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IN THE
COURT OF APPEALS OF INDIANA

ROBERT LAVAUGH ACKLES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-1002-CR-118
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable David A. Happe, Judge
Cause No. 48D04-0905-FD-153

October 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Robert Lavaugh Ackles pleaded guilty to operating a vehicle with an alcohol concentration equivalent ("ACE") of at least .15[1] as a Class D felony, failure to yield right-of-way to emergency vehicle[2] as a Class A infraction, and operating a vehicle without financial responsibility[3] as a Class A infraction. He was sentenced to thirty-six months, with twelve months suspended to probation and twenty-four months executed in the Department of Correction ("DOC"). He appeals, raising the following restated issue: whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 2, 2009, Indiana State Trooper Jeremy Mason observed Ackles driving the opposite direction on a one-way street. Ackles then turned down another street and, before stopping, nearly hit a marked police car that was conducting an unrelated traffic stop. Trooper Mason initiated a traffic stop, exited his car, and approached Ackles's vehicle. Ackles drove away from Trooper Mason, swerved around the other parked police car, nearly hitting it a second time and changing lanes without signaling. Ackles then drove approximately one block before finally stopping.

Trooper Mason approached Ackles's vehicle and immediately smelled the odor of alcohol in the vehicle and on Ackles's breath. Trooper Mason also observed that Ackles

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

[2] *See* Ind. Code § 9-21-8-35(b).

[3] *See* Ind. Code § 9-25-8-2(a).

had bloodshot, glassy eyes, slurred speech, and poor manual dexterity. When Trooper Mason asked Ackles for his driver's license and registration, Ackles was only able to produce an Indiana identification card. The trooper also observed various beer cans, one of which was half-full, and a half-full bottle of beer in the back seat area. Trooper Mason then asked Ackles to perform three field sobriety tests, and Ackles failed all three tests. He was subsequently taken to the Madison County Jail where he submitted to a chemical test, which showed a reading of .21.

Ackles was arrested and charged with operating a vehicle with an ACE of at least .15 as a Class A misdemeanor, public intoxication as a Class B misdemeanor, open alcoholic beverage during operation of a motor vehicle as a Class C infraction, driving while suspended as a Class C infraction, failure to yield right-of-way to emergency vehicle as a Class A infraction, operating a vehicle without financial responsibility as a Class A infraction, unsafe lane movement as a Class C infraction, driving the wrong way on posted one-way roadway as a Class C infraction, and operating a vehicle with an ACE of at least .15 as a Class D felony. On January 4, 2010, Ackles pleaded guilty to operating a vehicle with an ACE of at least .15 as a Class D felony, failure to yield right-of-way to emergency vehicle as a Class A infraction, and operating a vehicle without financial responsibility as a Class A infraction. Under the plea agreement, Ackles was to be sentenced to thirty-six months with twenty-four months executed and twelve months suspended to probation. The placement of his executed time was left to the discretion of the trial court. At sentencing, the trial court imposed the sentence under the plea

agreement and ordered the executed portion to be served in the DOC. Ackles now appeals.

DISCUSSION AND DECISION

"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*.

Ackles argues that his sentence was inappropriate in light of the nature of the offense and character of the offender. He specifically takes issue with trial court's determination that he should serve the executed portion of his sentence in the DOC. He claims that this was inappropriate because, as to the nature of the offense, his charged offenses mainly consisted of infractions and the offenses were alcohol-related and non-violent. He further asserts that, in regards to his character, his only serious prior convictions happened when he was eighteen years old, his more recent convictions were all substance-abuse related, he has maintained steady employment, has sought substance abuse treatment, has a family, and accepted responsibility by pleading guilty. In light of

these things, he contends it was inappropriate for the trial court to order his executed time to be served in the DOC.

As to the nature of his offenses, Ackles drove the wrong way down a one-way street and nearly hit a marked police car. After initially stopping, Ackles drove away when Trooper Mason approached his vehicle, swerving and almost hitting the other police car again. When Trooper Mason conducted his traffic stop, he observed that Ackles smelled of alcohol, had bloodshot, glassy eyes, and slurred speech and that there were open alcohol beverage containers in the back seat area. Ackles failed three field sobriety tests and registered a reading of .21 when he submitted to a chemical test.

As to his character, Ackles had a criminal history that consisted of convictions for robbery as a Class B felony, robbery as a Class A felony, possession of cocaine as a Class D felony, public intoxication as a Class B misdemeanor, operating while intoxicated as a Class A misdemeanor, and operating a vehicle with an ACE of at least .15 as a Class A misdemeanor. Although the robbery convictions occurred over twenty years ago, when Ackles was only eighteen years old, the instant offense was his third alcohol-related offense in four years. Additionally, he was on probation at the time the present offenses were committed. We therefore conclude that Ackles's placement in the DOC was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and BAILEY, J., concur.