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IN THE
COURT OF APPEALS OF INDIANA

IVORY JOHNSON,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 49A05-0905-CR-273
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
The Honorable Stanley E. Kroh, Commissioner
Cause No. 49G03-0903-FC-32287

November 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Ivory Johnson appeals following her convictions for Operating a Motor Vehicle After License Forfeited for Life, a Class C felony,[1] Operating a Vehicle While Intoxicated, a Class A Misdemeanor,[2] and Operating a Vehicle While Intoxicated, a Class D felony.[3] On appeal, Johnson contends that her sentence is inappropriate in light of the nature of her offenses and her character. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered during the April 17, 2009 plea hearing:

> [O]n March 14, 2009, on East 38th Street approaching the intersection of North Emerson Avenue … [Johnson] was observed by an officer of the Indianapolis Metropolitan Police Department driving very slowly and causing a traffic jam.
>
> And that – she was stopped in her vehicle and found to exhibit several signs of intoxication, including red, glassy, bloodshot eyes, strong odor of alcoholic beverage, extremely – extremely unsteady balance. And the officer administered field sobriety tests, including the gaze nystagmus, which she failed. She was unable to do the one-leg stand and walk and turn because of concerns about her safety.
>
> A – she was read the implied consent law and submitted to a chemical test, the result of which was an alcohol concentration of .21 grams of alcohol per 210 liters of breath. This was administered by Officer William Norlock, who is a certified chemical – chemical test operator.
>
> Additionally, [Johnson] had been previously convicted of Operating While Intoxicated and Driving a Vehicle While Suspended for Life under Cause No. 49F09-0801-FD-016218, on January 17, 2008, in Marion Superior Court No. 9. And [Johnson's] license was suspended for life at the time that this traffic stop occurred.

Tr. pp. 15-17.

Pursuant to her plea agreement, Johnson admitted that she was in violation of her

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[1] Ind. Code § 9-30-10-17 (2008).
[2] Ind. Code § 9-30-5-2 (2008).
[3] Ind. Code § 9-30-5-3 (2008).

probation under Cause No. 49G03-0801-FD-016218. Johnson also admitted that she was guilty of Count 1: Class C felony operating a motor vehicle after her license had been forfeited for life, Count 2: Class A misdemeanor operating while intoxicated, and Count 5: Class D felony operating while intoxicated. In exchange for Johnson's guilty plea, the State agreed to dismiss all remaining charges.

With respect to Johnson's probation violation, the trial court revoked Johnson's probation and imposed a 365-day executed sentence. With respect to the instant offenses, the trial court imposed a four-year executed sentence. The trial court ordered that Johnson's sentence for the instant offense be served consecutive to the sentence imposed in response to her probation violation. Johnson now appeals.

DISCUSSION AND DECISION

In challenging her sentence, Johnson concedes that the trial court "acted within its discretion in imposing the advisory sentence for a Class C felony, four years, and making it consecutive to her one year for violation of probation."[4] Appellant's Br. p. 4. Johnson, however, contends that her sentence is inappropriate in light of the nature of her offenses and her character. Indiana Appellate Rule 7(B) provides that "The Court may revise a sentence

[4] To the extent that Johnson argues that her sentence is inappropriate because the trial court failed to attribute appropriate mitigating weight to the fact that she accepted responsibility for her actions and that she was remorseful, we note that the trial court was under no obligation to "give the same weight or credit to the mitigating evidence as does the defendant." *Allen v. State*, 722 N.E.2d 1246, 1252 (Ind. Ct. App. 2000). Moreover, because the trial court cannot now be said to have abused its discretion in failing to "properly weigh" such factors, we will not review the weight granted to aggravating or mitigating factors by a trial court on appeal. *See Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007).

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." The defendant bears the burden of persuading us that her sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

With respect to the nature of her offenses, Johnson admitted to driving under the influence of alcohol after her license had been suspended for life. The record indicates that Johnson has a long history of both driving under the influence and driving while her license was suspended. In addition, in committing the instant offenses, Johnson violated the terms of her probation relating to her most recent driving while her license was suspended and driving while intoxicated convictions. Moreover, we believe that Johnson's offense was particularly egregious because her blood alcohol content ("BAC") at the time of her arrest was .21, which is nearly three times the legal limit.

With respect to Johnson's character, her numerous convictions for driving while intoxicated and for driving after her license had been suspended for life indicate a complete disregard for the law. Since 1992, Johnson has accrued five convictions for driving while intoxicated and five convictions for driving while her license was suspended. Alarmingly, Johnson continued to drive while under the influence even after her own sister lost her life to a drunk driver. In addition, Johnson's criminal history includes convictions for check deception and possession of marijuana. In light of the facts surrounding Johnson's offenses and her character, we cannot say that Johnson's sentence is inappropriate.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.