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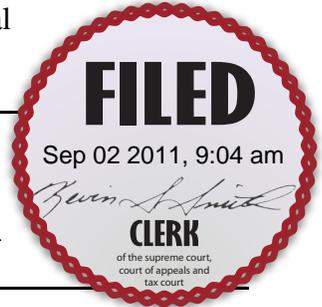
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**IN THE  
COURT OF APPEALS OF INDIANA**

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ANTHONY W. DALTON,  
Appellant- Defendant,

vs.

STATE OF INDIANA,  
Appellee- Plaintiff,

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No. 20A03-1101-CR-26

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APPEAL FROM THE ELKHART SUPERIOR COURT  
The Honorable Roger V. Bradford, Judge  
Cause No. 20D01-1010-CM-47  
20D01-1009-FC-39

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**September 2, 2011**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

## Case Summary and Issues

Following a guilty plea, Anthony W. Dalton was convicted of battery, a Class C felony, and public intoxication, a Class B misdemeanor. The trial court sentenced him to eight years for battery and 180 days for public intoxication with the sentences to be served consecutively. Dalton appeals his sentence, raising two issues for our review: whether the trial court abused its discretion when it imposed maximum sentences, and whether Dalton's sentence is inappropriate in light of the nature of the offenses and his character. Concluding the trial court did not abuse its discretion in sentencing Dalton and his sentence is not inappropriate, we affirm.

## Facts and Procedural History

On September 13, 2010, Dalton appeared in a public place intoxicated, and committed battery on R.H. resulting in two breaks in her shoulder bones and a laceration near her eye.<sup>1</sup>

On September 15, 2010, the State charged Dalton with public intoxication, a Class B misdemeanor. On September 20, 2010, under a separate cause number, the State charged Dalton with battery resulting in serious bodily injury, a Class C felony. The State offered Dalton the opportunity to plead guilty, and indicated that if he did not, it would not file an habitual offender enhancement. On November 22, 2010, Dalton entered a guilty plea to both charges without benefit of a written plea agreement. On January 4, 2011, the trial court accepted Dalton's guilty pleas and entered a judgment of conviction for public intoxication and battery causing serious bodily injury. On the same day, the trial court sentenced Dalton to eight years at the Department of Correction for

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<sup>1</sup> Because Dalton pled guilty, the record does not contain significant detail regarding his offenses.

the conviction of battery and 180 days for the conviction of public intoxication, to be served consecutively.

On January 14, 2011, Dalton filed a notice of appeal in both cases. On Dalton's motion, this court consolidated the appeals into a single cause number. Dalton now appeals his sentences.

### Discussion and Decision

#### I. Abuse of Discretion in Sentencing

Subject to our review and revise power pursuant to Appellate Rule 7(B), sentencing decisions rest within the sound discretion of the trial court, and are reviewed only for abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). A trial court may abuse its discretion by failing to enter a sentencing statement, entering findings of aggravating and mitigating factors unsupported by the record, omitting factors clearly supported by the record and advanced for consideration, or giving reasons that are improper as a matter of law. Id. “Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. The appellate court may review both written and oral sentencing statements in order to identify the findings of the trial court. Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002).

Dalton contends that the trial court “found aggravating circumstances . . . [and] no mitigating circumstances . . . and did not adequately state the court’s reasons for selecting the sentence that it imposed . . . .” Appellant’s Brief at 10. Under Indiana Code section 35-38-1-7.1(a)(2), a defendant’s “history of criminal or delinquent behavior” may be

considered as an aggravating circumstance in imposing a sentence. At Dalton's sentencing, the trial court noted Dalton had so many arrests for public intoxication, it had stopped counting. The trial court noted that were "a number of other crimes . . . identified in the pre-sentence investigation [that were a]lso very telling [about] Mr. Dalton." Transcript at 36-37. The trial court explicitly noted "[t]aking into account [Dalton's] prior criminal history . . . the Court [would] aggravate [the advisory] sentence by an additional four years." Id. at 37. Thus, the sentencing statement identified the aggravating circumstances that were supported by the record, and the trial court sufficiently explained the reasons and circumstances for imposing the sentence.

Dalton cites Allen v. State, 722 N.E.2d 1246 (Ind. Ct. App. 2000), in which we noted that to enhance a sentence based in whole or in part on the defendant's history of criminal activity, a sentencing court must find instances of specific criminal conduct shown by probative evidence to be attributable to the defendant. Id. at 1252. Dalton contends the trial court's sentencing statement improperly fails to explain why his criminal history was an aggravating circumstance. In the present case there is a nexus between Dalton's prior criminal conduct and his current battery and public intoxication convictions. See Rhoiny v. State, 940 N.E.2d 841, 848 (Ind. Ct. App. 2010) ("[T]he significance of a criminal history varies based on the gravity, nature, and number of prior offenses as they relate to the current offense."), trans. denied. Dalton's extensive criminal history includes six arrests for battery, four of which resulted in convictions. Significantly, Dalton was on probation for a 2004 domestic battery conviction when he committed this present battery. Dalton has also been arrested for public intoxication seventeen times, although the dispositions of many of these arrests are unknown.

Nonetheless, these instances evince Dalton's propensity for committing these specific crimes, and his inability to refrain from engaging in this type of conduct. The trial court's reference to Dalton's criminal history as reflected in the pre-sentence investigation report sufficiently states the trial court's reasons for imposing the sentence.

