.

Issues

The issues before us are:

I. whether the trial court properly denied Lesh the benefit of an alternative misdemeanor sentence; and

II. whether Lesh's sentence was inappropriate given the nature of the offense and his character.

Facts

On October 13, 2010, Officer Ray Pearson of the Huntington City Police observed Lesh traveling seventy-five miles-per-hour in a fifty-five mile-per-hour zone on U.S. 24 near West Park Drive. Officer Pearson pursued Lesh's vehicle and observed Lesh drive through two red lights and a stop sign. During the chase, a van traveling east on U.S. 24 collided with a police car, flipped over, and then struck another vehicle.

Lesh applied the brakes hard and began to skid. Officer Pearson struck Lesh's vehicle, pushing it into a field, where it rolled over and struck a farm truck. Officer Pearson was transported to a hospital to be treated for muscle strains as a result of the crash. Lesh was driving with a suspended license and had a blood alcohol level of 0.22.

The State charged Lesh with Count I, Class D felony resisting law enforcement and Count II, Class A misdemeanor operating a vehicle with 0.15 or more blood alcohol content, among other charges. Lesh pled guilty as charged. The trial court sentenced Lesh to two-and-half years on Count I with one year suspended and two-and-half years to

be served on probation. On Count II, the trial court sentenced Lesh to one year to be served concurrently to Count I and suspended his driving privileges for two years. Lesh now appeals.

Analysis

I. Misdemeanor

Lesh argues that the trial court should have modified his resisting law enforcement conviction from a Class D felony to a Class A misdemeanor. The controlling statute provides:

> Notwithstanding subsection (a), if a person has committed a Class D felony, the court may enter judgment of conviction of a Class A misdemeanor and sentence accordingly. However, the court shall enter a judgment of conviction of a Class D felony if:
>
> (1) the court finds that:
>
> (A) the person has committed a prior, unrelated felony for which judgment was entered as a conviction of a Class A misdemeanor; and
>
> (B) the prior felony was committed less than three (3) years before the second felony was committed;
>
> (2) the offense is domestic battery as a Class D felony under IC 35-42-2-1.3; or
>
> (3) the offense is possession of child pornography (IC 35-42-4-4(c)).
>
> The court shall enter in the record, in detail, the reason for its action whenever it exercises the power to enter judgment of conviction of a Class A misdemeanor granted in this subsection.

Ind. Code § 35-50-2-7(b).

The statute does not require a court to explain why a request for misdemeanor sentencing is not granted; it only requires an explanation when it grants misdemeanor sentencing. Fox v. State, 916 N.E.2d 708, 711 (Ind. Ct. App. 2009). The trial court is also not required to find or balance aggravating or mitigating factors when deciding whether to grant a defendant's request for leniency. Id. "The trial court has broad discretion whether to grant leniency under Indiana Code § 35-50-2-7(b)." Id.[1]

Lesh was previously given the benefit of alternative misdemeanor treatment in 2001 for resisting law enforcement, but that leniency did not have a positive effect on him. Also, the nature of this offense was egregious, as we discuss in the next part of this opinion. The trial court did not abuse its discretion in refusing to enter judgment on the resisting law enforcement conviction as a Class A misdemeanor.

II. Inappropriateness

Lesh also argues that his sentence is inappropriate under Indiana Appellate Rule 7(B) in light of his character and the nature of his offense. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). 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

[1] Lesh states in his brief, "A potentially novel question of law before this Court that Lesh has noticed is whether this Court can even review Lesh's request to reduce the felony Resisting Law Enforcement conviction to a class A misdemeanor in light of the Supreme Court's recent holding in State v. Brunner, [947 N.E.2d 411 (Ind. 2011)]. . . ." Appellant's Brief p. 5. We will not address this issue, as the State addresses the issue on the merits, and we will do so as well.

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 offense, although there were no serious injuries, Lesh was speeding at seventy-five miles-per-hour in a fifty-five mile-per-hour zone and fled from police and ran two red lights and a stop sign. During the high-speed chase anyone on the road was exposed to harm. Lesh's car collided with a farm truck. In addition, Officer Pearson had to be transported to the hospital, and a van collided with a police car and then struck another vehicle. Lesh also was driving with a suspended license and with a well above the minimum legal alcohol limit of 0.08; his reading of 0.22 was nearly three times above the limit.

As for his character, Lesh argues his sentence should be reduced because he has accepted responsibility for his actions, his criminal record is minor, and despite his alcohol abuse he has lived a productive life. Specifically, Lesh asserts that he had been employed, he has twice served in the United States Navy with honorable discharges each time, and his guilty plea did not guarantee him any benefits. Lesh also argues that it was his intoxication that caused the chase and that his primary motive was not contempt of the law. Contrary to Lesh's argument, alcoholism is not a mitigating circumstance because he had been given ample opportunity to correct the alcohol problem, but has failed to do so. See Welch v. State, 564 N.E.2d 525, 532 (Ind. Ct. App. 1990).

Further, we do not believe Lesh's criminal history to be minor. At the time of this crime, Lesh had pending charges for resisting law enforcement and operating a vehicle with 0.15 or more blood alcohol content, which are similar to the current crime. He was out on bond for those charges. Lesh was previously convicted of resisting law enforcement in 2001 along with possession of marijuana. Although Lesh mentioned before the trial court that he had been employed for several years, he did not present any evidence to support his claim that it was a mitigating circumstance. See Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003), trans. denied. In sum, the nature of the offenses here were egregious. Although Lesh has some positive character traits, his sentence is not inappropriate. Additionally, the trial court suspended one year of Lesh's sentence, thus reducing its punitive effects. We affirm Lesh's sentence.

Conclusion

Lesh's Class D felony resisting law enforcement conviction is proper, and his sentence is not inappropriate. We affirm.

Affirmed.

ROBB, C.J., and BRADFORD, J., concur.