

STATEMENT OF THE CASE

Juventino Jose Castillo appeals his sentence following his conviction for Operating a Motor Vehicle While Intoxicated Causing Serious Bodily Injury, as a Class C felony, and for being an Habitual Substance Offender, after Castillo pleaded guilty. Castillo raises a single issue for our review, namely, whether his ten-year aggregate sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 6, 2007, Castillo drove his vehicle with a BAC of .218 and THC in his blood. Castillo was involved in a car accident with David Osadchuk. As a result, Osadchuk had a shearing brain injury and was placed in a coma, and he has since undergone extensive physical therapy, including speech and occupational therapy. At the time of the accident, Castillo had two prior convictions, one for misdemeanor driving while intoxicated and one for misdemeanor possession of marijuana.

On July 19, the State charged Castillo with operating while intoxicated causing serious bodily injury, as a Class C felony, among other things. The State also alleged Castillo to be an habitual substance offender. On December 12, Castillo pleaded guilty to the Class C felony and habitual substance offender allegations, and, in exchange, the State dismissed all other charges.

On February 13, 2008, the trial court held a sentencing hearing. The court ordered Castillo to serve the advisory sentence for the Class C felony—four years—as well as six

years for the habitual substance offender enhancement. And in its written sentencing order, the court specified as follows:

The Court finds as aggravating factors the harm, injury, loss, or damage suffered by the victim was significant and greater than the elements necessary to prove the commission of the offense. The seriousness of the crime [sic].

The Court finds as mitigating factors the defendant has pled guilty and taken responsibility for his crime. The defendant is remorseful. The defendant has a low LSIR^[1] score.

The Court further finds that the aggravating factors and mitigating factors balance.

Appellant's App. at 6. This appeal ensued.

DISCUSSION AND DECISION

Castillo argues that his sentence is inappropriate in light of the nature of the offense and his character. 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 imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence

¹ The Level of Service Inventory-Revised, or LSI-R, score reflects an assessment of offender attributes and offender situations relevant for making sentencing decisions.

imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration original).

Here, Castillo received the advisory sentence of four years for his Class C felony conviction. See Ind. Code § 35-50-2-6(a) (2006). The trial court then enhanced Castillo’s sentence by six years because Castillo is an habitual substance offender. See I.C. § 35-50-2-10(f) (permitting an enhancement between three and eight years). In ordering that sentence, the trial court recognized the seriousness of Castillo’s offense, especially with regards to the “harm, injury, loss, or damage suffered by the victim,” as an aggravating factor. Appellant’s App. at 6. In mitigation, the court recognized Castillo’s acceptance of responsibility, his remorse, and his low LSI-R score. The court concluded that the aggravators and mitigators balanced.

Castillo asserts that his ten-year sentence is inappropriate in light of the nature of the offense for two reasons. First, Castillo contends that his sentence is inappropriate because “serious bodily injury . . . is already contemplated by the elevation of this crime to a Class C felony.” Appellant’s Brief at 6. Second, he argues that “a defendant with only two prior misdemeanor offenses cannot be considered among the most serious of offenders deserving sentences near the maximum.” Id. at 7. We are not persuaded by either of Castillo’s assertions.

First, we note that Indiana Code Section 35-38-1-7.1(a) expressly permits trial courts to consider the following criterion when sentencing a defendant: “In determining what sentence to impose for a crime, the court may consider the following aggravating circumstances: (1) The harm, injury, loss, or damage suffered by the victim of an offense was: (A) significant; and (B) greater than the elements necessary to prove the commission of the offense.” That is exactly what the trial court here did when it stated that “the harm, injury, loss, or damage suffered by the victim was significant and greater than the elements necessary to prove the commission of the offense.” Appellant’s App. at 6. And the trial court’s assessment is supported by the extent of Osadchuk’s injury. Because of the accident, Osadchuk suffered a shearing brain injury and has had to undergo extensive physical, occupational, and speech therapy.² As such, we are not persuaded by Castillo’s assertion that the nature of his offense has already been incorporated by its elevation to a Class C felony.

We are likewise not persuaded by Castillo’s assertion that his ten-year aggregate sentence is “near the maximum” and therefore he should receive a lesser sentence. See Appellant’s Brief at 7. The maximum sentence for a Class C felony enhanced by an habitual substance offender enhancement is sixteen years. See I.C. §§ 35-50-2-6, -10. The minimum sentence is five years. Castillo received ten years—the advisory four years

² The trial court may also “properly consider the particularized circumstances of the factual elements as aggravating factors.” See McElroy v. State, 865 N.E.2d 584, 590 (Ind. 2007) (citation and quotations omitted). Here, the State correctly notes that Castillo’s BAC “was far more than necessary to be operating while intoxicated,” and Castillo had THC in his blood at the time of the accident. See Appellee’s Brief at 5-6.

for the Class C felony and six years for the habitual substance offender enhancement. That is, Castillo received a mid-range sentence, and his argument that he is being sentenced on par with “the most serious of offenders,” Appellant’s Brief at 7, is without cogent reasoning and therefore waived. See Ind. Appellate Rule 46(A)(8)(a).

Nor is Castillo’s sentence inappropriate in light of his character. Although Castillo accepted responsibility for his actions, was remorseful, and had a low LSI-R score, he also has had three substance-related convictions since 2002. The last of those offenses resulted in serious bodily injury to another. Accordingly, we are not persuaded that Castillo’s character merits revision of his sentence.

Affirmed.

MAY, J., and ROBB, J., concur.