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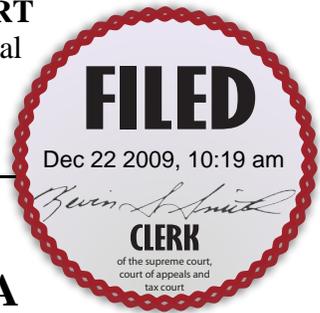
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**IN THE
COURT OF APPEALS OF INDIANA**

CHRISTOPHER WEAVER,)

Appellant-Defendant,)

vs.)

No. 79A04-0909-CR-535

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0807-FC-67

December 22, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Christopher Weaver appeals his sentence following his convictions for two counts of Operating a Vehicle While Intoxicated Causing Death, as Class C felonies, pursuant to a plea agreement. He presents the following issues for our review:

1. Whether his sentence is inappropriate in light of the nature of the offenses and his character.
2. Whether the trial court erred when it ordered his five-year license suspension to commence upon his release from incarceration.

We affirm.

FACTS AND PROCEDURAL HISTORY

Early in the morning on June 1, 2008, nineteen-year-old Weaver was driving his car in Lafayette, and his friends Benjamin Howard-Shaw and Demetrius Fikes were riding in the car as passengers. Weaver was intoxicated and traveling at more than ninety miles per hour when he lost control of the vehicle and collided with a guard rail. The force of the collision resulted in fatal injuries to Howard-Shaw and Fikes, who were twenty years old and seventeen years old, respectively. Weaver admitted to police that he had been drinking before the collision and submitted to urine and blood tests. His blood alcohol level was measured at .15%.

The State charged Weaver with eight felonies and one misdemeanor, and Weaver ultimately pleaded guilty to two counts of operating a vehicle while intoxicated causing death, as Class C felonies. The State dismissed the other charges. The plea agreement left sentencing to the trial court's discretion.

Family members of the victims made statements at Weaver's sentencing hearing. And the trial court identified the following aggravators: Weaver's history of criminal or

delinquent behavior;¹ Weaver had recently violated the terms of his probation, diversion, and pre-trial release; and the fact that there were multiple victims. The trial court identified the following mitigators: that Weaver has made or will make restitution to the victims' families; his guilty plea and acceptance of responsibility; his participation in rehabilitative programs; his cooperation with law enforcement; his remorse; and his family's support. The trial court found that the aggravators outweighed the mitigators and imposed consecutive six-year sentences, for an aggregate sentence of twelve years.² Of that aggregate sentence, eight years will be executed, including two years with Tippecanoe County Community Corrections, and four years suspended to probation. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sentence

Weaver contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution “authorize[] independent appellate review and revision of a sentence imposed by the trial court.” Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate

¹ Weaver's juvenile history consists of adjudications for minor consumption, public intoxication, possession of marijuana, and possession of paraphernalia, for which he was placed on probation. Thereafter, in October 2006, Weaver was subsequently arrested and charged with public intoxication and minor consumption, and that cause was waived to adult court. Weaver entered into a diversion agreement with the State. Then, in January 2008, Weaver was charged with minor consumption, and that charge was pending at the time of the offenses in the instant case.

² The advisory sentence for a Class C felony ranges from two years to eight years. See Ind. Code § 35-50-2-6.

Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Weaver contends that his sentence is inappropriate in light of his character. But “revision of a sentence under Indiana Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of both the nature of his offenses and his character.” Williams v. State, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008); see Ind. Appellate Rule 7(B). Weaver presents no argument whatsoever, let alone cogent argument, regarding the inappropriateness of his sentence in light of the nature of his offenses. Therefore, the argument is waived. Williams, 891 N.E.2d at 633; see App. R. 46(A)(8)(a).

Waiver notwithstanding, we hold that Weaver’s sentence is not inappropriate in light of the nature of the offenses or his character. Weaver does not dispute the validity of any of the aggravators identified by the trial court. Instead, he suggests that the trial court assigned too much weight to his criminal history. But we will not review the weight given to an aggravator on appeal. Indeed, Weaver’s entire argument on this issue amounts to a request that we reweigh the aggravators and mitigators, which we will not

do. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (“[b]ecause the trial court no longer has the obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence . . . a trial court can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.”), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007).

Weaver, who, at nineteen years old, had an established history of drinking alcohol, consumed enough alcohol to produce a blood alcohol level of .15% and drove a vehicle with his two friends as passengers. Weaver was driving his vehicle at a speed of approximately ninety miles per hour on a city street when he lost control of the vehicle and crashed it, killing his two young friends. The trial court took into consideration Weaver’s expression of remorse and participation in rehabilitative programs, in addition to other mitigators. We cannot say that his twelve-year sentence, with eight years executed, is inappropriate in light of the nature of the offenses and his character.

Issue Two: License Suspension

Weaver also contends that the trial court did not have the authority to order that his driver’s license be suspended for five years after his release from incarceration. Indiana Code Section 9-30-5-10(a) provides in relevant part that in addition to a criminal penalty imposed for an offense under the chapter the court shall recommend the suspension of the person’s driving privileges for a fixed period of time. The legislature amended that section in 2008 to add the following language:

The court may require that a period of suspension recommended under this section be imposed, if applicable, before a period of incarceration or after a period of incarceration, or both before and after a period of incarceration, as long as the suspension otherwise complies with the periods established in this section.

I.C. § 9-30-5-10(a) (2008). Weaver points out that the 2008 amendments to the statute apply “only to crimes committed after June 30, 2008.” P.L. 126-2008, Sec. 13. Accordingly, Weaver maintains that the amended statute does not apply to the instant offenses, which occurred on June 1, 2008.³

However, even applying the former version of the statute, the trial court did not err when it ordered that Weaver’s license suspension commence upon his release from incarceration. The former version of Indiana Code Section 9-30-5-10(a) states only that the trial court shall recommend suspension of a defendant’s driving privileges for a fixed period of time and is silent on the issue of when license suspensions are to be served. In other words, the former version of the statute did not prohibit, as Weaver contends, the imposition of a license suspension after a defendant’s release from incarceration.⁴ And the trial court’s imposition of the license suspension is consistent with the plain language of the former statute. We hold that the trial court did not err when it ordered that Weaver’s license suspension commence upon his release from incarceration.

Affirmed.

FRIEDLANDER, J., and BRADFORD, J., concur.

³ There were substantive amendments to the statute other than that in subsection (a).

⁴ Regardless, as the State correctly points out, suspending a defendant’s driving privileges while he is incarcerated is no punishment at all, and the legislature would not have intended such an absurd result.