954 N.E.2d 1112 (Table)
Unpublished Disposition
Only the Westlaw citation is currently available.
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Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.
Court of Appeals of Indiana.

Delbert R. MAJORS, Appellant–Defendant,
v.
STATE of Indiana, Appellee–Plaintiff.

No. 82A01–1012–CR–660. | Oct. 5, 2011.

Appeal from the Vanderburgh Circuit Court; The Honorable Carl A. Heldt, Judge; The Honorable Kelli Fink, Magistrate; Cause No. 82C01–0812–FB–1304.

Attorneys and Law Firms

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Opinion

MEMORANDUM DECISION —NOT FOR PUBLICATION

VAIDIK, Judge.

Case Summary

***1** Delbert Majors appeals his fourteen-year sentence with three years suspended for Class B felony causing death when operating a motor vehicle with a schedule II controlled substance in the blood. He argues that his sentence is inappropriate because he was held to a higher legal standard as a result of his profession as a truck driver. We disagree. The trial court primarily considered Majors' driving conduct, not his profession, when determining his sentence. Even so, Majors' profession is an appropriate factor when determining the nature of the offense. Majors has failed to persuade us that his sentence is inappropriate in light of the nature of the offense and his character. We therefore affirm.

Facts and Procedural History

On July 29, 2008, Majors was driving a 28,000–pound oil rig through the intersection of Lloyd Expressway and Rosenberger Avenue in Evansville. At the time, he had cocaine in his blood. The light at the intersection turned red, and a truck adjacent to Majors, weighing almost three times as much as that of Majors' vehicle, was able to safely come to a complete stop at the light. Majors, however, did not stop, and he ran the red light. He collided with a Pontiac Sunfire in the intersection, killing the other driver.

The State charged Majors with Class B felony causing death when operating a motor vehicle with a schedule II controlled substance in the blood. Ind.Code § 9–30–5–5(b)(2). Following a jury trial, Majors was found guilty as charged.

At sentencing, the trial court considered as aggravating factors both Majors' criminal history and the facts and circumstances of the case. The sole mitigating factor was that Majors expressed remorse. Majors was sentenced to fourteen years, with three years suspended to the Drug Abuse Probation Services Program.

Majors now appeals his sentence.

Discussion and Decision

Majors contends that his sentence is inappropriate in light of the nature of the offense and his character. [1] We disagree.

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 sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind.2006)). Also, "[i]n assessing whether a sentence is inappropriate, appellate courts may take into account whether a portion of the sentence is ordered suspended or is otherwise crafted using any of the variety of sentencing tools available to the trial judge." *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind.2010).

***2** The sentencing range for a Class B felony is six to twenty years, with ten years being the advisory term. Ind.Code § 35–50–2–5. Here, the trial court sentenced Majors to fourteen years with three years suspended to probation.

Regarding the character of the offender, Majors had previously been convicted of two criminal offenses: operating a motor vehicle under the influence in 2003 and theft in September 2008.[2] According to the presentence investigation report, Majors has a problem with alcohol and illicit drug use. While the trial court did find that Majors' remorse was a mitigating factor, his executed sentence of eleven years is not inappropriate in light of his character.

Regarding the nature of the offense, there again is nothing in the record that indicates that this sentence is inappropriate. Majors was familiar with the practice of driving large vehicles and held a commercial driver's license. This shows, as the trial court indicated, that he "understood and knew enough to know that he needed to exercise extreme caution when driving that vehicle and failed to do so when he used cocaine before driving that vehicle." Tr. p. 393. Instead of exercising that extreme caution, however, Majors ingested cocaine, drove a 28,000–pound oil rig through a red light, and collided with the small car in the intersection, resulting in the driver's death. The nature of this offense, therefore, is serious. After due consideration of the trial court's decision, we cannot say that Majors' sentence is inappropriate in light of the nature of the offense.

Nevertheless, Majors argues that the trial court erroneously considered that he was a "professional truck driver." Despite Majors' argument, the trial court did not solely consider that he drove for a living. Rather, the trial court looked to the conditions surrounding the offense, namely, the size of the truck that Majors was driving and the actual driving conduct in which he engaged. The trial court pointed out that any driver, not just one who drives for a living, would have known to exercise extreme care when operating such a large vehicle. Regardless of one's profession, when driving a vehicle of that size, it is readily apparent that substantial safety precautions need to be taken. Nonetheless, Majors' job as a professional truck driver is a proper factor to be considered by the trial court in sentencing. As a professional truck driver, Majors should know, more than most individuals, the dangers inherent in driving an oil rig.

After careful review, Majors has failed to persuade us that his fourteen-year sentence with three years suspended to probation is inappropriate. We therefore affirm Majors' sentence.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.

Parallel Citations

2011 WL 4591857 (Ind.App.)

Footnotes

1 Majors frames his argument solely as whether his sentence is inappropriate. The State construes Majors' argument as including the waived contention that the trial court abused its discretion by considering his profession as a truck driver as an aggravating factor. To the extent that Majors' argument contains this assertion, we observe that whether a trial court has abused its discretion by improperly recognizing aggravators and mitigators when sentencing a defendant and whether a defendant's sentence is inappropriate under Indiana Appellate Rule 7(B) are two distinct analyses. *King v. State*, 894 N.E.2d 265, 267 (Ind.Ct.App.2008). Because Majors frames his argument as one made under Indiana Appellate Rule 7(B), we so confine our discussion.

2 The theft conviction took place after the motor vehicle collision involved in this case but before Majors was charged with the present offense.

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