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IN THE
COURT OF APPEALS OF INDIANA

DONALD R. CRANK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0712-CR-611
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphey, Judge
Cause No. 15C01-0702-FC-006

June 13, 2008

MEMORANDUM DECISION– NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Donald Crank appeals the sentence imposed by the trial court after he pleaded guilty to Operating a Vehicle while Intoxicated,[1] a class A misdemeanor, and Theft,[2] a class D felony. Specifically, Crank argues that the sentence is inappropriate in light of the nature of the offenses and his character. Finding no reversible error, we affirm the judgment of the trial court.

FACTS

On February 13, 2007, Crank and his brother, William Crank, stole two speed-lock sets and a shop-vac from a Sears store in Aurora. The store owner confronted the brothers in the parking lot and removed the front license plate from their vehicle. Crank and his brother fled the Sears parking lot in their vehicle.

Lawrenceburg Police Officer Morgan Hedrick spotted the vehicle and followed it. Crank was driving erratically and the officer observed articles being thrown out of the rear window. Eventually, Crank stopped the vehicle and submitted to a chemical test, which revealed that he had a blood alcohol content of .093%.

On February 15, 2007, the State charged Crank with class D felony resisting law enforcement, class A misdemeanor operating a vehicle while intoxicated, class D felony theft, class D felony conspiracy to commit theft, and class C felony robbery. On July 23, 2007, the State filed a petition alleging Crank to be a habitual offender.

Crank pleaded guilty to operating a vehicle while intoxicated and theft in exchange for the State's agreement to dismiss the remaining charges and the habitual offender request.

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[1] Ind. Code § 9-30-5-2 (a).

Crank's sentence was left to the trial court's discretion. The trial court found no mitigating circumstances and cited Crank's lengthy criminal history as a significant aggravating factor. On November 9, 2007, Crank was sentenced to the maximum term of one year of imprisonment for operating a vehicle while intoxicated and three years of imprisonment for theft, with the sentences to run consecutively. Crank now appeals.

DISCUSSION AND DECISION

Crank argues that the trial court abused its discretion by imposing a sentence that is inappropriate in light of the nature of the offenses and his character. He contends that the court should have ordered his sentences to be served concurrently rather than consecutively.

When reviewing a sentence imposed by the trial court, we "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." Ind. Appellate Rule 7(B). In conducting an appropriateness review, we must examine both the nature of the offense and the defendant's character. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004). We may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied.

We recognize that the advisory sentence for an offense "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). Indiana Code section 35-50-3-2 provides that a person who commits a class A misdemeanor shall not be imprisoned for more than a year. For a

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[2] Ind. Code § 35-43-4-2 (a).

class D felony, Indiana Code section 35-50-2-7 provides a person shall be imprisoned for a fixed term of between six months and three years, with the advisory term being one and one-half years.

Regarding the nature of the offenses, Crank went to the Sears store, stole items, fled the premises, and led a police officer on a chase, driving erratically and tossing items from his vehicle's window. His actions—and the fact that he was intoxicated—endangered the safety of a police officer and members of the public. The nature of the offenses does not aid his inappropriateness argument.

Turning to his character, Crank's criminal history consists of forty-two prior convictions. Tr. p. 25. The trial court properly found his lengthy criminal history to be a significant aggravating factor. Id. at 26. In light of Crank's substantial criminal history, we cannot say that his sentence is inappropriate.

Crank further argues that the trial court should have found the fact that he pleaded guilty to be a mitigating factor. Our Supreme Court has held that "a defendant who pleads guilty deserves some mitigating weight to be given to the plea in return." Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218, 220 (Ind. 2007). Failure to raise a guilty plea as a mitigating factor at sentencing does not preclude the issue from being raised on appeal. 875 N.E.2d. at 220. We review the trial court's failure to consider the guilty plea as a mitigator for an abuse of discretion. Id. The significance of a guilty plea will vary from case to case. Id.

Here, Crank received the benefit of charges being dismissed in exchange for his guilty

plea, especially the charge of resisting law enforcement and the allegation of being a habitual offender. Moreover, Crank changed his plea just four days before trial, providing little benefit to the State. Even if the trial court had found the guilty plea to be a mitigating factor, the trial court would not have had to give it any significant weight. Ultimately, therefore, we do not find Crank's aggregate four-year sentence to be inappropriate in light of the nature of the offenses and his character.

The judgment of the trial court is affirmed.

NAJAM, J., and BROWN, J., concur.