MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Mark A. Conley,
Appellant/Defendant,

v.

State of Indiana,
Appellee/Plaintiff.

February 19, 2021

Court of Appeals Case No. 20A-CR-1964

Appeal from the Tippecanoe Superior Court

The Hon. Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2006-F5-103

Bradford, Chief Judge.

Case Summary

[1] In September of 2020, Mark Conley pled guilty to Level 5 felony operating a vehicle after a lifetime suspension, and the trial court sentenced him to one and one-half years in the Department of Correction ("DOC"), one and one-half years in community corrections, and one year suspended to probation. Conley contends that his sentence is inappropriately harsh. Because we disagree, we affirm.

Facts and Procedural History

[2] On June 23, 2020, Conley, aware that his driving privileges had been suspended for life, was stopped by Lafayette police while operating a motor vehicle. On June 25, 2020, the State charged Conley with Level 5 felony operating a vehicle after a lifetime suspension, Class A misdemeanor theft, and Class C misdemeanor illegal possession of paraphernalia. On September 2, 2020, Conley and State executed a plea agreement in which he agreed to plead guilty to Level 5 felony operating a vehicle after a lifetime suspension in exchange for the State dismissing the other charges. The plea agreement provided that the executed portion of Conley's sentence would be no shorter than two years and would be served in the DOC or community corrections; any sentence longer than two years but shorter than four would be served in the DOC, in community corrections, and/or on probation; and any part of the sentence beyond four years would be suspended to probation. On September 3, 2020, Conley pled guilty to Level 5 felony operating a vehicle after a lifetime suspension, and, on October 1, 2020, the trial court sentenced him to one and

one-half years in the DOC, one and one-half years in community corrections, and one year suspended to probation.

Discussion and Decision

[3] We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). In addition to the "due consideration" we are required to give to the trial court's sentencing decision, "we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Conley pled guilty to Level 5 felony operating a vehicle after a lifetime suspension, and Indiana Code section 35-50-2-6(b) provides that "[a] person who commits a Level 5 felony […] shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years." As mentioned, the trial court

sentenced Conley to one and one-half years in the DOC, one and one-half years in community corrections, and one year suspended to probation. Conley contends that this sentence is inappropriately harsh.

[4] The nature of Conley's offense does not justify a reduction in his moderately-enhanced sentence. Conley was discovered operating a vehicle while fully aware that his driving privileges had been suspended for life. Moreover, the record indicates that Conley attempted to avoid apprehension by running a red light after he noticed a police vehicle behind him. The nature of Conley's offense does not warrant a reduction in his sentence.

[5] As for Conley's character, it fully justifies his sentence. When considering the character of the offender, one relevant consideration is the defendant's criminal history. *Rutherford*, 866 N.E.2d at 874. Conley has a significant criminal history dating to 1995, much of which involves substance abuse, consisting of convictions for Class B felony robbery resulting in bodily injury, two counts of Class D felony operating a vehicle while intoxicated ("OWI") with a prior conviction, Class D felony operating a vehicle after being adjudged a habitual traffic offender, Class D felony escape, Level 5 felony operating a vehicle after a lifetime suspension, Level 6 felony auto theft, two counts of Class A misdemeanor OWI, Class A misdemeanor intimidation, Class A misdemeanor resisting law enforcement, Class A misdemeanor theft, two counts of Class B misdemeanor public intoxication, and Class B misdemeanor visiting a common nuisance. In addition to these convictions, Conley has been found to be a habitual offender and twice a habitual substance offender. The State has

petitioned to revoke Conley's probation ten times, six of which petitions were found to be true. Conley has a long history of violating the terms of community corrections, failing to appear for court dates, and violating conditions of bond. In fact, Conley failed to appear and had his bond revoked in this case. Finally, although Conley has been offered substance-abuse treatment numerous times, it has not taken, and he continues to abuse drugs and alcohol. Conley's extensive criminal history and the failure of all attempts to rehabilitate him reflect poorly on his character and strongly indicate that he is unwilling to conform his behavior to the norms of society.

[6] Conley argues that his good character is demonstrated by his union membership and full-time employment as a construction worker. Because most adults are gainfully employed, this does not establish a significant mitigating factor that would demonstrate that the trial court's sentence was inappropriate. *See Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) (observing that "[m]any people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as [the defendant] proposes"), *trans. denied*. Conley also contends that his guilty plea warrants a reduction in his sentence. Conley's guilty plea, however, gave him a substantial benefit and was therefore likely the result of a pragmatic decision. In exchange for his guilty plea, the State agreed to drop two other criminal charges, and Conley's plea agreement limited the executed portion of his sentence to four years out of a possible maximum of six. In light of Conley's extensive criminal record, he likely would have received a longer sentence

following a conviction at trial. Under the circumstances, we cannot say that Conley's guilty plea necessarily speaks well of his character. *See, e.g.*, *Norris v. State*, 113 N.E.3d 1245, 1254 (Ind. Ct. App. 2018) ("A guilty plea is not necessarily a mitigating factor where the defendant receives substantial benefit from the plea or where evidence against the defendant is so strong that the decision to plead guilty is merely pragmatic.") (citation omitted), *trans. denied*. Conley has failed to establish that his sentence is inappropriate in light of the nature of his offense and his character.

[7] We affirm the judgment of the trial court.

Kirsch, J., and May, J., concur.