

MEMORANDUM DECISION

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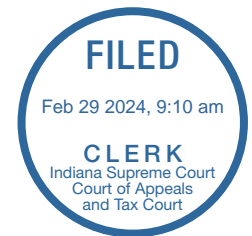


IN THE
Court of Appeals of Indiana

Thomas Scott Ritchie,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



February 29, 2024

Court of Appeals Case No.
23A-CR-2411

Appeal from the Noble Superior Court
The Honorable Steven T. Clouse, Judge

Trial Court Cause No.
57D01-2106-F6-174

Memorandum Decision by Judge May
Judges Vaidik and Kenworthy concur.

May, Judge.

- [1] Thomas Scott Ritchie appeals the eight-year sentence imposed following his conviction of Level 6 felony operating a vehicle while intoxicated with a blood alcohol content (“BAC”) over .15 after a prior conviction,¹ his adjudication as a habitual vehicular substance offender (“HVSO”),² and his conviction of Class A misdemeanor domestic battery.³ He argues the trial court abused its discretion when it did not consider his guilty plea as a mitigating circumstance when sentencing him. We affirm.

Facts and Procedural History

- [2] On June 13, 2021, Ritchie and his girlfriend, S.K., became involved in a physical altercation during which Ritchie and S.K. fell down the stairs outside their residence into a bush while wrestling over S.K.’s cell phone. Both Ritchie and S.K. had “cuts from the bush[.]” (App. Vol. II at 25.) S.K.’s phone called 911 during the struggle and the 911 operator heard the entire incident, including S.K. “screaming for help.” (*Id.*)
- [3] Shortly thereafter, Ritchie left the residence on his moped. Noble County Sheriff’s Department Deputy Alex Vice observed Ritchie driving left of the

¹ Ind. Code § 9-30-5-1(b) (operating vehicle while intoxicated with a BAC of over .15); Ind. Code § 9-30-5-3(a)(1) (felony enhancement for prior conviction of operating a vehicle while intoxicated).

² Ind. Code § 9-30-15.5-2.

³ Ind. Code § 35-42-2-1.3(a)(1).

center line and initiated a traffic stop. While speaking with Ritchie, Deputy Vice noticed Ritchie smelled of alcohol, his speech was slurred, his eyes were bloodshot, and his balance was poor. Ritchie did not shut off the moped when he got off it, and he staggered when dismounting the moped. Deputy Vice obtained Ritchie's consent for a test to determine Ritchie's BAC. Deputy Vice transported Ritchie to Parkview Noble Hospital, where hospital personnel completed a "Serum" test, which determined Ritchie's BAC was .34. (*Id.* at 34.) Deputy Vice then placed Ritchie under arrest.

[4] On June 14, 2021, the State charged Ritchie with Level 6 felony operating a vehicle while intoxicated with a blood alcohol content greater than .15% with a prior conviction and Class A misdemeanor domestic violence. The State also alleged Ritchie was an HVSO. On November 2, 2021, Ritchie entered an open guilty plea to both charges and admitted he was an HVSO. The trial court did not enter convictions or sentence him, but instead allowed him to participate in the LaGrange County Drug Court Program. The trial court retained jurisdiction to enter convictions and sentence Ritchie at a later date. On February 3, 2023, Ritchie was "unsuccessfully terminated from the LaGrange County Drug Court Program." (*Id.* at 55.)

[5] On September 12, 2023, the trial court held a hearing during which it entered convictions of the Level 6 felony and Class A misdemeanor to which Ritchie had pled guilty to in 2021 and adjudicated him an HVSO based on his 2021 admission. At the same hearing, the trial court considered Ritchie's sentence. Ritchie argued the trial court should find as mitigators his guilty plea, his

alcoholism, his compliance with the drug court program for a period of time before relapsing, and his advanced age. The State argued the trial court should find aggravators in Ritchie's criminal history, which contained multiple convictions of operating a vehicle while intoxicated, and Ritchie's inability to complete the drug court program and other prior opportunities for rehabilitation. The State also asserted Ritchie's criminal history made him a safety risk to the community.

[6] The trial court found Ritchie's criminal history, his lack of success in rehabilitation programs, and his being a safety risk to the community to be aggravating factors. The trial court did not find any mitigating factors. The trial court sentenced Ritchie to two years for the Level 6 felony, which the court enhanced by six years for his HVSO adjudication, and 365 days for the Class A misdemeanor. The court ordered those sentences served concurrent to one another. Thus, Ritchie's aggregate sentence is eight years.

