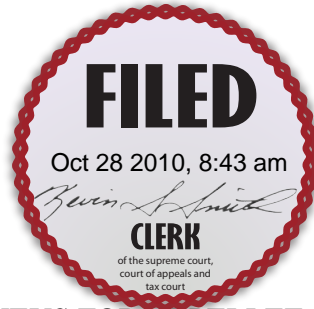


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SAMUEL JOHNSON,)
)
Appellant-Defendant,)
)
vs.) No. 49A05-1003-CR-171
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila Carlisle, Judge
Cause No. 49G03-0907-FA-67629

October 28, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Samuel Johnson appeals his aggregate sentence of eighty-four years in prison for four separate counts to which he pled guilty. He argues that the court failed to issue a sufficiently detailed explanation for its decision to order these sentences to be served consecutively. Finding that the trial court's sentencing statement is sufficient, we affirm.

Facts and Procedural History

The facts as admitted by Johnson at his guilty plea hearing establish that, on April 20, 2009, he entered a medical building located directly across the street from his residence which he knew used no video surveillance. After watching a woman leave her doctor's office and enter the ladies' restroom, Johnson followed her inside. Armed with a knife, he demanded and took the woman's money, cigarette case, and mobile telephone. Johnson then ordered the woman to go into a stall. He forced her to bend over the toilet and pulled her pants down. Johnson then put his penis in her anus. Following this, he also forced her to have vaginal intercourse with him in the stall. Before leaving the restroom, Johnson threatened to stab the woman if she came out of the restroom.

Two months later, a detective questioned Johnson about child molestation charges he was facing. During this conversation, Johnson provided the police with information about the crimes that occurred on April 20, 2009. He told the detective that his cousin admitted to having had sex with the victim in a bathroom and that he had seen his cousin in possession of her mobile telephone. These false accusations led to his cousin being detained by the police. Later, at the police's request, Johnson consented to providing a DNA sample, which indicated that he was the perpetrator of the crimes. On July 29,

2009, the State charged Johnson with class A felony rape, class A felony criminal deviate conduct, class B felony robbery, and class C felony intimidation. A jury trial was scheduled for February 8, 2010.

On February 5, 2010, Johnson withdrew his not guilty plea and pled guilty to all counts, with sentencing left to the trial court's discretion. At the sentencing hearing, the court found that Johnson's guilty plea was a mitigating factor. However, the court found that the nature of these offenses, including Johnson's attempt to frame his cousin, was aggravating and that his criminal history, which includes convictions for aggravated robbery, child molestation, and escape, was severely aggravating. The court concluded that the aggravating circumstances far outweighed the mitigating circumstances and sentenced Johnson to forty years for the class A felony rape, thirty years for the class A felony criminal deviate conduct, ten years for the class B felony robbery, and four years for the class C felony intimidation. The court ordered these sentences to be served consecutively, resulting in an aggregate sentence of eighty-four years.

Discussion and Decision

Johnson now contends that the trial court failed to issue a sufficiently detailed recitation of its reasons for ordering the sentences to be served consecutively. Sentencing determinations are within the trial court's discretion and are governed by Indiana Code Section 35-38-1-7.1. *Harris v. State*, 659 N.E.2d 522, 527 (Ind. 1995). "So long as the [trial court's] sentence is within the statutory range, it is subject to review only for an abuse of discretion." *Anglemeyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007). An abuse of discretion occurs where "the decision is clearly against the logic and effect of the facts

and the circumstances before the trial court, or the reasonable, probable, and actual deductions to be drawn therefrom.” *Phelps v. State*, 914 N.E.2d 283, 290 (Ind. Ct. App. 2009).

A sentencing statement

must include a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating.

Anglemeyer, 868 N.E.2d at 490. Even “[a] single aggravating circumstance is enough to justify an enhancement or the imposition of consecutive sentences.” *Williams v. State*, 690 N.E.2d 162, 172 (Ind. 1997).

Johnson concedes that the court properly found that the rape sentence should be aggravated, yet he contends that the trial court’s failure to enunciate specific reasons for running his sentences consecutively is an abuse of discretion. The Indiana Supreme Court has held otherwise. “[T]here is neither any prohibition against relying on the same aggravating circumstances both to enhance a sentence and to order it served consecutively, nor any requirement that the trial court identify the factors that supported the sentence enhancement separately from the factors that supported consecutive sentences.” *Blanche v. State*, 690 N.E.2d 709, 716 (Ind. 1998). We believe that the trial court’s lengthy discussion of the aggravating and mitigating circumstances was a proper basis for both the aggravated rape sentence and the consecutive sentences. Thus, Johnson’s argument fails.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.