MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Charles T. Langley, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 31, 2023

Court of Appeals Case No. 22A-CR-2730

Appeal from the Greene Superior Court

The Honorable Dena A. Martin, Judge

Trial Court Cause No. 28D01-2101-F5-4

Memorandum Decision by Judge Brown
Judges Bailey and Weissmann concur.

Brown, Judge.

[1] Charles T. Langley, Jr., appeals his two-year sentence for operating a vehicle after lifetime suspension as a level 5 felony. We affirm.

Facts and Procedural History

[2] On January 18, 2021, Langley operated a motor vehicle knowing that his driving privileges had been forfeited for life. The State charged Langley with operating a vehicle after lifetime suspension as a level 5 felony, operating a vehicle while intoxicated as a class C misdemeanor, and possession of marijuana as a class B misdemeanor. Langley and the State entered into a plea agreement pursuant to which Langley agreed to plead guilty to operating a vehicle after lifetime suspension as a level 5 felony and the State agreed to dismiss the remaining charges. The agreement also provided that Langley's sentence would be capped at two years.

[3] Langley pled guilty pursuant to the plea agreement. He testified he was fifty-eight years old. He acknowledged his lengthy criminal history but indicated that his most recent prior conviction was seventeen years earlier. He testified he has severe osteoarthritis and a prosthetic knee. He indicated he had several prescriptions including narcotics which he thought would not be allowed in the jail. He further indicated it was his understanding that he would lose his Social Security benefit if he were incarcerated for more than thirty days. He indicated that he feared incarceration would cause his medical conditions and finances to deteriorate drastically. He indicated that, while he was out on bond, he was charged with operating while being an habitual traffic violator in Monroe

County and that he had a letter from the public defender stating that the charge would be dismissed. An alternative sentencing evaluation filed by the Greene County Community Corrections stated:

> [Langley] scored high on the Community Supervision Screening Tool (CSST). He scored due to his extensive criminal history, prior placement on community supervision, his financial situation, and his attitude for fighting. [He] also plays himself up as a victim and takes limited responsibility. Often finding justifications for actions.
>
> He has an extensive history indicating a mindset that he will do as he pleases, regardless of rules and restrictions placed upon him. He lives in Monroe County, and there are concerns about his willingness to comply with the rules and regulations of home detention, especially for another county.
>
> [Langley's] finances are tight, and I have concerns about his ability to afford the costs of home detention and his regular expenses with his limited income. He lives in Monroe County. Monroe County Community Corrections has been contacted and are willing to supervise [Langley] for a home detention. They said if he becomes unable to pay his fees they will not hesitate to have him removed. . . .
>
> Therefore, I believe [Langley] is acceptable for placement on home detention. . . .

Appellant's Appendix Volume II at 53.

[4] The trial court stated:

> This goes back to regardless of the rules, he seems to have finds [sic] justifications for his actions. Based upon the Pre-Sentence Investigation, the Alternative Sentencing Evaluation, finding your prior criminal history, your still lack of cooperation with rules and regulations, that if you were on alternative sentencing it

> would have to be monitored by another county and that you have committed a new offense while you were out on bond in this case, the Court is going to accept your plea, accept your plea agreement. Showing your [sic] 58 years of age, you're guilty of Operating a Vehicle After a Lifetime Suspension, as a Level 5 Felony. . . . The Court is going to sentence you to the Indiana Department of Corrections for two years and give you credit for 4 days that you have served. Because of your medical condition, I will personally call the jail once they get you over there and ask that they get you on the next bus to the DOC.

Transcript Volume II at 20-21.

Discussion

[5] 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).

[6] Langley argues the trial court imposed a two-year prison sentence on a fifty-eight-year-old man with a medical condition and his sentence is permitted to be suspended. He argues that his offense caused no person any harm, he has behaved well in society for nearly seventeen years, and the nature of the offense and his character show that he does not need incarceration in prison to address his crime. He also argues he was accepted for supervision by community corrections in Greene County and Monroe County.

[7] Ind. Code § 35-50-2-6 provides that a person who commits a level 5 felony shall be imprisoned for a fixed term of between one and six years with the advisory sentence being three years. The plea agreement provided that Langley's sentence would be capped at two years. Langley was sentenced to two years.

[8] Our review of the nature of the offenses reveals that Langley operated a motor vehicle knowing that his driving privileges had been forfeited for life. Our review of the character of the offender reveals that Langley pled guilty pursuant to a plea agreement which provided the State agreed to dismiss the remaining charges against him and that his sentence would be capped at two years. The presentence investigation report ("PSI"), in the summary of legal history section, provides:

> [Langley] has been charged in no less than 40 criminal cases. He has been convicted of 31 criminal acts, five of which were for felony offenses. Of his 26 misdemeanor convictions, six were amended down from original felony charges. One of his felony convictions was later vacated via the granting of post conviction relief. There have been 16 Petitions to Revoke Suspended Sentence filed against him with six being amended to reflect additional violations. Ten of the PTR's against him led to revocations. He was out on bond in the instant offense when he allegedly committed the pending offense in Monroe County.

Appellant's Appendix Volume II at 68. The PSI indicates his prior offenses spanned from 1982 to 2004 and included dealing in marijuana, public intoxication, conversion, operating a vehicle while intoxicated, driving while suspended, possession of marijuana, battery, theft, criminal mischief, disorderly conduct, resisting law enforcement, and invasion of privacy.

[9] The PSI provides that Langley receives monthly disability payments. It further provides Langley suffers from severe osteoarthritis and degenerative bone/joint disease, both knees have been replaced, he experiences severe pain on a daily basis, he has had multiple knee and back surgeries, he took oxycodone and oxymorphone daily to manage his pain, and he reports having diabetes and high blood pressure.

[10] With respect to substance abuse, the PSI states that Langley reported being "very young" when he started using substances, his older siblings provided him with alcohol and marijuana when he was eight years old, he started smoking cigarettes at age five, he "currently drinks six to twelve beers five days a week," he "takes a 'few puffs' of marijuana three or four nights a week to help his sleep," "[f]rom age 17/18 until the early 2000's, he was using methamphetamine and/or cocaine on a regular basis, sometimes daily," and "[h]e said he quit after being arrested and entering a 90 day rehab program at the Greene County Rehabilitation Center." *Id*. at 70.

[11] The PSI also provides that Langley's overall risk assessment score using the Indiana Risk Assessment System places him in the moderate risk to reoffend category. It shows a high risk in the domain of substance abuse and moderate risk in the domains of criminal history; education, employment, and financial situation; and family and social support.

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

[13] For the foregoing reasons, we affirm Langley's sentence.

[14] Affirmed.

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

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[1] To the extent Langley argues the court abused its discretion in considering his arrest in Monroe County as an aggravator and in failing to consider his medical condition and that he led a law-abiding life for nearly seventeen years 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 Langley's abuse of discretion argument, we would not find it persuasive in light of the record.