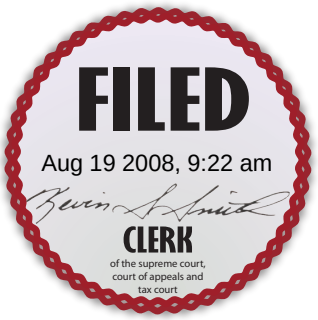

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IN THE
COURT OF APPEALS OF INDIANA

CLARENCE TAYLOR,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 71A05-0709-CR-510
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ST. JOSEPH SUPERIOR COURT
The Honorable Jane Woodward Miller, Judge
Cause No. 71D01-0611-FC-00352

AUGUST 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Clarence Taylor appeals the sentence he received for his conviction of battery, a Class C felony. Ind. Code § 35-42-2-1(a)(3).

We affirm.

ISSUE

Taylor presents one issue for our review which we restate as: whether the trial court properly sentenced Taylor.

FACTS AND PROCEDURAL HISTORY

Taylor shot a man in the abdomen with a handgun. Based upon this incident, he was charged with and convicted of battery as a Class C felony. The trial court sentenced Taylor to seven years for his conviction. Taylor now appeals this sentence.

DISCUSSION AND DECISION

Taylor contends that the trial court failed to properly sentence him. Particularly, he alleges that the trial court failed to give proper weight to certain mitigating circumstances and that his sentence is inappropriate.

First, Taylor asserts that the trial court failed to give proper weight to the mitigators of his family support and his employment upon release from jail. A court may impose any legal sentence "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." Ind. Code § 35-38-1-7.1(d). Although this statute allows for the imposition of any sentence within the statutory range without regard to mitigating or aggravating circumstances, it is worth noting that the statute does not prohibit the trial court from identifying facts in mitigation or aggravation. *Anglemyer v.*

State, 868 N.E.2d 482, 489 (Ind. 2007), *reh'g granted, decision clarified on other grounds*, 875 N.E.2d 218 (Ind. 2007). However, under Ind. Code § 35-38-1-7.1(d), the trial court no longer has any obligation to weigh and balance mitigating factors. Therefore, the weight or value assigned to any mitigating factors that the trial court may properly find is not subject to review for abuse of the trial court's discretion. *Anglemyer*, 868 N.E.2d at 491. Thus, we are prohibited from reviewing the weight assigned to the mitigating factors by the trial court at Taylor's sentencing. *See Anglemyer, supra*.

Taylor also claims that his sentence is inappropriate. However, he not only fails to develop an argument regarding this issue, he does not present even one sentence to support this contention. Taylor has waived this claim for failure to present a cogent argument. *See Allen v. State*, 875 N.E.2d 783, 788 n.8 (Ind. Ct. App. 2007); Ind. Appellate Rule 46(A)(8)(a).

Waiver notwithstanding, Taylor's sentence is not inappropriate. Under Article VII, Section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences. However, we will not revise the sentence imposed unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B).

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Taylor received a sentence of seven years. The advisory sentence for a Class C felony is four years. Although Taylor's

sentence is more than the advisory sentence for a Class C felony, this offense involved unprovoked violence by Taylor.

As to Taylor's character, we note that he has a criminal history including carrying a handgun without a license. While on probation for that offense, Taylor committed the offense of robbery, as a C felony. Taylor was then given residential placement, which he violated. Additionally, Taylor was on probation when he committed the instant offense.

Taylor has not carried his burden of persuading this Court that his sentence has met the inappropriateness standard of review. *See Anglemyer*, 868 N.E.2d at 494 (declaring that defendant must persuade appellate court that his sentence has met inappropriateness standard of review). Taylor has been given numerous chances at rehabilitation, and he has failed at them all. In light of the nature of the offense and Taylor's character, the sentence is not inappropriate.

CONCLUSION

Based upon the foregoing discussion and authorities, we conclude that we are prohibited from reviewing the weight assigned by the trial court to the mitigating circumstances and that, notwithstanding waiver, Taylor's sentence is not inappropriate.

Affirmed.

DARDEN, J., and NAJAM, J., concur.