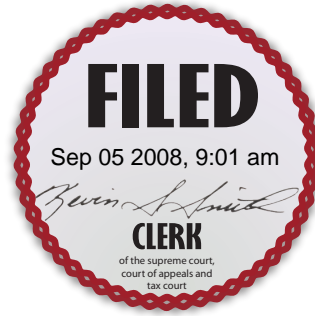


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MICHAEL TAYLOR,)
)
Appellant-Defendant,)
)
vs.) No. 49A04-0801-CR-29
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Patricia J. Gifford, Judge
Cause No. 49G04-0707-FB-152099

September 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Michael Taylor appeals his sentence following his convictions for Criminal Recklessness, as a Class C felony, and Carrying a Handgun Without a License, as a Class A misdemeanor. He raises a single issue for our review, which we restate as whether his sentence is inappropriate in light of the nature of his offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

During the evening of July 26, 2007, David Staten was on a porch at 3429 North Kenwood Avenue in Indianapolis. Taylor, while carrying a handgun, approached Staten and “jokingly requested” Staten to empty his pockets. Transcript at 7. Taylor then attempted to put his gun in his pocket, but the gun discharged, striking Staten in the leg and causing serious bodily injury. Taylor did not have a license to carry the handgun.

On July 30, the State charged Staten with attempted robbery, as a Class B felony; battery, as a Class C felony; carrying a handgun without a license, as a Class A misdemeanor; and dangerous possession of a firearm, as a Class A misdemeanor. On December 5, the State added a charge of criminal recklessness, as a Class C felony. That same day, Taylor pleaded guilty to the charges of criminal recklessness and carrying a handgun without a license. In exchange, the State agreed to dismiss the other charges against Taylor. Taylor’s plea agreement did not stipulate a recommended sentence.

On December 18, the trial court sentenced Taylor to four years, with one year executed and the balance suspended to probation, on the criminal recklessness

conviction. The court sentenced Taylor to a concurrent one-year executed term on the handgun conviction. In doing so, the court stated as follows:

6. Defendant accepted responsibility for his actions, which must be considered in mitigation. Additionally, Defendant has virtually no criminal history and has a strong system of family support which accords him some additional mitigating weight.
7. The nature and circumstances of the underlying act are an aggravating factor; defendant had no reason or explanation for his decision to shoot his friend, and the randomness of the act suggests Defendant is in need of something more than lenient treatment in order to deter future acts of violence.
8. The aggravating factors balance the mitigating factors and imposition of the recommended sentence is appropriate.

Appellant's App. at 55. This appeal ensued.

DISCUSSION AND DECISION

Taylor argues on appeal that his four-year sentence is inappropriate in light of the nature of the offenses and his character.¹ Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and

¹ Taylor does not appeal the one-year sentence imposed for his handgun conviction. Taylor also references our standard of review for determining whether the trial court, in sentencing the defendant, abused its discretion. However, Taylor in no way discusses how that standard of review might apply to the trial court's sentencing statement in his case. Accordingly, the issue of whether the trial court may have abused its discretion in sentencing Taylor is waived for lack of cogent argument. See Ind. Appellate Rule 46(A)(8)(a).

his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Here, Taylor appeals the sentence imposed after his conviction for criminal recklessness, as a Class C felony. Indiana Code Section 35-50-2-6 provides that a person who commits a Class C felony “shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.” Taylor received the advisory sentence of four years, three of which the trial court suspended to probation pursuant to Indiana Code Section 35-50-2-2. In ordering that sentence, the trial court recognized the nature and circumstances of the crime as an aggravating factor. In mitigation, the court recognized Taylor’s acceptance of responsibility, lack of criminal history, and strong family support.

Taylor’s sentence is not inappropriate. The nature of the offense reveals that Taylor acted recklessly, with “varying degrees of . . . stupidity,” which resulted in serious bodily injury to a friend.² Transcript at 21. Taylor’s character demonstrates that he

² The State argues that the “advisory sentence is inappropriate in light of the nature of the offense because all the aggravating factors were not properly considered by the trial court and should be used to increase his sentence.” Appellee’s Brief at 4. But the State relies on facts stated in its probable cause affidavit but not admitted by Taylor at his guilty plea hearing. Accordingly, like the trial court, we also do not consider those purported aggravating factors.

accepted responsibility and had a lack of prior criminal activity.³ And the trial court took Taylor's character into account when it imposed the four-year advisory sentence with three years suspended to probation. Thus, we cannot say that Taylor's sentence is inappropriate.

Affirmed.

MAY, J., and ROBB, J., concur.

³ Taylor asserts that the trial court erroneously considered his family support to be an aggravating factor. But while the trial court's statements during the sentencing hearing on this factor are less than clear, in its subsequent sentencing order the court clearly identified Taylor's "strong system of family support" as a mitigator. Appellant's App. at 55.