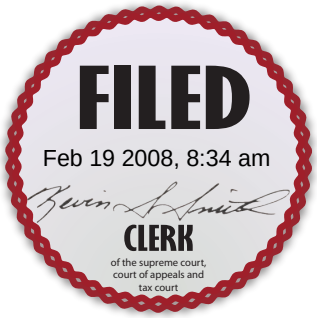

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IN THE
COURT OF APPEALS OF INDIANA

PEDRO RAMOS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0708-CR-490
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 9
The Honorable Heather Welch, Judge
Cause No. 49F09-0705-FD-83108

February 19, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

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

We affirm.

ISSUE

Ramos raises one issue on appeal which we restate as follows: Whether the trial court appropriately sentenced him in light of the nature of the offense and his character.

FACTS AND PROCEDURAL HISTORY

On the afternoon of May 10, 2007, Indianapolis Metro Police Officer Brian McCann (Officer McCann) was advised by dispatch of a possible intoxicated driver, later identified as Ramos, in a green pick up truck, traveling all over the lanes on the interstate. An anonymous caller indicated that the vehicle was last seen westbound on Pine Drive from Springmill Road, in Indianapolis, Indiana. Indiana State Police also contacted dispatch, informing that they had received numerous calls concerning the same green truck and its erratic and dangerous driving on the interstate.

While Officer McCann was on route, another anonymous caller told dispatch that the green pick up truck had just pulled into the Marathon Gas Station at 1415 West 86th Street. When Officer McCann arrived at the gas station, he observed the truck parked at a gas pump with Ramos inside. When the truck began to drive away, Officer McCann activated his emergency lights and stopped the vehicle.

Ramos exited the truck and leaned up against it. Ramos then held onto the side of the truck as he stumbled to the back. Upon speaking with Ramos, Officer McCann noticed a strong odor of an alcoholic beverage on his breath. Ramos had bloodshot eyes and his speech was slurred. Officer McCann believed Ramos to be intoxicated and began administering a field sobriety test. However, Ramos could not stand without leaning most of his body weight on the rear of the truck. Officer McCann stopped the test for fear Ramos would fall and hurt himself. Instead, Officer McCann gave Ramos a portable breath test which registered a blood alcohol content of 0.30. Looking inside the truck, the officer counted ten empty beer cans on the floorboard. He handcuffed Ramos, placed him inside his car, and read him the Indiana Implied Consent Law both in English and Spanish. Ramos responded by yelling, "Fuck You." (Appellant's App. p. 13). Officer McCann interpreted these repeated verbal expressions as a refusal to take the breath test, and arrested Ramos.

That same day, May 10, 2007, the State filed an Information charging Ramos with Count I, operating a vehicle while intoxicated, a Class D felony, I.C. § 9-30-5-3; Count II, public intoxication, a Class B misdemeanor, I.C. § 7.1-5-1-3; and Count III, driving without a license, I.C. § 9-24-18-1, a Class C misdemeanor. On July 11, 2007, Ramos entered into a plea agreement with the State and agreed to plead guilty to Count I, operating a vehicle while intoxicated, in exchange for the State's dismissal of Count II and Count III. Pursuant to the terms, his sentence would be limited to 910 days, with a cap of 545 days executed. On July 30, 2007, the trial court sentenced Ramos to the maximum sentence allowed by the plea agreement.

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

DISCUSSION AND DECISION

Ramos argues that the trial court inappropriately sentenced him. Indiana Appellate Rule 7(B) permits us to revise a sentence 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. *See* Ind. Appellate Rule 7(B); *see also Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). The burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress*, 848 N.E.2d at 1080. Ramos has not carried this burden.

In the present case, Ramos was convicted of operating a vehicle while intoxicated, a Class D felony, which carries an advisory sentence of one and one-half years, a minimum sentence of six months and a maximum sentence of three years. I.C. § 35-50-2-7. At the sentencing hearing, the trial court explained its reasons for imposing a sentence of two and one-half years, finding as aggravators: (1) Ramos' criminal history; (2) the fact that he was on probation at the time of the instant offense; and (3) his blood alcohol content was almost four times the legal limit. The trial court considered his admission of guilt by way of the plea agreement and his financial support of his minor child as mitigators. The trial court concluded that the aggravators outweighed the mitigators.

Upon review, we find the current sentence to be in line with the nature of the offense and Ramos' character. With regard to the nature of the offense, we note that Ramos erratically drove a pick up truck all over the lanes of an interstate highway. Numerous callers

found his driving dangerous enough to contact the Indiana State Police. Furthermore, Ramos' breath test showed a blood alcohol content of 0.30, almost four times the legal limit. He was visibly intoxicated and could not even stand or walk without seeking support on the side of his truck.

Regarding his character, the trial court noticed that the instant offense was his fourth conviction of driving while intoxicated since 2004. Overall, Ramos' criminal history consists of seven convictions, *i.e,* five misdemeanor convictions and two felony convictions. He has been arrested twenty times in the United States, including seven times for operating a vehicle while suspended, and he also admitted to having an arrest record in Mexico.

Additionally, Ramos was on probation at the time of the instant offense and, as shown by his criminal history, has violated his probation before. Thus, it is clear that prior contacts with the judicial system have not encouraged Ramos to change his behavior. Specifically, as pointed out by the State, even though Ramos was repeatedly given suspended sentences and probation instead of prison time, he failed to take advantage of the opportunities for reform. Rather, within less than a year after every conviction for driving while intoxicated, he was caught drinking and driving again.

Accordingly, in light of the evidence before us, we conclude that Ramos' sentence is appropriate in light of his character and nature of the offense.

CONCLUSION

Based on the foregoing, we conclude that the trial court did not inappropriately sentence Ramos.

Affirmed.

KIRSCH, J., and MAY, J., concur.