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IN THE
COURT OF APPEALS OF INDIANA

COURTNEY HALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0705-CR-432
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0608-FC-86

October 3, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Courtney Hall ("Hall") pleaded guilty in Tippecanoe Superior Court to Class C felony operating a vehicle with a controlled substance causing death. Hall was sentenced to serve seven years and he 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 August 23, 2006, Hall was charged with Class C felony operating a vehicle with a controlled substance causing death. Specifically, chemical testing revealed that at the time of the accident, Hall had marijuana or its metabolite in his blood. Hall pleaded guilty and was ordered to serve seven years executed in the Department of Correction. Hall now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Hall argues that his seven-year sentence is inappropriate. Appellate courts have 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 v. State, 868 N.E.2d 483, 494 (Ind. 2007).

Concerning the nature of the offense, we note Hall's argument that although a chemical test revealed that there were marijuana metabolites in his blood, he had last used marijuana a week before the accident and was "in no way under its influence or otherwise impaired" at the time of the accident. Br. of Appellant at 6. We acknowledge

Hall's argument, but observe that Indiana Code section 9-30-5-5 does not require impairment due to controlled substance use to be the cause of the accident resulting in death.[1]

Hall's character supports the imposition of an enhanced sentence. In 2000, Hall was convicted of Class A misdemeanor check deception. He committed this crime shortly after the court agreed to withhold prosecution on a Class A misdemeanor conversion charge. In 2003, Hall was convicted of Class D felony residential entry, Class D felony theft, and Class C felony robbery. One year later, the court agreed to modify Hall's sentence and allowed him to serve his sentence on house arrest to let him to care for his ailing father. While on probation, he committed the instant offense. We agree with the trial court's observation that Hall has "had prior opportunities to respond to probation and [he has] breached that trust." Tr. pp. 66-67.

Accordingly, we conclude that Hall's seven-year sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

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

[1] That statute provides: "A person who causes the death of another person when operating a motor vehicle: . . . (2) with a controlled substance listed in schedule I or II of IC 35-48-2 or its metabolite in the person's blood . . . commits a Class C felony. Ind. Code 9-30-5-5(a)(2) (2004 & Supp. 2007). Moreover, we reject Hall's argument that the trial court should have found his non-impairment to be a mitigating circumstance. Hall presented 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.