Dalton also contends that his severe alcoholism is a significant mitigator the trial court improperly failed to identify. In order to show the trial court abused its discretion in omitting a mitigating circumstance, the defendant must show the claimed mitigator is both significant and clearly supported by the record. Anglemyer, 868 N.E.2d at 493. Dalton has had an problem with alcohol for the majority of his life which has continuously led to his trouble with the law. However, there is no indication that Dalton was proactive in seeking treatment to rectify his problem. See Bryant v. State, 802 N.E.2d 486, 501 (Ind. Ct. App. 2004) (holding that a defendant's drug abuse was properly considered an aggravating circumstance and not a mitigating circumstance, considering that defendant was aware of his drug and alcohol problem, yet had taken no positive steps to treat his addiction), trans. denied. Therefore, Dalton's alcoholism is not a significant mitigating factor, and the trial court did not abuse its discretion in failing to identify it as such.

## II. Inappropriate Sentence

Article 7, Section 6 of the Indiana Constitution gives appellate courts the authority to review and revise sentences. Pursuant to this authority, an appellate 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." Ind. Appellate Rule 7(B); Watson v. State, 784 N.E.2d 515,

521 (Ind. Ct. App. 2003). 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).

#### A. Nature of the Offense

Dalton was convicted of public intoxication, a Class B misdemeanor, and battery causing serious bodily injury, a Class C felony. A person who commits a Class B misdemeanor shall be imprisoned for a fixed term of not more than 180 days. Ind. Code § 35-50-3-3. The trial court sentenced Dalton to 180 days for his public intoxication conviction. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6(a). The trial court sentenced Dalton to eight years for his battery conviction. In addition, the trial court ordered the sentences to be served consecutively for an aggregate sentence of eight and one-half years.

Regarding the nature of the offense, Dalton claims “he loved the victim and did not intend to hurt her . . . [and] the victim’s injuries were sustained when [R.H.] fell after some contact.” Appellant’s Br. at 22. However, Dalton battered R.H. with such force that it caused two breaks in her shoulder blade, and a laceration near her eye. R.H.’s right arm was also rendered so useless that she needed an aide three days a week for several weeks to help around the house. It is unlikely these injuries were caused by a mere fall after incidental contact. Emotionally, R.H. was depressed, angry, sad, afraid, and had nightmares after Dalton’s attack.

Similarly, Dalton’s public intoxication conviction should not be taken lightly. Dalton was not merely in a public place while in a state of intoxication, as the offense

requires; although we note he was not driving, his blood alcohol content was 0.33 – four times the legal driving limit. See Ind. Code § 9-30-5-1(a) (operating a vehicle with a blood alcohol content of at least .08 is a Class C misdemeanor). In response to the trial court’s inquiry as to his high blood alcohol content, Dalton stated, “I was still walkin [sic].” Tr. at 37. Dalton’s response indicates his lack of remorse in committing this offense.

#### B. Character of the Offender

Dalton’s extensive criminal history indicates his poor character. At the age of fifteen, Dalton was referred to the Elkhart County juvenile authorities for public intoxication. Since then, Dalton’s record includes arrests and convictions for public intoxication, resisting arrest, malicious trespass, jail break, escape, disorderly conduct, theft, battery, felonious assault, attempted aggravated vehicular assault, and battery resulting in serious bodily injury.

Significantly, Dalton’s criminal history indicates that his current battery and public intoxication offenses are not his first of this nature and he has historically engaged in these specific types of crimes. For example, Dalton was convicted of battery in 1994 and arrested for battery in 1995. In 1999 and 2004 he was also convicted of domestic battery, and while on probation for the 2004 domestic battery, committed this current offense. Moreover, Dalton has been arrested for public intoxication seventeen times.

Dalton contends he has shown an acceptance of responsibility for his actions by pleading guilty, and that the guilty plea “confirms the mitigating evidence regarding his character.” Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). However, this contention is inapplicable to this case. If the State “reaps a substantial benefit” from a defendant’s

guilty plea, “the defendant deserves to have a substantial benefit returned.” Sensback v. State, 720 N.E.2d 1160, 1164 (Ind. 1999). Where, however, the defendant has received a substantial benefit or where the evidence against him is such that the decision to plead guilty is a pragmatic one, a guilty plea is less significant. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied.

Here, Dalton’s plea does not mitigate evidence regarding his character. Dalton’s guilty plea allowed him not to be tried as an habitual offender. Thus, his decision to plead guilty was a pragmatic one. See Fields v. State, 852 N.E.2d 1030, 1034 (Ind. Ct. App. 2006) (determining that the defendant’s guilty plea did not necessarily reflect positively on his character because the defendant received a benefit from the plea), trans. denied; Ind. Code § 35-50-2-8(h) (pursuant to which, if Dalton was determined to be an habitual offender, he would have been subject to an additional sentence of at least four years and as many as twelve). Dalton’s long history of committing crimes, including several instances of the same crimes he committed here, reflects poorly on his character. For the foregoing reasons, we conclude that Dalton’s sentence is not inappropriate in light of the nature of his offenses and his character.

#### Conclusion

The trial court did not abuse its discretion in sentencing Dalton, and his eight and one-half year sentence is not inappropriate in light of the nature of the offenses and his character.

Affirmed.

NAJAM, J., and CRONE, J., concur.