



Appellant-defendant Thomas K. Patterson appeals the sentence imposed by the trial court after Patterson pleaded guilty to Operating a Vehicle with a Blood Alcohol Content Between .08 and .15,<sup>1</sup> a class D felony, and admitted to being a Habitual Violator of Traffic Laws,<sup>2</sup> a class D felony. Patterson argues that the aggregate three-year sentence imposed by the trial court is inappropriate in light of the nature of the offenses and his character. Finding the sentence appropriate, we affirm.

### FACTS

On October 16, 2008, Patterson's daughter called the police because Patterson was in her home, was intoxicated, and refused to leave. Police arrived shortly after midnight, at which time Patterson got into a taxi and returned to his own home. Approximately ninety minutes later, Patterson returned to his daughter's home, and she again called police, at which time Patterson returned home. Around 3:00 a.m., police officers pulled over and arrested Patterson as he was driving back to his daughter's home. Police had to tase Patterson twice before they were able to place him in handcuffs. A blood serum test revealed that his blood alcohol content was approximately .12.

On October 21, 2008, the State charged Patterson with class D felony resisting law enforcement, class A misdemeanor operating a vehicle while intoxicated causing endangerment, class C misdemeanor operating a vehicle with blood alcohol content between .08 and .15, and being a habitual violator of traffic laws, a class D felony. On December 4,

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<sup>1</sup> Ind. Code § 9-30-5-1.

<sup>2</sup> I.C. § 9-30-10-16.

2008, Patterson pleaded guilty to operating a vehicle with blood alcohol content between .08 and .15 as a class D felony and admitted to being a habitual violator of traffic laws as a class D felony, in exchange for the State's agreement to dismiss the remaining charges. Patterson also admitted to violating probation in another, unrelated cause. The plea agreement specified that the sentences would be served concurrently but otherwise left sentencing to the trial court's discretion.

Following the January 15, 2009, sentencing hearing, the trial court found two aggravators: this was Patterson's fourth conviction for operating while intoxicated and he was on probation for similar charges when he committed the instant offenses. The trial court imposed a three-year sentence on each of the two convictions, to be served concurrently to each other and consecutively to his sentence for the probation violation. Patterson now appeals.

### DISCUSSION AND DECISION

Patterson's sole argument on appeal is that the aggregate three-year sentence is inappropriate in light of the nature of the offenses and his character.<sup>3</sup> In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Here, Patterson

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<sup>3</sup> Patterson indicates at the beginning of his brief that he is making an ineffective assistance of trial counsel argument, but at the end of the brief states that he is reserving the issue for post-conviction proceedings. Therefore, we will not address this argument herein.

received the maximum term of three years on each of his two class D felony convictions. Ind. Code § 35-50-2-7.

As to the nature of the offense, Patterson repeatedly traveled to his daughter's house on the night in question. He was intoxicated and she twice had to call the police to escort him out of her home. He states that he was deeply depressed and suicidal and, when he was pulled over, was driving back to her house so that she could walk with him to the hospital that was a short walk from her home. She did not have a vehicle, so he felt as though he had to drive himself there to get the help he needed. But he could have taken a taxi to her home, or even called an ambulance if he truly believed he was in need of immediate medical intervention. Rather than choosing one of those options, however, he got behind the wheel in an intoxicated state, endangering himself and anyone else who may have been on the road and ignoring the fact that his license was suspended and he was on probation. When the police attempted to arrest him, they had to tase him twice before they were able to get him into handcuffs. We do not find that the nature of the offense aids Patterson's inappropriateness argument.

As to Patterson's character, he is undeniably mentally ill. He has been diagnosed with bipolar disorder and schizophrenia, though medications seem to keep most of his symptoms under control. He is also an alcoholic, though he claims that the time he has spent with Alcoholics Anonymous while in jail for the current offenses has offered him immeasurable help on his path to sobriety. Additionally, he pleaded guilty to the current offenses, though he offers explanations for his actions rather than remorse.

Patterson also has a troubling criminal history. This is his fourth conviction for operating a vehicle while under the influence of alcohol since 2000. He is a habitual traffic violator whose license was suspended for ten years on May 8, 2008. Furthermore, he was on probation for a 2007 conviction for operating a vehicle with a blood alcohol content over .08 when he committed the instant offense.

Patterson argues that he should be permitted to serve his sentence herein on community corrections rather than in the Department of Correction. His history belies that suggestion, however. Following his 2007 conviction, he successfully served six months on home detention but subsequently had probation revoked and was ordered to serve an additional six months on home detention. A few months after completing the second six months, he committed the instant offense. It was reasonable for the trial court to examine Patterson's history and conclude that alternative sentences such as home detention and probation are insufficient to prevent Patterson from reoffending. Indeed, his own testimony establishes that the Alcoholics Anonymous meetings he attended while in jail benefited him far more than any he attended before being incarcerated. And there is no evidence tending to establish that he will not receive adequate treatment for his mental illness while incarcerated. Under these circumstances, we cannot find that the aggregate three-year sentence imposed by the trial court is inappropriate.

The judgment of the trial court is affirmed.

FRIEDLANDER, J., and RILEY, J., concur.