

Roger Ordonez (“Ordonez”) pleaded guilty in Marion Superior Court to Class B felony failure to stop after operating while intoxicated causing serious bodily injury. Ordonez was ordered to serve twenty years in the Department of Correction, with two years suspended. He appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On October 10, 2010, Ordonez drove his vehicle while intoxicated. Specifically, his blood alcohol content measured .24. At approximately 2:00 p.m., Ordonez drove through a red light at the intersection of 16th Street and Martin Luther King Drive. He struck a vehicle driven by eighty-one-year-old Lola Herman, who was returning home from her volunteer shift at Riley Children’s Hospital. Ordonez did not remain at the scene of the accident, but fled the scene in a bystander’s vehicle. Mrs. Herman was transported to Methodist Hospital, and she later died due to injuries from massive blunt force trauma sustained from the impact.

Police officers obtained Ordonez’s address after running a records check on the vehicle involved in the accident. Ordonez attempted to evade arrest by climbing out of a window when the officers arrived at his residence. He admitted that he was involved in an accident and that he had been drinking beer. Ordonez has never obtained a driver’s license, and he is illegally residing in the United States.

Three days after the accident, Ordonez was charged with Class B felony failure to stop after operating while intoxicated causing serious bodily injury, Class B felony

failure to stop after an accident resulting in death, Class B felony operating a motor vehicle with a BAC greater than .15 causing death, Class C felony operating while intoxicated causing death, Class C felony reckless homicide, and Class C misdemeanor operating never having received a license. On March 16, 2011, Ordonez agreed to plead guilty to Class B felony failure to stop after operating while intoxicated causing serious bodily injury and Class C misdemeanor operating having never received a license in exchange for dismissal of the remaining charges. The plea agreement provided for open sentencing, but that the sentences would be served concurrently.

The sentencing hearing was held on April 6, 2011. The trial court considered the following mitigating circumstances: Ordonez's acceptance of responsibility for his actions, his expression of remorse, and long-term imprisonment would impose a hardship on Ordonez's dependents. The trial court considered Ordonez's criminal history, the nature and circumstances of the crime, and his disregard for immigration authorities and the laws "of this nation" as aggravating circumstances. Tr. p. 73. Concerning the nature and circumstances of the crime, the trial court stated:

Mr. Ordonez ran a red light at 16th and MLK, a very busy intersection in this city. It was 2:00 p.m. By his own admission, he had been drinking since nine o' clock on [] what I believe was a Sunday morning, and was .24 –so three times the legal level – and ran the red light, not only did he run the red light, but he has exacerbated the situation by getting into another car – it's my understanding that the individual thought he was taking him to the hospital, he refused to go to the hospital and instead went home. At that time, police ran the registration on the Jeep Grand Cherokee, and found that it was, in fact, registered to Mr. Ordonez, called the Lawrence Police Department, who subsequently went to his home where Mr. Ordonez was seen climbing out of a window and upon climbing out of the window is when he made his admission that he hurt someone and he did it. So all of

those are unique and make this a very unique, horrendous, horrible situation where an 81 year old woman tragically lost her life.

Tr. pp. 72-73. The trial court then ordered Ordonez to serve twenty years in the Department of Correction, with two years suspended, and imposed a concurrent thirty-day sentence for the Class C misdemeanor. Ordonez now appeals. Additional facts will be provided as necessary.

Discussion and Decision

Ordonez was ordered to serve twenty years in the Department of Correction, with two years suspended. See Ind. Code § 35-50-2-5 (providing that the sentencing range for a Class B felony is six to twenty years, with ten years being the advisory term). He argues that his twenty-year sentence with two years suspended is inappropriate in light of the nature of the offense and the character of the offender.

Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “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.” Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh’g, 875 N.E.2d 218 (Ind. 2007)). The defendant has the burden of persuading us that his or her sentence is inappropriate. Id. (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)). Finally, although we have the power to

review and revise sentences, “[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008).

The nature of the offense in this case is particularly troubling. Ordonez immigrated to this country illegally, chose to operate a motor vehicle despite being unable to obtain a license to do so due to his illegal immigration status, and then chose to operate his vehicle while intoxicated, specifically with a BAC of .24, three times the legal limit. It is also noteworthy that his BAC was measured several hours after the accident. He ran a red light at a busy intersection in the middle of the afternoon. After striking Mrs. Herman’s vehicle, he fled the scene. And when the investigating police officers arrived at his residence, he attempted to evade them by climbing out a window.

Mrs. Herman died as a result of being struck by Ordonez’s vehicle. Evidence presented at the sentencing hearing established that Mrs. Herman’s death was a tragic loss for her family and friends, multiple organizations for whom she volunteered, and for her synagogue.

Although Ordonez did accept responsibility for his actions and express remorse, his character is also reflected in his actions following the accident. Ordonez did not immediately accept responsibility but fled the scene and attempted to evade police officers when they arrived at his home. He also has two prior convictions: Class D felony resisting law enforcement and Class A misdemeanor operating a vehicle while intoxicated.

For all of these reasons, we conclude that Ordonez's twenty-year sentence, with two years suspended for his Class B felony failure to stop after operating while intoxicated causing serious bodily injury conviction is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAILEY, J., and CRONE, J., concur.