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IN THE
COURT OF APPEALS OF INDIANA

CARL L. SMITH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A04-0704-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT 2
The Honorable Roderick D. McGillivrary, Judge
Cause No. 03D02-0607-FD-1050

October 18, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Carl Smith (Smith), appeals his conviction for operating a vehicle while intoxicated, a Class D felony, Ind. Code §§ 9-30-5-2(a), 9-30-5-3(1).

We affirm.

ISSUE

Smith raises one issue on appeal, which we restate as follows: Whether the trial court properly sentenced Smith.

FACTS AND PROCEDURAL HISTORY

On July 21, 2006, Smith operated a vehicle in Bartholomew County while intoxicated. On July 25, 2006, the State filed an Information charging him with operating a vehicle while intoxicated, a Class D Felony, I.C. §§ 9-30-5-2(a), 9-30-5-3(1). On February 14, 2007, Smith pled guilty and in exchange the State agreed to dismiss two pending driving while suspended charges and two probation revocations. On March 26, 2007, the trial court accepted Smith's guilty plea and sentenced him to three years noting as aggravating factors that, "[Smith] was on probation at the time of the crime . . . has a history of criminal and delinquent activity . . ., and is in need of correctional or rehabilitative treatment that can best be provided by commitment to a penal facility." (Transcript p. 29). The court found no mitigating factors.

Smith now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Smith contends that the trial court abused its discretion when sentencing him to the

maximum sentence and that his sentence is inappropriate in light of the nature of the offense and his character. *See Ind. Appellate Rule 7(B).* Specifically, Smith asserts that the trial court failed to consider as mitigating factors that he was likely to affirmatively respond to probation or short term imprisonment and the fact that he pled guilty. In addition, Smith asserts that his sentence is inappropriate since he is not among the worst offenders, he was sober six or seven months before this offense, and he has never injured anyone while driving under the influence.

I. *Standard of Review*

"[S]o long as a sentence is within the statutory range, it is subject to review only for abuse of discretion." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before the court. *Payne v. State*, 854 N.E.2d 7, 13 (Ind. Ct. App. 2006). However, "[i]n order to carry out our function of reviewing the trial court's exercise of discretion in sentencing, we must be told of [its] reasons for imposing the sentence. . . . This necessarily requires a statement of facts, in some detail, which are peculiar to the particular defendant and the crime, as opposed to general impressions or conclusions. Of course[,] such facts must have support in the record." *Anglemyer*, 868 N.E.2d at 490 (quoting *Page v. State*, 424 N.E.2d 1021, 1023 (Ind. 1981)). One way in which a trial court may abuse its discretion is by omitting aggravating or mitigating circumstances that are clearly supported by the record and advanced for consideration. *Anglemyer*, 868 N.E.2d at 490-91. However, a trial court cannot abuse its discretion when weighing those circumstances because it no longer has

the obligation to do so. *Id.* at 491. Where the trial court has entered a reasonably detailed sentencing statement explaining its reasons for a given sentence that is supported by the record, we may only review the sentence under Indiana Appellate Rule 7(B), which 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." *Id.*

II. *Mitigating Factors*

Smith first argues the trial court abused its discretion when it failed to consider that he was likely to affirmatively respond to probation or short term imprisonment, and his guilty plea, as mitigating factors when imposing his sentence. However, as the trial court aptly notes, Smith has had prior instances of short term imprisonment and probationary periods; yet, the instant offense is Smith's seventh conviction for operating a vehicle while under the influence or while intoxicated. Additionally, Smith was on probation when the instant offense occurred. Thus, we cannot find the trial court abused its discretion by finding Smith would not affirmatively respond to probation or short term imprisonment.

Furthermore, we do not find the trial court abused its discretion by not recognizing his guilty plea as a mitigating factor. It is true that, a "defendant's guilty plea may be a significant mitigating factor as it saves court time and judicial resources." *Antrim v. State*, 745 N.E.2d 246, 248 (Ind. Ct. App. 2001). This is not to say, however, the substantial benefit to the defendant must be at sentencing. There are situations when a defendant greatly benefits from a guilty plea, and as a result may not be so deserving of a benefit at sentencing.

If, for example, a benefit is extended by the State in exchange for pleading guilty a benefit must not also necessarily be extended at sentencing. *See Sensback v. State*, 720 N.E.2d 1160, 1165 n.4 (Ind. 1999) (defendant's benefit was received when the State amended the charge from a Class A felony carrying twenty to fifty years to a Class B felony carrying six to twenty years).

Here, as recognized by the trial court, Smith received, "a huge break having everything else dismissed except for this D felony." (Transcript p. 28). In exchange for his guilty plea, the State dismissed two driving while suspended charges and two probation revocations. Thus, we find Smith received a substantial benefit from his guilty plea and the trial court did not abuse its discretion by failing to recognize it as a significant mitigating factor for sentencing.

III. *Ind. Appellate Rule 7(B)*

Smith also argues his sentence is inappropriate with respect to the nature of the offense and his character. The State concedes that, "there do not appear to be any facts or circumstances in his crime that warrant[] a sentence beyond the advisory." (Appellee's Brief p. 6). Thus, we will only discuss the appropriateness of Smith's sentence with respect to his character.

Smith contends because he has been sober for the past six to seven months with stable employment, recognizes that he has a disease and needs help overcoming his addiction, and that he has never injured anyone during his drunken driving episodes, his sentence is inappropriate. We do not find such argument persuasive. One way in which our supreme

court has determined the character of an offender is by analyzing the offender's extensive related criminal history. *See Weiss v. State*, 848 N.E.2d 1070, 1072-73 (Ind. 2003). As previously mentioned, Smith has six prior convictions for operating a vehicle while under the influence or while intoxicated, two convictions for reckless driving, and one conviction for public intoxication; those are only his alcohol and driving related convictions. Smith also has convictions for public indecency and false informing. As the trial court noted, Smith has had years to deal with his addiction as his first conviction was in 1984; he participated in a diversion class in 2001 after his fifth conviction; was on probation when charged with the instant offense; and is eventually "going to kill someone" while driving under the influence of alcohol. (Tr. p. 29). Thus, in light of Smith's character, we do not find the maximum sentence to be inappropriate.

CONCLUSION

Based on the foregoing, we find the trial court properly sentenced Smith to three years.

Affirmed.

SHARPNACK, J., and FRIEDLANDER, J., concur.