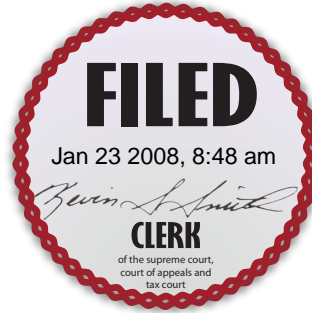


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RANDOLPH AYERS,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 69A01-0709-CR-424

APPEAL FROM THE RIPLEY CIRCUIT COURT
The Honorable Carl Taul, Judge
Cause No. 69C01-0605-FC-9

January 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Randolph Ayers appeals the sentence imposed following his plea of guilty to pointing a firearm at another person, as a class D felony.¹

We affirm.

ISSUE

Whether Ayers' sentence is inappropriate pursuant to Indiana Appellate Rule 7(B).

FACTS

Ayers owned property in Ripley County. Ayers rented the property's residence to James and Mary Stout. On or about May 5, 2006, after a dispute with the Stouts regarding rent, Ayers went to the Stouts' residence and pointed a loaded rifle at them. The Stouts' children were at home during the incident.

On May 5, 2006, the State charged Ayers with Count 1, intimidation, as a class C felony; and Count 2, pointing a firearm at another person, as a class D felony. On July 3, 2007, the State and Ayers entered into a plea agreement, whereby Ayers agreed to plead guilty to Count 2, with the trial court to determine the judgment of conviction. The State agreed to dismiss Count 1.

The trial court ordered a presentence investigation report ("PSI"). According to the PSI, Ayers was convicted of class A misdemeanor operating while intoxicated in 1998. In 2001, Ayers was convicted of class D felony operating while intoxicated; the trial court converted this conviction to a class A misdemeanor. Approximately five

¹ "A person who knowingly or intentionally points a firearm at another person commits a Class D felony. However, the offense is a Class A misdemeanor if the firearm was not loaded." Ind. Code § 35-47-4-3.

months after the current offense, Ayers was arrested for operating while intoxicated. Ayers pled guilty to the class A misdemeanor charge in July of 2007.

On August 2, 2007, the trial court accepted the plea agreement and held a sentencing hearing. The trial court found Ayers' guilty plea to be a mitigating circumstance and Ayers' criminal history and the fact that children were present when he committed the offense to be aggravating circumstances. The trial court then entered judgment of conviction of a class D felony and sentenced Ayers to three years in the Department of Correction, with one and one-half years suspended to probation.

DECISION

Ayers asserts that his sentence of three years is inappropriate.² We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

As to the nature of the offense, Ayers argues that it "was not particularly egregious." Ayers' Br. 4. As to his character, Ayers contends that because alcohol may have been a factor in the present crime, and his prior offenses also involved alcohol, his "case demonstrates the appropriateness of an alternative to incarceration." Ayers' Br. 5.

² Because Ayers committed his offense in 2006, Indiana's advisory sentencing scheme, which went into effect on April 25, 2005, applies. Pursuant to Indiana Code section 35-50-2-7, "[a] person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years."

Ayers also contends that his acceptance of responsibility for his actions by pleading guilty should be considered.

The record reflects that Ayers pointed a loaded rifle at two people. Although Ayers did plead guilty to this act, he also received a significant benefit as the State dismissed a class C felony charge. Further, the record reflects that Ayers has prior alcohol-related offenses, for which he had been given probation with minimal time served; these less restrictive sentences failed to deter Ayers from abusing alcohol and failed to encourage compliance with the law. Accordingly, we find that the sentence imposed by the trial court is appropriate.

Affirmed.

BAKER, C.J., and BRADFORD, J., concur.