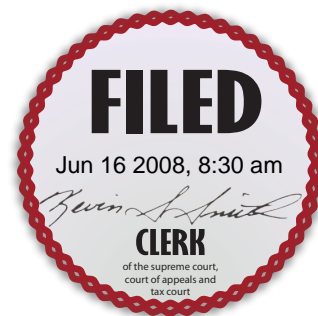


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

CURLEY PAUL GIBBS, JR.,)

Appellant-Defendant,)

vs.)

No. 45A05-0708-CR-492

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Judge
Cause No. 45G04-0601-FA-4

June 16, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

After pleading guilty to criminal confinement¹ as a Class B felony, Curley Paul Gibbs Jr. appeals his seventeen-and-a-half-year sentence. Gibbs raises one issue on appeal, which we restate as: whether the trial court abused its sentencing discretion.

We affirm.

FACTS AND PROCEDURAL HISTORY

Gibbs and two accomplices armed with handguns, kidnapped David Arroyo. Pursuant to a plea agreement, Gibbs pled guilty to criminal confinement and the State dropped the kidnapping and resisting law enforcement charges and did not charge Gibbs as a habitual offender. The parties were free to argue the sentence to be imposed.

At the sentencing hearing, neither party offered evidence or testimony regarding sentencing. The State argued Gibbs's lengthy criminal history and failure to comply with the terms of probation were aggravating factors. Gibbs argued that the unlikelihood of recidivism, the victim's status as a drug dealer, and his guilty plea were mitigating factors. The trial court ordered Gibbs to serve seventeen and one-half years in the Department of Correction. The trial court noted Gibbs's guilty plea but also stated that Gibbs received a substantial benefit in pleading guilty because the State dropped two charges, including a Class A felony charge and Class C felony charge, and refrained from prosecuting him as a habitual offender. The trial court also noted that Gibbs had completed a substance abuse program while in jail. The trial court noted, as aggravators, that Gibbs had a significant criminal history that indicated a need for correctional or rehabilitative treatment. The trial

¹ See IC 35-42-3-3.

court also found that the fact that the victim was a drug dealer did not mitigate the offense. Gibbs now appeals.

DISCUSSION AND DECISION

Gibbs claims that the trial court improperly weighed the aggravators and mitigators in imposing his sentence. Sentencing decisions are left to the trial court's sound discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002)). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences drawn therefrom. *Id.* We can only review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491.

Gibbs also contends that the trial court did not include in its written sentencing statement the rationale for enhancing his sentence beyond the advisory ten-years for a Class B felony.² Pursuant to IC 35-38-1-3, if a trial court finds aggravators or mitigators, its record must include a statement of its reasons justifying the sentence, including: a) the identity of all significant aggravators and mitigators; b) the specific facts and circumstances that lead the court to find the existence of such circumstances; and c) an articulation that the aggravators have been evaluated and balanced against the mitigators.

We look to both the trial court's oral sentencing statement and its written sentencing statement to determine whether the trial court provided sufficient support to justify Gibbs's sentence. *See Dowell v. State*, 873 N.E.2d 59, 60 (Ind. 2007). At the sentencing hearing, the

trial court acknowledged Gibbs's plea but noted that he received the benefit of the State dismissing two charges and refraining from filing an habitual offender charge. *Tr.* at 55. The trial court then thoroughly examined his criminal history, including a conviction for theft in 2003, for which he was still on parole when he committed the instant offense. *Id.* at 56. The trial court then stated that Gibbs was in need of correctional or rehabilitative treatment that would best be provided by a correctional facility based on his twenty years in and out of the court system. *Id.* at 57. The trial court also acknowledged that, while the victim of the offense may have been a drug dealer, no person has the right to kidnap another. *Id.* at 57-58. The trial court held that the aggravators substantially outweighed the mitigators and justified the sentence. *Id.* at 58-59.

Gibbs argues that the trial court's failure to list the applicable aggravators and mitigators in its written sentencing statement warrants a reversal of his sentence. The trial court appropriately incorporated its oral sentencing statement into its written sentencing statement, and our review of both statements together provided sufficient support for the sentence imposed.

Affirmed.

FRIEDLANDER, J., and BAILEY, J., concur.

² See IC 35-50-2-5.