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IN THE
COURT OF APPEALS OF INDIANA

RICKY C. NEWMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A05-1102-CR-134
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Jonathan N. Cleary, Judge
Cause No. 15D01-1008-FC-10

August 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Ricky C. Newman pleaded guilty to Operating a Vehicle While Privileges Are Forfeited for Life,[1] a class C felony. As the sole issue on appeal, Newman challenges the four-year sentence imposed by the trial court as inappropriate.

We affirm.

The facts as admitted in Newman's guilty plea are that on August 4, 2010, Newman operated a motor vehicle after his driving privileges had been forfeited for life under I.C. § 9-30-10-16 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011) and that he had actual knowledge and notice of the lifetime suspension. Newman was stopped on the night in question because a police officer who was familiar with Newman observed him operating a vehicle in or near the town of Moores Hill, Indiana, and the officer was aware that Newman's driving privileges had been forfeited for life. Newman was arrested and charged with operating a motor vehicle after his driving privileges had been forfeited for life and alleged to be a habitual offender.

Newman eventually pleaded guilty to the charge of operating a motor vehicle after his driving privileges had been forfeited for life, in exchange for which the State agreed to dismiss the habitual offender enhancement. Sentencing was left to the trial court's discretion. After a hearing, the trial court sentenced Newman to the advisory sentence for a class C felony of four years in prison.

Newman contends his sentence was inappropriate in light of his character and the nature of his offense. Article 7, section 4 of the Indiana Constitution grants our Supreme

[1] Ind. Code Ann. § 9-30-10-17 (West, Westlaw through 2011 Pub. Laws approved & effective through 6/28/2011).

Court the power to review and revise criminal sentences. Pursuant to Ind. Appellate Rule 7, the Supreme Court authorized this court to perform the same task. *Cardwell v. State*, 895 N.E.2d 1219 (Ind. 2008). Per App. R. 7(B), we may revise a sentence "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." *Wilkes v. State*, 917 N.E.2d 675, 693 (Ind. 2009), *cert. denied*, 131 S.Ct. 414 (2010). "[S]entencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d at 1223. Newman bears the burden on appeal of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073 (Ind. 2006).

Beginning with the nature of the offense, Newman reiterates the claim he made at sentencing that he was driving on the day in question only because he had accompanied his fiancé to a methadone clinic. While there, she received a significant dose of prescribed methadone and thereafter was in no condition to drive a vehicle, so Newman was driving them home. He also reiterates his claim that he had not been drinking on the day of his arrest and in fact at the time was a recovering alcoholic who was active with Alcoholics Anonymous and had been sober for more than four years. Assuming Newman's claims are accurate, he is to be commended for the steps he has been and is taking to address his substance abuse problem. Nevertheless, he did choose to drive a vehicle despite knowing his privileges had been suspended for life and under circumstances that did not require it. It would seem that even assuming his fiancé was required to take the medication while at the clinic, they could or should have anticipated that she would then need transportation from the

clinic after having done so. Even assuming her intoxication could not have been anticipated, they found themselves "stranded" at a treatment facility – hardly an emergency. Presumably they could have waited there while someone else came to pick them up and transport them home. We are not persuaded that the nature of the offense is mitigating as a matter of law.

Turning now to the character of the offender, Newman "readily admitted his prior criminal history and acknowledged that it was due to his addiction to alcohol." *Brief of Appellant* at 5. He claims, however, that he has not had an OWI conviction since 2007 and since that time he "had been very active with AA and had even become a district chairman and group service representative with AA." *Id*. Newman's presentence report reflects that he was convicted of theft in 1977 (Ohio), burglary in 1977 (Alabama), and invasion of privacy in 2003. In addition, Newman has a total of ten OWI convictions (in 1982, 1985 (2), 1986, 1989, 1992, 2000, 2003 (2), and 2007), one conviction of operating a vehicle while driver's license was suspended (2003), three convictions of operating a vehicle as a habitual traffic offender (1993 and 2007 (2)), and, in addition to the instant conviction, one conviction of operating a vehicle as a habitual traffic offender under lifetime suspension (2010). Although we commend Newman for recognizing the seriousness of his alcohol addiction and taking steps in the last few years to address it, his long history of OWI offenses and persistent and continuing refusal to abide by the restrictions placed upon his driving activities as a result thereof does not mitigate in favor of a sentence below the advisory sentence.

In summary, we conclude that the four-year, advisory sentence imposed by the trial court is not inappropriate in view of Newman's character and the nature of this offense.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.