Discussion and Decision

[7] Ritchie argues the trial court abused its discretion when it did not list his guilty plea as a mitigator when it sentenced him. Sentencing decisions are within the sound discretion of the trial court and we will only reverse if the trial court abuses that discretion. *Weedman v. State*, 21 N.E.3d 873, 892 (Ind. Ct. App. 2014), *trans. denied*.

[A] trial court may be found to have abused its sentencing discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement

that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law.

Id. at 892-3. The inclusion or exclusion of an aggravator or mitigator are subject to review on appeal, however, the weight given to those reasons is not subject to appellate review. *Id.* at 893. “A claim that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record.” *Id.* “A trial court is not obligated to accept a defendant’s claim as to what constitutes a mitigating circumstance.” *Id.*

[8] Ritchie argues the trial court abused its discretion because it did not find his guilty plea to be a mitigating factor when sentencing him. “A guilty plea demonstrates a defendant’s acceptance of responsibility for the crime and extends a benefit to the State . . . Thus, a defendant who pleads guilty deserves to have mitigating weight extended to the guilty plea in return.” *Reis v. State*, 88 N.E.3d 1099, 1105 (Ind. Ct. App. 2017) (quoting *Francis v. State*, 817 N.E.2d 235, 237-38 (Ind. 2004)). However, “[a] guilty plea may not be significantly mitigating when ... the defendant receives a substantial benefit in return for the plea. A guilty plea’s significance is also diminished where the decision to plead guilty is likely a pragmatic one because the evidence of a defendant’s guilt is overwhelming.” *Hollins v. State*, 145 N.E.3d 847, 852 (Ind. Ct. App. 2020)

(internal quotes and citations omitted), *trans. denied*. Herein, we cannot say Ritchie’s guilty plea was significant because there was overwhelming evidence of his crimes and his HVSO enhancement.

[9] To prove Ritchie committed Class A misdemeanor domestic violence, the State had to prove he touched his girlfriend, S.K., in a rude, insolent, or angry manner. Ind. Code § 35-42-2-1.3. Ritchie’s girlfriend, S.K. told responding officers about the physical altercation with Ritchie and the 911 operator heard the struggle and S.K. “screaming for help.” (App. Vol. II at 25.)

[10] To prove Ritchie committed Level 6 felony driving a vehicle while intoxicated with a BAC over .15 with a prior conviction, the State had to prove Ritchie operated a vehicle with a BAC over .15 and had at least one prior conviction of operating while intoxicated within the last seven years. *See* Ind. Code § 9-30-5-1(b) (operating vehicle while intoxicated with a BAC of over .15); Ind. Code § 9-30-5-3(a)(1) (felony enhancement for prior conviction of operating a vehicle while intoxicated). Ritchie’s BAC was .34 at the time Deputy Vice pulled him over for traveling left of the center line, and Ritchie had been convicted of Level 6 felony operating a vehicle while intoxicated in 2018.

[11] To adjudicate Ritchie an HVSO, the State had to prove Ritchie had “accumulated two (2) or three (3) prior unrelated vehicular substance offense convictions.” Ind. Code § 9-30-15.5-2(a). Because the State alleged Ritchie committed two prior unrelated vehicular substance offenses, one of those convictions must have occurred within ten years of the date of the current

offense. *Id.* The record indicates Ritchie was convicted of Class C misdemeanor operating a vehicle while intoxicated on October 15, 2015, and Class D felony operating a vehicle while intoxicated on September 1, 2005.

[12] Based thereon, we conclude the evidence of Ritchie's guilt as to both of his crimes and his status as an HVSO was overwhelming, and thus his decision to plead guilty was a pragmatic one. Therefore, we hold the trial court did not abuse its discretion when it did not list his guilty plea as a mitigating factor when sentencing him. *See, e.g., Norris v. State*, 113 N.E.3d 1245, 1254 (Ind. Ct. App. 2018) (trial court did not abuse its discretion when it did not find Norris's guilty plea as a mitigating circumstance because the evidence against Norris was overwhelming), *reh'g denied, trans. denied.*

Conclusion

[13] Because Ritchie's plea was merely pragmatic based on the evidence against him, we cannot say its mitigating weight was significant and clearly supported by the record. Therefore, the trial court did not abuse its discretion when it did not find Ritchie's guilty plea as a mitigating circumstance when sentencing him. Accordingly, we affirm.

[14] Affirmed.

Vaidik, J., and Kenworthy, J., concur.

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