

Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

ATTORNEY FOR APPELLANT:

JOHN T. WILSON
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JOBY D. JERRELLS
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROBERT L. DAVIS,)
)
Appellant-Defendant,)
)
vs.) No. 48A02-0705-CR-415
)
STATE OF INDIANA,)
)
Appellee-Plaintiff..)

APPEAL FROM THE MADISON SUPERIOR COURT
DIVISION III
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0505-FD-248

September 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Robert Davis (“Davis”) was convicted in Madison Superior Court of Class D felony operating a vehicle while intoxicated and with being an habitual substance offender. He received an aggregate sentence of eight years and appeals arguing that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On May 26, 2005, Davis was charged with Class A misdemeanor operating a vehicle while intoxicated, Class D felony operating a vehicle while intoxicated, and with being an habitual substance offender. On September 7, 2005, Davis pleaded guilty as charged. He was sentenced to serve three years for the Class D felony operating a vehicle while intoxicated conviction, and his sentence was enhanced by five years for the habitual substance offender adjudication, for an aggregate sentence of eight years. Davis now appeals. Additional facts will be provided as necessary.

Discussion and Decision.

“Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). “An abuse of discretion occurs if the decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” Id. (citation omitted). “The trial court must enter a [sentencing] statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” Id. at 491. Our court may review “the

reasons given, and the omission of reasons arguably supported by the record,” but the relative weight assigned to those reasons is not subject to appellate review. Id.

Davis argues that the trial court abused its discretion in failing to find his guilty plea to be a mitigating circumstance. The trial court need only identify mitigating circumstances that it finds to be significant and is not obligated to explain why it has found that mitigating circumstances do not exist. Id. at 493. While a defendant who pleads guilty generally deserves to have some mitigating weight extended to his guilty plea, the trial court is not required to find that the defendant’s guilty plea is a significant mitigating circumstance. See Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005). Moreover, a guilty plea may be regarded as a pragmatic decision where the defendant receives a benefit as a result of the plea, and considerable evidence exists of his or her guilt. See Hines v. State, 856 N.E.2d 1275, 1282 (Ind. Ct. App. 2006), trans. denied; Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied.

In this case, Davis received a benefit in exchange for his guilty plea, i.e. an eight-year cap on a possible eleven-year aggregate sentence. There was also substantial evidence of his guilt. Davis failed three field sobriety tests and registered a .21 on a portable breath test. Appellant’s App. p. 59. Accordingly, we cannot conclude that the trial court abused its discretion when it did not consider Davis’s guilty plea to be a mitigating circumstance.¹

Finally, Davis argues that his aggregate eight-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Appellate courts have

¹ Davis also argues that the trial court abused its discretion when it failed to consider his history of substance abuse as a mitigating circumstance. Davis raised this argument at sentencing, and it was well within the trial court’s discretion to reject it. See Anglemyer, 868 N.E.2d at 493.

the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer, 868 N.E.2d at 494.

Concerning the nature of the offense, Davis was extremely intoxicated while operating his vehicle. Tr. pp. 11-12; Appellant's App. p. 59. Davis's criminal history reveals numerous substance offenses, including several misdemeanor convictions for public intoxication and two operating while intoxicated convictions. Accordingly, we conclude that Davis's aggregate eight-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.²

Affirmed.

NAJAM, J., and BRADFORD, J., concur.

² Davis also argues that the trial court has a personal bias against drunk drivers, which led to improper aggravation of his sentence. We do not agree. When the trial court's sentencing statement is read as a whole, we conclude that the trial court's comments were directed specifically towards its discussion of Davis's criminal history.