

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

R. Patrick Magrath
Alcorn Sage Schwartz & Magrath, LLP
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana
Daylon L. Welliver
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Pedro Ramirez-Cuautle,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

May 12, 2023

Court of Appeals Case No.
22A-CR-3052

Appeal from the Decatur Superior
Court

The Honorable Matthew D.
Bailey, Judge

Trial Court Cause No.
16D01-2201-F4-59

Memorandum Decision by Judge Pyle

Chief Judge Altice and Judge Riley concur.

Pyle, Judge.

Statement of the Case

[1] Pedro Ramirez-Cuautle (“Ramirez-Cuautle”)¹ appeals the aggregate eight-year sentence imposed after he pleaded guilty, pursuant to a plea agreement, to Level 4 felony operating a vehicle while intoxicated causing death² and Class A misdemeanor driving while suspended.³ His sole argument is that his sentence is inappropriate in light of the nature of the offenses and his character. Concluding that Ramirez-Cuautle’s sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether Ramirez-Cuautle’s sentence is inappropriate.

Facts

[3] At approximately 4:00 p.m. on January 16, 2022, thirty-two-year-old Ramirez-Cuautle was driving his 2018 Chevrolet Camaro sixty-five miles an hour in a thirty-mile-an-hour zone. At some point, Ramirez-Cuautle crossed the center line, drove off the road, and hit twenty-three-year-old Kamryn Smith (“Smith”),

¹ Ramirez-Cuautle is also known as Pedro Cuautle-Ramirez.

² IND. CODE § 9-30-5-5(a)(3).

³ I.C. § 9-24-19-2.

a pedestrian who was walking in the grass at the side of the road. The impact of the collision knocked off Smith's pants, undergarments, socks, and shoes and resulted in Smith's body being wedged in the Camaro's front windshield.

Ramirez-Cuautle then crossed the road again and hit a culvert, which knocked Smith off the windshield. Ramirez-Cuautle subsequently slammed into a telephone pole. During the course of these events, Ramirez-Cuautle never applied the Camaro's brakes.

[4] When law enforcement officers arrived at the scene, an officer noticed a partially nude Smith lying face down in a nearby driveway. Smith had sustained severe head injuries and was deceased. While an officer was checking on Smith, Ramirez-Cuautle approached the officer and told him that he had been driving approximately thirty-five miles per hour when he had noticed Smith crossing the road in front of him. According to Ramirez-Cuautle, he had applied the brakes in an attempt to stop his car but had been unable to do so before hitting Smith. Ramirez-Cuautle told the officer that he had drunk two alcoholic beverages immediately before the accident and that his license had been suspended. A subsequent test revealed that Ramires-Cuautle's blood alcohol content was .177.

[5] Two days after the accident, the State charged Ramirez-Cuautle with Level 4 felony operating a vehicle while intoxicated causing death, Level 5 felony reckless homicide, and Class A misdemeanor driving while suspended. In August 2022, Ramirez-Cuautle pleaded guilty to the Level 4 felony and the Class A misdemeanor, and the State dismissed the Level 5 felony. Pursuant to

the terms of the plea agreement, the parties agreed that the sentence for the Level 4 felony could range from eight years with six years executed and two years suspended to eight years with time served and the balance of the sentence on probation. In addition, the plea agreement provided that Ramirez-Cuautle would receive a two-day sentence for the Class A misdemeanor and that the two-day sentence would run concurrently with the sentence for the Level 4 felony.

[6] The trial court held a sentencing hearing in November 2022. Following the hearing, the trial court found the nature and circumstances of the offenses to be an aggravating circumstance. The trial court specifically noted Ramirez-Cuautle's .177 blood alcohol content, his unsafe rate of speed, and the impact that had knocked Smith out of his clothing and shoes. The trial court also noted that Ramirez-Cuautle had not applied the Camaro's brakes. In addition, the trial court found as mitigating factors that Ramirez-Cuautle had expressed remorse and had pleaded guilty. The trial court also found as a mitigating factor that Ramirez-Cuautle did not have a criminal history. Thereafter, the trial court sentenced Ramirez-Cuautle to an aggregate sentence of eight years with six years executed in the Department of Correction and two years suspended.

[7] Ramirez-Cuautle now appeals his sentence.

Decision

- [8] Ramirez-Cuautle argues that his aggregate eight-year sentence, with six years executed and two years suspended, is inappropriate. Indiana Appellate Rule 7(B) provides that 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. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on 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). Sentence modification under Rule 7(B) is reserved for a “rare and exceptional case.” *Skeens v. State*, 191 N.E.3d 916, 923 (Ind. Ct. App. 2022) (cleaned up).
- [9] When determining whether a sentence is inappropriate, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Childress*, 848 N.E.2d at 1081. Here, Ramirez-Cuautle pleaded guilty to a Level 4 felony and a Class A misdemeanor. The sentencing range for a Level 4 felony is between two (2) to twelve (12) years, and the advisory sentence is six (6) years. IND. CODE § 35-50-2-5.5. The maximum sentence for a Class A misdemeanor is one year. I.C. § 35-50-3-2. The trial court sentenced Ramirez-Cuautle to eight years, with six years executed and two years suspended, for the Level 4 felony. We note that in the plea

agreement, Ramirez-Cuautle and the State specifically agreed that Ramirez-Cuautle's potential sentence for the Level 4 felony could be a term of eight years, with six years executed and two years suspended. Also, pursuant to the terms of the plea agreement, the trial court sentenced Ramirez-Cuautle to a two-day sentence for the Class A misdemeanor. The trial court further ordered the two sentences to run concurrently with each other, resulting in an eight-year aggregate sentence.

[10] Regarding the nature of the offense, we note that it was horrific. Ramirez-Cuautle, while driving sixty-five miles an hour in a thirty-mile-an-hour-zone with a blood alcohol content of .177, crossed the center line, drove off the side of the road, and hit Smith, who was walking in the grass. The impact of the collision knocked off Smith's pants, undergarments, socks, and shoes and resulted in him being wedged in the Camaro's front windshield. Ramirez-Cuautle then drove back across the center lane and hit a culvert, knocking Smith to the ground. Ramirez-Cuautle subsequently slammed into a telephone pole. Ramirez-Cuautle did not apply the Camaro's brakes during the course of these events. In addition, Ramirez-Cuautle chose to drive despite having a suspended license.

[11] Regarding Ramirez-Cuautle's character, we note that when law enforcement officers arrived at the scene, Ramirez initially lied to one of the officers. Specifically, Ramirez-Cuautle told the officer that he had been driving the speed limit and that Smith had attempted to cross the road in front of his Camaro. Ramirez-Cuautle also told the officer that he had applied the brakes in an

attempt to stop his car but had been unable to do so before hitting Smith. In addition, Ramirez-Cuautle told the officer that he had only had two alcoholic beverages that afternoon. Ramirez-Cuautle's false statements to the officer reflect poorly on Ramirez-Cuautle's character.

[12] Based on the nature of the offenses and his character, Ramirez-Cuautle has failed to persuade this Court that his eight-year sentence, with six years executed and two years suspended, is inappropriate. We further note that this is simply not one of those rare and exceptional cases for which a sentence modification under Rule 7(B) is reserved. Therefore, we affirm the trial court's sentence that was in accordance with Ramirez-Cuautle's plea agreement.

[13] Affirmed.

Altice, C.J., and Riley, J., concur.