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IN THE
COURT OF APPEALS OF INDIANA

EVAN J. ERICKSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A05-1104-CR-212
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Darrin M. Dolehanty, Judge
Cause No. 89D03-1101-FC-1

September 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Evan J. Erickson ("Erickson") appeals his twelve-year sentence after pleading guilty to one count of operating a vehicle while intoxicated,[1] as a Class C felony, enhanced by his admission that he is an habitual substance offender.[2] Erickson raises the following restated issue for our review: whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 29, 2010, around 7:00 p.m., Erickson drove his vehicle into an intersection in Wayne County, Indiana and collided with another vehicle. Officers from the Richmond Police Department were dispatched to the accident. Upon arriving, the officers observed that Erickson had watery eyes, slurred speech, and unsteady balance and could detect the odor of alcohol on Erickson's breath. At the hospital, Erickson voluntarily submitted to a "plasma test of [his] blood," which revealed that Erickson "far exceeded the, the so called legal limit" for driving. *Tr*. at 13.

The State charged Erickson with various counts relating to his operating a motor vehicle while intoxicated and alleged that he was an habitual substance offender. At a March 30, 2011 hearing, Erickson pleaded guilty to one count of operating a vehicle while intoxicated, as a Class C felony, and admitted to being an habitual substance offender.

While sentencing Erickson, the trial court found the following as aggravating

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[1] *See* Ind. Code §§ 9-30-5-2, 9-30-5-3(b)(1).

[2] *See* Ind. Code § 35-50-2-10.

factors: (1) Erickson committed the crime while on parole, having been released from prison after serving approximately three-and-one-half years following his conviction for Class B felony operating a vehicle while intoxicated causing death; (2) Erickson was released to parole only ten months before committing the current offense; (3) Erickson's blood alcohol content was "amazingly high"; and (4) he was involved in a wreck with another vehicle. *Appellant's App.* at 39. The trial court considered as mitigating circumstances the following: (1) Erickson accepted responsibility for his crime by pleading guilty; (2) Erickson had support from family and friends; (3) Erickson sought help for alcohol addiction while in prison and through Alcoholics Anonymous; (4) Erickson cared for his ill mother; (5) Erickson had steady employment; and (6) Erickson held both a bachelor's degree and an associate degree. *Id.* The trial court imposed a twelve-year sentence—six years for the Class C felony, enhanced by six years for the habitual offender finding. One-and-one-half years of the habitual substance offender sentence were suspended to probation. Erickson was ordered to serve ten-and-one-half years executed with the Indiana Department of Correction. Erickson now appeals.

DISCUSSION AND DECISION

Erickson asserts that his twelve-year sentence, of which one-and-one-half years were suspended, is inappropriate in light of the nature of the offense and the character of the offender. Instead, he contends that a sentence of five years is appropriate.

"This court has authority to revise a sentence '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.'" *Spitler v. State*, 908 N.E.2d 694,

696 (Ind. Ct. App. 2009) (quoting Ind. Appellate Rule 7(B)), *trans. denied*. "Although Indiana Appellate 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." *Patterson v. State*, 909 N.E.2d 1058, 1062-63 (Ind. Ct. App. 2009) (quoting *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007)). We understand and recognize the unique perspective a trial court brings to its sentencing decisions. *Id*. at 1063. The defendant bears the burden of persuading this court that his sentence is inappropriate. *Id*.

The advisory sentence for a crime is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Richardson v. State*, 906 N.E.2d 241, 247 (Ind. Ct. App. 2009). Erickson pleaded guilty to driving while intoxicated in a manner that endangers a person, which was elevated to a Class C felony because Erickson had a previous conviction for driving while intoxicated causing death. *See* Ind. Code §§ 9-30-5-2(b), 9-30-5-3(b)(1). Indiana Code section 35-50-2-6 provides that a person who commits a Class C felony shall be imprisoned for a term of between two and eight years, with the advisory sentence being four. Erickson also admitted to being an habitual substance offender. Indiana Code section 35-50-2-10 provides that the trial court shall sentence a person found to be an habitual substance offender for an additional fixed term of at least three years imprisonment but not more than eight years.

Here, the trial court imposed a six-year sentence on Erickson's Class C felony conviction, which it enhanced by an additional six years for being an habitual offender for a total of twelve years, of which one-and-one-half years were suspended. Ten and one half years executed is less than the statutory maximum of sixteen years.

Erickson argues that his sentence is inappropriate because the nature of the offense is not particularly egregious. While Erickson admits that he got into an accident while he was intoxicated, he contends that there was no evidence that the collision caused either personal or property injury. In giving Erickson two years less than the maximum sentence for the Class C felony and two years less than the maximum sentence for the habitual substance offender enhancement, the trial judge responded to Erickson's argument as follows:

> But you do not get any credit for that in the Court or in the big scheme of things because that was out of your hands. It was by the grace of God that nobody got killed this time around. Everything that you did lent towards someone else losing a life.

Tr. at 46.

We agree with the trial court's reasoning. During the evening hours of December 29, 2010, Erickson got into an accident while driving his car in a state of extreme intoxication; Erickson's plasma blood test revealed that he was three times the legal limit. At the time, Erickson was on parole for a prior conviction of driving while intoxicated causing death, having been released from prison just ten months prior to the current accident. Nothing about the nature of the offense suggests that Erickson's sentence is inappropriate.

Erickson's character also does not support a downward revision of his sentence. There was certainly evidence of Erickson's good character: he had a bachelor's degree as well as an associate degree; he volunteered with AIDS Education in Africa, Habitat for Humanity, and other charitable organizations; he carried out missionary work; he held a

steady job; and he was helpful to his ill mother. However, there was also evidence of Erickson's criminal history. The instant conviction was Erickson's third conviction for operating while intoxicated during a ten-year period. At the time of the accident, Erickson was on parole. It had been less than ten months since Erickson had been released from prison in connection with the Class B felony of operating while intoxicated causing death.

In his sentencing statement, Erickson informed the trial court that, on Christmas day of 2010, after abstaining from alcohol for an extended period of time, he felt "safe" to drink again because he "deserved some prize or a treat [he] could use to pat [himself] on the back." *Id*. at 27.

> [Prosecutor]: Now you said you felt free to drink again, one of the reasons you said you felt safe again?
> [Erickson]: Yes.
> [Prosecutor]: But I don't understand the decision to drive again.
> [Erickson]: Right, I don't, I'm, I'm, I know what you mean. That's still . . .
> [Prosecutor]: Especially after you've been drinking.
> [Erickson]: Right, I understand. I don't, I'm not claiming it make, makes sense. I think it's only, it's the only kind of decision that you could make under the influence.

Id. at 32. Four days after Christmas, Erickson, in an extremely intoxicated state, crashed his car into another vehicle.

Erickson states that he is a "law abiding citizen but for his alcoholism." *Appellant's Br.* at 8. However, it is not Erickson's alcoholism that has caused him to be convicted on three separate occasions for crimes related to driving while intoxicated. Erickson's statements reveal that he lacks the judgment and insight to appreciate the

consequences of his decision to drive while intoxicated. Erickson's character reveals an individual with an alcohol problem who is, nevertheless, a danger to society. We do not find that a sentence of twelve years—ten-and-one-half executed and one-and-one-half suspended to probation—is an inappropriate sentence.

Affirmed.

BAKER, J., and BROWN, J., concur.