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**IN THE
COURT OF APPEALS OF INDIANA**

TODD A. BEBOUT,)
)
Appellant- Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee- Plaintiff,)

No. 02A05-1104-PC-157

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0503-FB-31

October 4, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Chief Judge

Case Summary and Issue

Following a guilty plea, Todd Bebout was originally convicted of operating a vehicle with a controlled substance or its metabolite in blood causing death, a Class B felony, operating a vehicle while intoxicated causing serious bodily injury, a Class D felony, and being an habitual offender. Bebout was sentenced to an aggregate fifty-three years. After a joint motion was filed, Bebout was granted post-conviction relief as to his habitual offender conviction, but a charge for habitual substance offender was reinstated. The trial court held a resentencing hearing and reaffirmed Bebout's twenty-year sentence for operating a vehicle with a controlled substance or its metabolite in blood causing death and three-year sentence for operating a vehicle while intoxicated causing serious bodily injury, to be served consecutively. Upon finding Bebout was an habitual substance offender, the trial court enhanced Bebout's operating a vehicle with a controlled substance or its metabolite in blood causing death sentence by eight years, for an aggregate sentence of thirty-one years. Bebout raises one issue for our review: whether Bebout's sentence is inappropriate in light of the nature of the offenses and his character. Concluding Bebout's sentence is not inappropriate, we affirm the sentence.

Facts and Procedural History

While intoxicated from consuming alcohol, cocaine, and marijuana, Bebout drove his motorcycle and struck a van, killing a passenger and seriously injuring the driver. The State charged Bebout with fourteen counts of criminal conduct. Bebout pleaded guilty to Count I, operating a vehicle with 0.15 or more alcohol concentration equivalent in blood or breath causing death, a Class B felony, Count II, operating a vehicle with a controlled substance or its metabolite in blood causing death, a Class B felony, Count VI,

operating a vehicle while intoxicated causing serious bodily injury, a Class D felony, and to being an habitual offender. At sentencing, the trial court found the following aggravating circumstances: Bebout had a multi-county and lengthy criminal history, with most of his offenses involving alcohol or drugs; his prior efforts at rehabilitation failed; and the victims of the crimes were both over the age of sixty-five. The trial court found the following mitigating circumstances: Bebout pleaded guilty; he accepted responsibility for his conduct; and he expressed remorse and apologized to the victims and their families.

Concluding the aggravating circumstances outweighed the mitigating circumstances, the trial court sentenced Bebout to twenty years for Count II, enhanced by thirty years for being an habitual offender, and three years for Count VI, to be served consecutively for an aggregate sentence of fifty-three years.¹ Bebout appealed, arguing the trial court's sentence was inappropriate in light of the nature of the offenses and his character. We affirmed the trial court's sentence, stating,

because Bebout's conduct resulted in injury to one victim and the death of another, we cannot say that the nature of the offenses supports a lesser sentence. Moreover, Bebout's criminal history shows a consistent pattern of substance abuse and a failure to respond to prior attempts at rehabilitation. Bebout has not demonstrated that his sentence is inappropriate in light of the nature of the offenses and his character.

Bebout v. State, 2007 WL 2012671, at *3 (Ind. Ct. App., July 13, 2007).

After Bebout filed a petition for post-conviction relief, Bebout and the State filed a joint motion to grant his petition for post-conviction relief as to his habitual offender enhancement pursuant to Count XIII, to reinstate the State's allegation that Bebout was

¹ The trial court merged Count I, operating a vehicle with 0.15 or more alcohol concentration equivalent in blood or breath causing death, with Count II, operating a vehicle with a controlled substance or its metabolite in blood causing death.

an habitual substance offender, and to set a hearing for re-sentencing on Count II with an enhancement for the habitual substance offender charge. At the hearing Bebout asked the trial court to take into consideration a report indicating he had been well-behaved in serving the beginning of his sentence at the Department of Correction and he had been participating in Alcoholics Anonymous classes. The trial court reaffirmed Bebout's twenty-year sentence for Count II and the three-year sentence for Count VI, finding the original aggravating and mitigating circumstances still applied. In addition, the trial court found Bebout to be an habitual substance offender and enhanced his sentence on Count II by eight years.²

Discussion and Decision

I. Standard of Review

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.” Ind. Appellate Rule 7(B). In determining whether a sentence is appropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. The burden is on the defendant to demonstrate that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Our decision turns on our sense of 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. Cardwell v. State, 895 N.E.2d 1219, 1224 (Ind. 2008).

² See Ind. Code § 35-50-2-10(f) (providing for a sentence enhancement of at least three (3) years but not more than eight (8) years for habitual substance offenders).

II. Bebout's Sentence

Bebout argues the eight-year habitual offender enhancement of his sentence is inappropriate. As to his character, Bebout argues he has established and the trial court agreed that he has been well-behaved while serving the beginning of his sentence, which he began in 2005. However, the record indicates Bebout has a lengthy criminal history, primarily involving drug and alcohol charges. It also indicates he has failed in numerous prior attempts to rehabilitate. Further, while we commend Bebout for demonstrating good behavior, we must also recognize that drugs and alcohol are not easily procured while in the Department of Correction, so the types of misconduct leading to his sentence could not easily be continued while he serves his sentence. This fact mitigates the relevance of his good behavior in the Department of Correction in assessing his character. Thus, Bebout's positive conduct is outweighed by his lengthy record.

As to the nature of the offenses, Bebout argues it does not justify receiving the maximum enhancement available, eight years, which should be reserved for the "worst of the worst." Brief of Appellant at 12; see Walker v. State, 747 N.E.2d 536, 538 (Ind. 2001). Here, however, Bebout's behavior resulted in the death of one victim and serious bodily injury of another. Coupled with his character, the maximum eight-year enhancement leading to a thirty-one year total sentence is not inappropriate.

Conclusion

Bebout raises no other arguments, nor do we find anything in the record that would cause us to conclude his sentence is inappropriate. The trial court's maximum eight-year enhancement to Bebout's sentence for being an habitual substance offender is not inappropriate. We therefore affirm Bebout's sentence.

Affirmed.

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