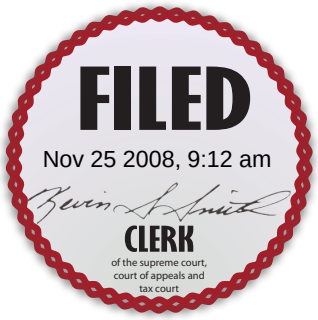

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IN THE
COURT OF APPEALS OF INDIANA

GREGORY S. TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 16A01-0808-CR-378
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DECATUR SUPERIOR COURT
The Honorable W. Michael Wilke, Judge
Cause Nos. 16D01-0702-FD-93; 16D01-0111-DF-586; 16D01-0210-FD-660

November 25, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Gregory S. Taylor appeals the two-year executed sentence that was imposed following his conviction for Operating a Motor Vehicle while Intoxicated,[1] a class D felony, and the imposition of a previously-suspended one-year sentence on each of two prior counts of operating a vehicle while intoxicated as a class D felony. In particular, Taylor argues that a two-year sentence for class D felony driving while intoxicated is inappropriate when considering the nature of the offense and his character, insisting that an eighteen-month advisory sentence[2] was warranted on that offense. Moreover, Taylor claims that the trial court should have continued his probation in the prior offenses and that ordering executed sentences on those offenses was an abuse of discretion. Finding no error, we affirm the judgment of the trial court.

FACTS

In April 2005, Taylor pleaded guilty in cause numbers 16D01-0111-DF-586 (Cause 586) and 16D01-0210-FD-660 (Cause 660), to separate counts of operating a vehicle while intoxicated as a class D felony. In Cause 586, Taylor was sentenced to three years in the Department of Correction (DOC), all suspended except for nine months, with the remainder to be served on supervised probation. In Cause 660, Taylor was sentenced to three years in the DOC, all suspended except for one year, which was ordered to run consecutively to the sentence imposed in Cause 586. When Taylor began

[1] Ind. Code § 9-30-5-3.

[2] Indiana Code section 35-50-2-7 provides in relevant part that "a person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years."

his probationary period on January 9, 2006, he received and signed a form containing all conditions of probation.

On February 26, 2007, at approximately 11:30 p.m., Greensburg Police Officer Jarrod McCalvin stopped Taylor for operating his vehicle without headlights. Taylor handed Officer McCalvin his driver's license and a sheet of paper regarding a recent arrest for operating a motor vehicle while intoxicated. Officer McCalvin smelled the odor of alcohol in Taylor's vehicle and observed that Taylor's eyes were bloodshot. Thereafter, Officer McCalvin learned that Taylor's driver's license had been suspended.

After issuing Taylor a citation, Officer McCalvin noticed a cooler behind the front seat of the vehicle that contained beer bottles. Officer McCalvin then administered field sobriety tests and a portable breath test to Taylor. Taylor failed both of those tests. Officer McCalvin arrested Taylor, transported him to jail, and administered another breath test that registered .10% BrAC. As a result, Taylor was charged with several offenses under Cause Number 16D01-0702-FD-93 (Cause FD-93), which the State amended on March 28, 2008. Pursuant to the amended information, Taylor was charged with operating a vehicle while intoxicated, a class D felony, driving while suspended, a class A misdemeanor, operating a vehicle while intoxicated, a class C misdemeanor, and operating a vehicle with an alcohol concentration of at least .08 or more, a class C misdemeanor. The State also alleged that Taylor was a habitual substance offender. Finally, the State filed petitions to revoke Taylor's suspended sentences in Causes 586 and 660.

On June 4, 2008, Taylor and the State entered into a conditional plea agreement with regard to Cause FD-93, which provided that Taylor would plead guilty to operating a vehicle while intoxicated as a class D felony, and all remaining counts—including the habitual substance offender enhancement—would be dismissed. Sentencing was left to the trial court's discretion. The plea agreement also provided that Taylor's probation in Cause 586 and Cause 660 would be revoked and that he would be sentenced at the court's discretion to up to one year executed in each cause, to be served consecutively.

On July 3, 2008, the trial court accepted Taylor's guilty plea and sentenced him in Cause DF-93 to two years in the DOC, which was to run consecutively to the sentences imposed in Causes 586 and 660. The trial court revoked Taylor's probation in Cause 586 and Cause 660 and sentenced him to consecutive one-year executed terms. Taylor now appeals.

DISCUSSION AND DECISION

I. Sentence Under Cause FD-93

Taylor first claims that the two-year executed sentence imposed in Cause FD-93 is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offenses, the record shows that Taylor was driving with a passenger in his truck at 11:30 p.m. without his headlights turned on. Appellant's App. p.

