

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Amanda O. Blackketter
Blackketter Law, LLC
Shelbyville, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Kathy Bradley
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Daniel D. Karbino,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 26, 2023

Court of Appeals Case No.
22A-CR-2710

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-2012-CM-1403

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Daniel D. Karbino appeals his convictions and sentence for operating a vehicle while intoxicated as a class A misdemeanor and violation of specialized driving privileges as a class C misdemeanor and the finding he was an habitual vehicular substance offender. He claims the evidence is insufficient to sustain the finding he was an habitual vehicular substance offender and his conviction for violation of specialized driving privileges and that his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] On November 26, 2020, Thanksgiving Day, Greensburg Police Officer Kyle Hildebrand responded to a call regarding a reckless driver. He located the vehicle based on the dispatch notes and was able to move behind it. He saw the car “was kind of back and forth in their lane, kind of unable to maintain a single lane,” and at one point there was a curve and he “observed the driver continue straight, slam on the brakes and overcorrect and jump into the oncoming lane in order to miss that curve.” Transcript Volume II at 22. He activated his emergency lights, initiated a traffic stop, and directed the driver, Karbino, to exit the vehicle. Karbino gave Officer Hildebrand his driver’s license. Officer Hildebrand observed that “it was very hard for him to keep his balance,” “[w]hen he talked, it was very lethargic and slow and very mumbled,” “his eyes appeared very glassy or glossy,” and “there was an order [sic] of intoxicants coming from him.” *Id.* at 26. Officer Hildebrand called for another officer to administer field sobriety tests, and Officer Mitchell Tuttle arrived at the scene and administered three tests, all of which Karbino failed. Karbino was

transferred to the jail where he was administered a certified breath test, and the test result was 0.247 grams of alcohol per 210 liters of breath.

[3] The State charged Karbino with: Count I, operating a vehicle while intoxicated as a class A misdemeanor; Count II, false informing as a class B misdemeanor; and Count III, violation of specialized driving privileges as a class C misdemeanor. The State also alleged he was an habitual vehicular substance offender. The court held a bench trial, found Karbino guilty on Counts I and III and not guilty on Count II, and found he was an habitual vehicular substance offender.

[4] At sentencing, the prosecutor argued that Karbino's blood alcohol content was 0.247, he placed others on the road in jeopardy, he had an HTV conviction in 2018, and he was on specialized driving privileges when this offense occurred. The prosecutor requested a sentence of one year on Count I and an additional five years on the habitual vehicular substance offender enhancement. Karbino's counsel argued that Karbino's most recent conviction was in 2013, he completed coursework at Centerstone and received a certificate of completion, he was employed full-time at Valley Oak, and he lived in an apartment in Greensburg. His counsel requested a sentence of 360 days on Count I, with ten days executed and the balance served on home detention so he could continue to work, and a three-year sentence on the enhancement suspended to probation. The court found the aggravators included Karbino's prior criminal history and the nature and circumstances of the offense, specifically, "the high test." *Id.* at 62. It found the fact "he completed the Centerstone IOP program" to be a

mitigator. *Id.* With respect to Count I, the court sentenced Karbino to one year, enhanced the sentence by three years based on the habitual vehicular substance offender finding, and ordered one year of the sentence be suspended to probation. The court also sentenced him to four days on Count III to be served concurrently.

Discussion

I.

[5] Karbino first asserts the evidence is insufficient to support the finding he is an habitual vehicular substance offender and his conviction for violation of specialized driving privileges. He argues the State failed to prove that he was the offender in each of the prior unrelated convictions. He also argues the State failed to prove he had specialized driving privileges.

[6] In reviewing a claim of insufficient evidence, we will affirm the conviction unless, considering only the evidence and reasonable inferences favorable to the judgment, and neither reweighing the evidence nor judging the credibility of the witnesses, we conclude that no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Tyson v. State*, 766 N.E.2d 715, 717-718 (Ind. 2002).

[7] Ind. Code § 9-30-15.5-2 provides a person is an habitual vehicular substance offender if the court finds the State has proved beyond a reasonable doubt that the person has accumulated three or more prior unrelated vehicular substance offense convictions at any time or two prior unrelated vehicular substance

offense convictions with at least one of the prior unrelated vehicular substance offense convictions occurring within ten years of the date of the occurrence of the current offense. In regard to the use of documents to establish the existence of prior convictions, the Indiana Supreme Court has stated:

Certified copies of judgments or commitments containing a defendant's name or a similar name may be introduced to prove the commission of prior felonies. While there must be supporting evidence to identify the defendant as the person named in the documents, the evidence may be circumstantial. If the evidence yields logical and reasonable inferences from which the finder of fact may determine beyond a reasonable doubt that it was a defendant who was convicted of the prior felony, then a sufficient connection has been shown.

Tyson, 766 N.E.2d at 718 (quoting *Hernandez v. State*, 716 N.E.2d 948, 953 (Ind. 1999) (citations omitted), *reh'g denied*).

