ATTORNEY FOR APPELLANT:

ROBERT D. KING, JR.,
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MICHAEL GENE WORDEN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ALFREDERICK WILLIAMS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0712-CR-1081
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Paula Lopossa, Judge
Cause No. 49G01-0605-FA-92313

July 30, 2008

MEMORANDUM DECISION ON REHEARING - NOT FOR PUBLICATION

BARNES, Judge

The State petitions for rehearing following our decision in Williams v. State, 49A02-0712-CR-1081 (Ind. Ct. App. June 18, 2008). We concluded that the trial court's sentencing statement was not sufficiently detailed as required by our supreme court's interpretation of the current "advisory" sentencing scheme in Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007). We remanded for the trial court to issue a more detailed sentencing statement to justify its imposition of the four-year advisory sentence for a Class C felony. At the outset of our analysis, we noted, "Both parties here seem to assume that this case is governed by the current advisory sentencing scheme, rather than the presumptive sentencing scheme that was in place in 1994 when Williams committed this offense." Williams, slip op. at 4.

The State's argument on rehearing is that we erred in applying the advisory sentencing scheme, as opposed to the prior presumptive sentencing scheme. Under the presumptive scheme, a trial court did not have to issue a sentencing statement when imposing a presumptive sentence. See Jackson v. State, 728 N.E.2d 147, 154-55 (Ind. 2000). The State asserts, "Admittedly, the parties did not clearly argue that the present case should be governed by the old 'presumptive' sentencing laws. Nonetheless, it is clear that this case must be reviewed under the 'presumptive' sentencing statutes and the law applicable thereto." Appellee's Rehearing Br. p. 3.

In fact, both Williams and the State limited their arguments to the propriety of Williams's sentence under the current advisory scheme. Williams referred to the review of sentences under the advisory scheme pursuant to Anglemyer. More importantly, the State did not refute that this case should be decided under the advisory sentencing

scheme. It repeatedly referred to Williams as receiving an "advisory" sentence. See Appellee's Br. pp. 1, 3, 4, 5, 8, 9. The State also said, "Under the current 'advisory' sentencing scheme, a trial court is still required to provide a reasonably detailed sentencing statement." Id. at 4. In other words, the State implicitly agreed with Williams that this case should be decided under the current advisory sentencing scheme.

"[A] petition for rehearing in the Court of Appeals must rely on the same theory as that advanced in the original brief." State v. Jones, 835 N.E.2d 1002, 1004 (Ind. 2005). There may be limited exceptions to this rule when a court strays from the issues as presented by the parties and sua sponte decides an issue not originally briefed by the parties. See Hannoy v. State, 793 N.E.2d 1109, 1111 (Ind. Ct. App. 2003), trans. denied. Here, we addressed the issue precisely as framed by both parties. The State on rehearing is improperly attempting to interject a completely new theory into the case. Moreover, to the extent we mentioned that the parties assumed that the advisory and not the presumptive sentencing scheme applied, allowing the State now to argue differently "would be both procedurally and practically unfair and would expose this court to the charge that we 'tipped off' the State as to an argument it should have raised in its original brief." Id.

We reaffirm our original decision in all respects.

CRONE, J., and BRADFORD, J., concur.