

Sandra K. McDaniel pleaded guilty as charged to Operating a Vehicle While Under the Influence of a Controlled Substance, as a class D felony.¹ She received the maximum sentence of three years in prison.² On appeal, McDaniel contends her sentence is inappropriate in light of the nature of the offense and her character.

We affirm.

At 2:30 a.m. on December 9, 2007, McDaniel was driving a vehicle in Franklin County when Indiana State Police Officer Stephen Sexton stopped her for the improper display of a license plate. Officer Sexton smelled the odor of alcoholic beverage on McDaniel and observed that her speech was slurred, eyes were bloodshot and glassy, manual dexterity was poor, and balance was “horrible”. *Appendix* at 19. McDaniel failed both field sobriety tests that were administered by Sexton. Tests later revealed that McDaniel had marijuana and benzodiazepines³ (or metabolites of these drugs) in her body, as well as a blood alcohol concentration of .7 grams of alcohol per 100 milliliters of blood.

On March 28, 2008, the State charged McDaniel with operating a vehicle while under the influence of a controlled substance, a class C misdemeanor. The State also sought an enhancement to a class D felony due to McDaniel’s prior conviction for operating while intoxicated in 2003.

While out on bond in the instant case and receiving substance abuse treatment, McDaniel committed separate crimes of conversion and public intoxication, for which she

¹ Ind. Code Ann. § 9-30-5-1(c) (West, Westlaw through 2010 2nd Regular Sess.); I.C. § 9-30-5-3 (a) (West, Westlaw through 2010 2nd Regular Sess.).

² A person who commits a class D felony shall be imprisoned for a fixed term between six months and three years, with an advisory sentence of one and one-half years. Ind. Code Ann. § 35-50-2-7 (West, Westlaw through 2010 2nd Regular Sess.).

was convicted in February 2009 and April 2009, respectively. She also became pregnant at the end of 2009.⁴

On March 30, 2010, two years after the charges were filed and after a series of continuances obtained by the defense, McDaniel pleaded guilty as charged. At the sentencing hearing on April 27, McDaniel pleaded for leniency in light of her pregnancy and her claims that she was finally clean and sober. She asked for the court to place her on home detention where she could care for her unborn child and live with her (unemployed) fiancé.

In sentencing McDaniel to the maximum term of three years in prison, the trial court explained:

I think you probably do want to be clean...you probably do want to have a life with your unborn child at this point, and the unborn child is also a concern of the Court, um, I don't want that child to be affected by the choice that you are making or the things that you do, um, I do find it commendable that you have gotten treatment, and that you have admitted that you have committed this crime, so I will find that you are meeting those mitigating factors, but the big, big problem, that I see, the big aggravator in this case is your prior history, its [sic] not one or two things, we are up to, uh, a thirteenth conviction, and you have several felonies in your past, you've done time in prison before, uh, it appears, you have been placed on probation, you have violated that, and probation has been revoked, so you don't appear to be a good candidate for probation, um, the chances that you are going to re-offend are quite high, this is a twenty, a twenty year criminal history at this point, um, I don't find that you are a good candidate for probation, I think it is possible that you will re-offend, you don't have any family that you are taking care of, um, you have some children, you have lost all of those, um, and for those reasons I am going to sentence you to three years in the Indiana Department of Correction....

Sentencing Transcript at 13-14. McDaniel challenges her sentence as inappropriate.

We have the constitutional authority to revise a sentence if, after careful consideration

³ A schedule IV drug. Ind. Code Ann. § 35-48-2-10 (West, Westlaw through 2010 2nd Regular Sess.).

