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IN THE
COURT OF APPEALS OF INDIANA

OLEN GOINS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 47A01-0701-CR-44
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAWRENCE SUPERIOR COURT
The Honorable William G. Sleva, Judge
Cause No. 47D02-0408-FC-636

July 27, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Olen Goins ("Goins") challenges the presumptive four-year sentence imposed following his plea of guilty to a charge that he operated a motor vehicle as a habitual traffic violator, a Class C felony.[1] We affirm.

Issues

Goins presents two issues for review:

I. Whether the trial court abused its sentencing discretion by ignoring mitigating evidence; and

II. Whether his sentence is inappropriate and should be revised pursuant to Indiana Appellate Rule 7(B).

Facts and Procedural History

On July 30, 2004, Goins operated a vehicle at the intersection of 22nd Street and Mitchell Road in Bedford, Indiana. His driving privileges had been revoked for life, pursuant to Indiana Code Section 9-30-10-16. On August 2, 2004, the State charged Goins with operating a motor vehicle as a habitual traffic violator. On December 12, 2005, Goins pleaded guilty to that charge, and the State moved to dismiss a separate charge of operating a motor vehicle as a habitual traffic violator, arising from Goins' conduct on November 9, 2005.

On November 27, 2006, the trial court imposed upon Goins the presumptive sentence of four years, with two years suspended to probation. Goins now appeals.

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[1] Ind. Code § 9-30-10-17.

Discussion and Decision

I. Mitigating Circumstances

At the time Goins committed the instant offense, Indiana Code Section 35-50-2-6 provided that a person who committed a Class C felony should be imprisoned for a fixed term of four (4) years, with not more than four (4) years added for aggravating circumstances and not more than two (2) years subtracted for mitigating circumstances. The trial court imposed upon Goins the presumptive sentence, and then suspended two years to probation. Goins argues that the trial court ignored mitigating evidence, i.e., he pled guilty and he drove his vehicle in order to obtain heart medication.

When a trial court has imposed the presumptive sentence, on appeal this Court presumes that the trial court considered the proper factors in making its sentencing determination. Jones v. State, 698 N.E.2d 289, 290 (Ind. 1998). Because the trial court imposed the presumptive sentence, it was not required to set forth the specific reasons for that sentence. See Williams v. State, 676 N.E.2d 1074, 1078 (Ind. Ct. App. 1997). Moreover, whether the trial court finds mitigating circumstances is within its discretion. Id. The trial court is neither required to set forth a description of all proffered mitigating circumstances nor required to give the same weight that the defendant does to those circumstances. Id. The trial court is not obligated to find that mitigating circumstances exist at all. Id.

We also observe that the trial court was required to impose a minimum two-year executed sentence upon Goins because he was convicted of a Class C felony and less than seven years had elapsed since he was discharged from prison for a prior unrelated felony

conviction. See Ind. Code §§ 35-50-2-2(b)(2), 35-50-2-1(c)(4). Thus, Goins received the minimum executed sentence possible.

II. Appropriateness of Sentence

Goins also argues that his four-year sentence is inappropriate in light of the nature of the offense and the character of the offender. In particular, he points out that he pled guilty, he has a heart condition, and he was driving in order to obtain necessary medication.

Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

Concerning the nature of the instant offense, Goins reported to the probation officer compiling the presentence investigation report that he was driving in order to obtain his heart medication. However, Goins chose to plead guilty rather than raise a defense of necessity. Moreover, the sentencing record does not establish that the medication could not have been obtained through alternative means, such as mail delivery or pickup by a relative.

The character of the offender is such that prior rehabilitative efforts have failed. Goins has twelve prior convictions, including four felony convictions. He accepted responsibility for the instant offense by pleading guilty, but the State dismissed a subsequent charge in exchange for the guilty plea. We are not persuaded that the presumptive sentence, with two years suspended such that Goins is required to serve only the minimum executed sentence, is inappropriate.

Affirmed.

SHARPNACK, J., and MAY, J., concur.