239. Taylor admitted that he was intoxicated and he was driving on a suspended license. As a result of the incident, Taylor was charged with operating a vehicle as a class D felony because he had previous convictions for operating while intoxicated that had occurred within five years of the instant offense. Although Taylor claims that the sentence was inappropriate because he was not driving in a manner that was dangerous to person or property, it is apparent that Officer McCalvin stopped Taylor before he could damage property or do harm to any individual. In sum, we do not find that the nature of this offense aids Taylor's inappropriateness argument.

As for Taylor's character, the record shows that he has accumulated six operating while intoxicated convictions over a nine-year period. Sent. Tr. p. 24. And when Taylor was arrested for this offense, he was on probation serving consecutive sentences for similar crimes.

Although Taylor acknowledged that he has a drinking problem and must overcome that addiction, he has failed to take any significant action toward addressing that issue. Appellant's Br. p. 10. As the trial court observed at the sentencing hearing:

> [T]o be convicted of six OWI offenses over nine years is almost out of control. And you knew, you sat right there and told me. You know you've got a problem. You've known you had a problem for years. . . . I don't understand that thought process of understanding and knowing that you have a problem. And some people won't admit that they do. I think you have. You just haven't gone that next step and gotten serious about getting rid of the problem.

Tr. p. 24-25. In addition to the above, Taylor admitted at the sentencing hearing that he had consumed his last drink of alcohol only three days before the hearing and was intoxicated just one week prior to sentencing. Id. at 17.

In light of these circumstances, including Taylor's prior convictions for driving while intoxicated, his probation status at the time of arrest, his failure to take significant steps to remedy his drinking problem, and his failure to obey traffic laws, it is apparent that Taylor has not been deterred from criminal conduct.

Finally, Taylor acknowledges that the trial court identified the hardship that incarceration would have on his family as a mitigating factor. Appellant's Br. p. 7-8. However, Taylor maintains the two-year executed sentence was inappropriate because the trial court should have assigned greater weight to this sole mitigating circumstance. Notwithstanding this claim, our Supreme Court has determined that under the current sentencing scheme, "a trial court [cannot] now be said to have abused its discretion in failing to 'properly weigh'" aggravators and mitigators, Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007), and we no longer engage in this kind of analysis. As a result, Taylor cannot successfully contend that his sentence was inappropriate because the trial court failed to afford more weight to the hardship that his family would suffer as a result of his incarceration.

In sum, after analyzing the nature of the offense and Taylor's character, we do not find the two-year sentence inappropriate.

II. Reinstatement of Previously Suspended Sentences

Taylor next argues that the trial court abused its discretion in ordering him to serve consecutive one-year sentences in Causes 586 and 660 after concluding that he had violated the conditions of probation. Specifically, Taylor maintains that the trial court

should have extended his probation so he could be rehabilitated and become "a productive member of society." Appellant's Br. p. 11.

In resolving this issue, we initially observe that probation is a matter of grace and a conditional liberty that is a favor, not a right. Noethtich v. State, 676 N.E.2d 1078, 1081 (Ind. Ct. App. 1997). The restrictions imposed by a court during the probationary period are designed to ensure a genuine period of rehabilitation and that the public is not harmed by a probationer living within the community. Brabandt v. State, 797 N.E.2d 855, 860 (Ind. Ct. App. 2003). Trial courts determine the conditions of probation and may revoke probation if the conditions are violated. Hubbard v. State, 683 N.E.2d 618, 619 (Ind. Ct. App. 1997). When a trial court determines that a defendant has violated a condition of probation, the court has the authority to order execution of all or part of the sentence that was suspended at the time of initial sentencing. Ind. Code § 35-38-2-3.

In this case, Taylor implies that because he has been punished for the offense in Cause FD-93, the reinstatement of two years of incarceration on the previously suspended sentences in the other causes will not assist him with his alcohol problem. Appellant's Br. p. 11. Notwithstanding this contention, the trial court did not order Taylor to serve two years of his suspended sentences merely because he committed a new offense. Rather, the trial court imposed the previously suspended sentences because Taylor violated the terms of his probation.

Finally, although Taylor argues that the trial court should have extended his probation so he could "continue to work and meet his family responsibilities," id. at 11, Taylor knew that he was the sole provider for his family, yet he made the decision to

drink and drive. Even though Taylor had been placed on probation on previous occasions, he did not use that opportunity for the benefit of himself and his family to seek assistance with his alcohol problem. Rather, Taylor has continued to drive in an intoxicated state with a suspended license. Therefore, we cannot say that the trial court abused its discretion in ordering Taylor to serve the previously-suspended sentences following the revocation of probation.

The judgment of the trial court is affirmed.

MATHIAS, J., and BROWN, J., concukr.