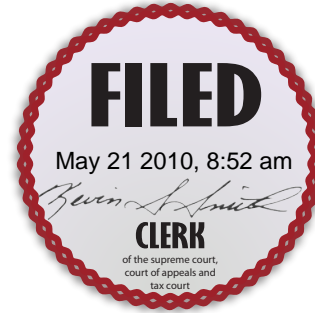


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

LANNY R. HISSONG,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 17A03-0911-CR-537

APPEAL FROM THE DEKALB SUPERIOR COURT
The Honorable Kevin P. Wallace, Judge
Cause No. 17D01-0801-FD-13

May 21, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant Lanny R. Hissong contends that his sentence for Operating a Vehicle While Intoxicated, as a Class D felony,¹ is inappropriate. We affirm.

Facts and Procedural History

Late in the evening on January 10, 2008, Gregory Hall was driving with his family in Waterloo, Indiana, when he observed a White Silverado truck swerving “all over the road.” Trial transcript at 150. The truck then attempted to make a left turn, but completely missed the road and hit a tree head-on. Hall immediately stopped his vehicle to assist the driver of the truck. When Hall saw the driver, he recognized him as Hissong and helped him out of the truck. Hall noticed that Hissong had the smell of alcohol on his breath. Despite Hall’s advice for Hissong to stay at the scene, Hissong walked to his nearby home.

Officer Janet Brady of the Waterloo Marshal’s Department responded to the accident scene. After investigating the scene and interviewing witnesses, Officer Brady drove the short distance to Hissong’s house and spoke with Hissong, who was lying on his bed. Hissong smelled of alcohol, had slurred speech, bloodshot and glassy eyes, and poor balance. Hissong was arrested and submitted to a certified breath test. The results indicated that he had a blood alcohol content level of .23 gram of alcohol per 210 liters of breath.

On January 16, 2008, the State charged Hissong with Operating a Vehicle While Intoxicated, as a Class A misdemeanor (“Count I”),² Operating a Vehicle While Intoxicated

¹ Ind. Code § 9-30-5-3.

² Ind. Code § 9-30-5-2(b).

with an alcohol concentration equivalent of at least fifteen-hundredths gram of alcohol per 210 liters of the person's breath, a Class A misdemeanor ("Count II"),³ and Operating a Vehicle While Intoxicated with a Prior Conviction, as a Class D felony ("Count III").⁴ After a jury trial on Counts I and II, Hissong was found guilty as charged. Hissong admitted to having a prior Operating While Intoxicated conviction, and the trial court entered judgment only as to Count III. The trial court sentenced Hissong to one and one-half years imprisonment at the Indiana Department of Correction.

Hissong now appeals.

Discussion and Decision

In Reid v. State, the Indiana Supreme Court noted the standard by which appellate courts independently review criminal sentences:

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 through Indiana Appellate Rule 7(B), which provides that a court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The burden is on the defendant to persuade us that his sentence is inappropriate.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (quotation and citations omitted).

More recently, the court reiterated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference."

Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme

³ Ind. Code § 9-30-5-1(b).

⁴ Ind. Code § 9-30-5-3(a).

allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. One purpose of appellate review is to attempt to “leaven the outliers.” Id. at 1225. “[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” Id. at 1224.

Here, Hissong was convicted of Operating While Intoxicated, as a Class D felony. For a Class D felony, the sentencing range is six months to three years, with one and one-half years as the advisory. Ind. Code § 35-50-2-7. The trial court sentenced Hissong to the advisory sentence of one and one-half years.

As to the nature of the offense, Hissong, with a blood alcohol content almost three times the legal limit, drove his truck, weaving back and forth across the road, until he attempted to make a left turn. His judgment was so impaired that he missed the road entirely and drove his truck straight into a tree that was located near a house. Despite the advice of Hall, Hissong left the scene, retreating to his nearby home.

As to the character of the offender, Hissong’s criminal history includes convictions for Furnishing Alcohol to a Minor, Public Intoxication, Leaving the Scene of an Accident, Reckless Driving and Operating a Vehicle While Intoxicated. Between his trial on the current offense and sentencing, Hissong was charged with Public Intoxication for an unrelated incident.

In light of the nature of the offense and the character of the offender, Hissong has not persuaded this Court that his advisory sentence is inappropriate.

Affirmed.

MAY, J., and BARNES, J., concur.