[8] The record reveals the State presented filings showing that Karbino was convicted of operating a vehicle while intoxicated as a class D felony in 2013 in cause number 03D02-1305-FD-2821 (“Cause No. 2821”), operating a vehicle while intoxicated as a class D felony in 2013 in cause number 03D02-1303-FD-1642 (“Cause No. 1642”), operating a vehicle while intoxicated endangering a person as a class A misdemeanor in 2011 in cause number 03D02-1104-CM-2106 (“Cause No. 2106”), and operating a vehicle with a BAC of .15 or greater as a class A misdemeanor in 2011 in cause number 49F10-1103-CM-015601 (“Cause No. 5601”). Further, the State presented an Indiana Official Driver Record for Karbino from the Indiana Bureau of Motor Vehicles (“BMV”). It

also presented a copy of Karbino's driver's license as State's Exhibit 1. Officer Hildebrand testified that Karbino was the person he stopped on November 26, 2020, the copy of the driver's license admitted as State's Exhibit 1 was the license which he obtained from Karbino, and the photograph on the license matched the driver of the vehicle. Officer Hildebrand also identified Karbino in the courtroom as the driver. The admitted driver's license contains Karbino's first and last names and middle initial, date of birth, gender, home address, and driver's license number. The same name, date of birth, gender, driver's license number, and address appear on his official driver record. In addition, the same name, date of birth, gender, driver's license number, and address appear on the filings in Cause Nos. 2821, 1642, and 2106, and the same name, date of birth, and gender appear on the filings in Cause No. 5601. The State presented sufficient evidence from which the court could have found that Karbino was an habitual vehicular substance offender.

[9] As for his conviction for violation of specialized driving privileges, Ind. Code § 9-30-16-5 provides in part that a person who knowingly or intentionally violates a condition imposed by a court under section 3, 3.5, or 4 of the chapter commits a class C misdemeanor. Ind. Code § 9-30-16-3 relates to specialized driving privileges, and Ind. Code § 9-30-16-4 relates to a petition for specialized driving privileges. The record reveals the State presented an "Amended Order for Specialized Driving Privileges" which identifies "Daniel D. Karbino" as the petitioner and provides a date of birth, home address, and driver's license number for him. State's Exhibit 5. The name, date of birth, address, and

driver's license number for the petitioner in the order are the same as the name, date of birth, address, and driver's license number on Karbino's driver's license. Also, Officer Hildebrand testified that Karbino was the person he stopped on November 26, 2020, and the driver's license admitted as State's Exhibit 1 was the license which he obtained from Karbino. Karbino was present in the courtroom, and his driver's license contained a photograph of him. We conclude there was sufficient evidence from which the court could have found beyond a reasonable doubt that Karbino committed violation of specialized driving privileges as a class C misdemeanor.

II.

[10] Karbino next asserts that his sentence is inappropriate in light of the nature of the offenses and his character. Ind. Appellate Rule 7(B) provides we “may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[11] Karbino argues that he was not in an accident, no one was injured, he was cooperative and agreed to a certified breath test, and his conviction “is a relative mild example of such an offense.” Appellant's Brief at 15. He also argues that he had stable housing and full-time employment and that his most recent prior conviction was in 2013.

[12] Ind. Code § 35-50-3-2 provides that a person who commits a class A misdemeanor shall be imprisoned for a fixed term of not more than one year. Ind. Code § 35-50-3-4 provides that a person who commits a class C misdemeanor shall be imprisoned for a fixed term of not more than sixty days. Ind. Code § 9-30-15.5-2 provides the court shall sentence a person found to be an habitual vehicular substance offender to an additional fixed term of at least one year but not more than eight years of imprisonment, “to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3.” Karbino received an aggregate sentence of four years with one year suspended to probation.

[13] Our review of the nature of the offenses reveals that Karbino operated a vehicle while intoxicated on November 26, 2020. Officer Hildebrand saw Karbino’s vehicle move “back and forth in their lane, kind of unable to maintain a single lane,” and observed him “slam on the brakes and overcorrect and jump into the oncoming lane.” Transcript Volume II at 22. He further observed it was difficult for Karbino to maintain his balance, his speech was lethargic, his eyes were glassy or glossy, and there was an odor of alcohol. Karbino failed three field sobriety tests, and his breath test result was 0.247 grams of alcohol per 210 liters of breath.

[14] Our review of the character of the offender reveals that Karbino has been convicted for driving-related offenses under Cause Nos. 2821, 1642, 2106, and 5601. While the most recent of these convictions occurred in 2013, all of them involved Karbino operating a vehicle while intoxicated. At sentencing, the

prosecutor argued Karbino “had an HTV conviction 2018” and “was on specialized driving privileges when this occurred.” Transcript Volume II at 60. The court’s Amended Order for Specialized Driving Privileges was dated July 10, 2020, and expired on January 3, 2021. The Official Driver Record for Karbino from the BMV indicates he committed “Operating While Habitual Traffic Violator - Felony” in April 2018. State’s Exhibit 6 at 2. Karbino’s counsel argued that Karbino was employed full-time and he lived in an apartment. The court noted Karbino “completed the Centerstone IOP program.” Transcript Volume II at 62.

[15] After due consideration, we conclude Karbino has not sustained his burden of establishing that his sentence is inappropriate in light of the nature of the offenses and his character.¹

[16] For the foregoing reasons, we affirm.

[17] Affirmed.

¹ To the extent Karbino argues the court abused its discretion in failing to consider his stable housing and full-time employment as mitigators, we need not address this issue because we find that his sentence is not inappropriate. See *Chappell v. State*, 966 N.E.2d 124, 134 n.10 (Ind. Ct. App. 2012) (noting that any error in failing to consider the defendant’s guilty plea as a mitigating factor is harmless if the sentence is not inappropriate) (citing *Windhorst v. State*, 868 N.E.2d 504, 507 (Ind. 2007) (holding that, in the absence of a proper sentencing order, Indiana appellate courts may either remand for resentencing or exercise their authority to review the sentence pursuant to Ind. Appellate Rule 7(B)), *reh’g denied*; *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007) (noting that, “even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate”), *trans. denied*), *trans. denied*. Even if we were to address his abuse of discretion argument, we would not find it persuasive in light of the record.

Bailey, J., and Weissmann, J., concur.