⁴ McDaniel has given birth to four children and has lost custody of each of them.

of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Even if a trial court follows the appropriate procedure in arriving at its sentence, we maintain the constitutional power to revise a sentence we find inappropriate. *Hope v. State*, 834 N.E.2d 713 (Ind. Ct. App. 2005). Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). On appeal, McDaniel bears the burden of persuading us that her sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

We first turn to the nature of the offense. Although McDaniel correctly observes that she was not pulled over on the night in question for driving erratically, the record reveals that she was driving under the influence of more than one substance and was significantly impaired. To be sure, in addition to slurred speech and bloodshot/glassy eyes, Officer Sexton noted that her manual dexterity was poor and balance was horrible. This is not surprising given the fact McDaniel had a combination of alcohol, marijuana, and benzodiazepines in her system. Though not deserving, on its own, of a maximum sentence, the nature of her offense was more serious than McDaniel would have us believe, and we find it simply fortuitous that she did not harm someone or something.

McDaniel's character is more telling regarding the appropriateness of the maximum sentence imposed in this case. The trial court placed emphasis on McDaniel's lengthy criminal history. Between 1994 and 2009, McDaniel amassed twelve separate convictions

(four of which were felonies) in four Indiana counties.⁵ Despite being granted leniency in the majority of these cases, McDaniel's has displayed an inability to satisfactorily address her serious alcohol and substance abuse issues and cease her ongoing criminal behavior. In fact, McDaniel was on probation for a class C felony when she committed the instant offense, and she committed at least two offenses (a class A misdemeanor conversion in January 2009 and a class B misdemeanor public intoxication in March 2009) while out on bond awaiting trial in this case.

McDaniel's self-serving claims of sobriety are not persuasive, and she presented no supporting evidence at the sentencing hearing. Moreover, contrary to her assertions on appeal, the trial court did not appear to agree that she had conquered her addictions. Rather, the court simply found that McDaniel *probably wanted* to be clean. There was no clear indication, however, that McDaniel had been clean and sober for any appreciable period of time, especially in light of the public intoxication offense she committed in the middle of her six-month treatment program in 2009 and while on bond in this case.

With regard to her pregnancy, we do not agree that this entitles her to a lesser sentence. McDaniel became pregnant while this case was pending without regard for the fact that she was facing a class D felony with likely prison time. Further, she has consistently

⁵ McDaniel summarized her criminal history as follows:

Her adult criminal history began with two Possession of Marijuana convictions and one Conversion conviction, all Class A misdemeanors, in 1996; False Reporting, a Class A misdemeanor, in 1997; convictions for Possession of Cocaine, a Class C felony, and two counts of Possession of Marijuana, a Class D felony, in 2000; Operating a Motor Vehicle While Intoxicated, a Class A misdemeanor, in 2003; Attempted Fraud on Financial Institution, a Class C felony, in 2004, with a subsequent violation of her probation in that case; Public Intoxication, a Class B misdemeanor, in 2008; and Conversion, a Class A misdemeanor, and Public Intoxication, a Class B misdemeanor, in 2009."

shown her inability to parent the children to whom she gives birth, as she admitted at sentencing that each of her other four children entered the foster care system and was adopted out.

Finally, while McDaniel's guilty plea is certainly entitled to some mitigating weight, as found by the trial court, such is minimal in this case. The record reveals that McDaniel dragged this seemingly straightforward case out for nearly two years before pleading guilty, which provided her with time to commit at least two more criminal offenses. Further, her decision to plead guilty likely came down to a pragmatic assessment of the State's case against her, her behavior while on bond, and her latest pregnancy. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) ("a guilty plea does not rise to the level of significant mitigation...where the evidence against him is such that the decision to plead guilty is merely a pragmatic one"), *trans. denied*.

After thoroughly considering the record before us, we find that the maximum sentence imposed in this case was not inappropriate in light of McDaniel's character and the nature of her offense. The trial court properly concluded that McDaniel was not entitled to leniency yet again from our courts.

Judgment affirmed.

MAY, J., and MATHIAS, J., concur.

Appellant's Brief at 9-10. Notwithstanding this lengthy history, McDaniel has served only a limited amount of time in prison.