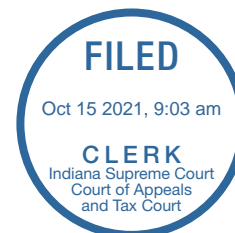


MEMORANDUM DECISION

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.



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IN THE COURT OF APPEALS OF INDIANA

Ronald J. Disbro,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 15, 2021

Court of Appeals Case No.
21A-CR-1098

Appeal from the
Ohio Circuit Court

The Honorable
Kimberly A. Schmaltz, Magistrate

Trial Court Cause No.
58C01-1811-CM-104

Vaidik, Judge.

Case Summary

- [1] Ronald J. Disbro appeals his sentence of six years and 348 days for Class A misdemeanor operating a vehicle while intoxicated and being a habitual vehicular substance offender, arguing it is inappropriate. We affirm.

Facts and Procedural History

- [2] In November 2018, the State charged Disbro with Class A misdemeanor operating while intoxicated, Class C misdemeanor operating while intoxicated, and Class C misdemeanor operating with an alcohol concentration equivalent to at least 0.08 but less than 0.15. The State also alleged Disbro is a habitual vehicular substance offender. *See* Ind. Code ch. 9-30-15.5. Disbro was released on bond.
- [3] While on bond, Disbro committed several offenses. Specifically, he was charged with Level 6 felony theft in Dearborn County. *See* Cause No. 15D02-1910-F6-499.¹ In addition, he was charged with two counts of operating while intoxicated and one count of possession of fentanyl in Ohio. *See* Appellant's App. Vol. II p. 102; Tr. p. 25. After being convicted of these offenses in Ohio

¹ In May 2021, after sentencing in this case, the State dismissed the theft charge against Disbro without prejudice in exchange for him paying the victim \$2,750. *Agreed Order Granting Dismissal*, Cause No. 15D02-1910-F6-499 (May 24, 2021).

and serving time in prison, Disbro returned to Indiana to face the charges in this case. In September 2020, Disbro posted another bond and got a job.

[4] In February 2021, Disbro pled guilty to Class A misdemeanor operating while intoxicated and admitted he is a habitual vehicular substance offender, and the remaining charges were dismissed. Sentencing was left to the discretion of the trial court. At the March 2021 sentencing hearing, evidence was presented about Disbro's extensive criminal history. Disbro has twelve felony convictions, thirteen misdemeanor convictions, and seven probation violations. Notably, Disbro's conviction in this case was his ninth operating-while-intoxicated-type conviction. Evidence was also presented about Disbro's history of drug and alcohol abuse and the different chances he has had to rehabilitate himself, including probation, counseling, in-home detention, work release, road crew, Jail Chemical Addiction Program, Purposeful Incarceration, Community Transition Program, and imprisonment. Disbro acknowledged his criminal history but testified he hit "rock bottom" "this time" (even though he admitted saying that before), had been sober for two years, and had a job. Tr. p. 25. He asked the trial court to sentence him to probation or in-home detention. *See id.* at 27.

[5] The trial court found the following aggravators: (1) Disbro has an extensive criminal history; (2) Disbro committed four offenses while on bond in this case, two of which were operating while intoxicated; (3) Disbro has had "many different attempts at rehabilitation" but continues to "misuse alcohol and illegal drugs and commit crimes"; and (4) Disbro needs correctional or rehabilitative

treatment that can best be provided by a penal facility. Appellant's App. Vol. II p. 105. The court found one mitigator: Disbro pled guilty and took responsibility for his actions. Finding the aggravators to "significantly" outweigh the mitigator, the court sentenced Disbro to 348 days for Class A misdemeanor operating while intoxicated enhanced by six years for being a habitual vehicular substance offender. Tr. p. 33.

[6] Disbro now appeals his sentence.

Discussion and Decision

[7] Disbro contends his sentence is inappropriate under Indiana Appellate Rule 7(B), which provides an appellate 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." The appellate court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). "Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate." *Id.* at 160 (quotation omitted).

[8] A person who commits a Class A misdemeanor "shall be imprisoned for a fixed term of not more than one (1) year." I.C. § 35-50-3-2. In addition, "[t]he court shall sentence a person found to be a habitual vehicular substance offender to

an additional fixed term of at least one (1) year but not more than eight (8) years of imprisonment, to be added to the term of imprisonment imposed under IC 35-50-2 or IC 35-50-3.” I.C. § 9-30-15.5-2(d). Disbro’s sentence of six years and 348 days is about two years less than the maximum sentence he could have received.

[9] Disbro points out there is nothing in the record about the nature of his offense. *See* Appellant’s Br. p. 10 (“The record is completely devoid of any facts regarding Disbro’s offense other than [his] admission to the statutory elements.”). Even so, Disbro’s history easily supports his sentence. Disbro has an extensive criminal history consisting of twelve felony convictions, thirteen misdemeanor convictions, and seven probation violations. Disbro’s conviction in this case was his ninth operating-while-intoxicated-related offense, and he committed several offenses while on bond. In addition, Disbro has been given numerous opportunities to reform his behavior but has failed to do so. We acknowledge Disbro’s testimony he had been sober for two years and had a job; however, the repeated nature of his criminal offenses outweighs those facts.

[10] Disbro has failed to persuade us his sentence is an outlier needing revision.

[11] Affirmed.

May, J., and Molter, J., concur.