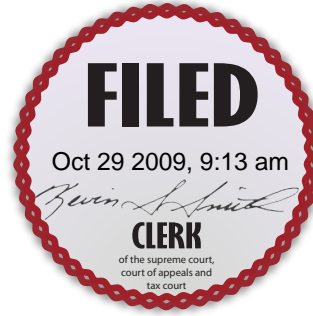


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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RODNEY WORD, )

Appellant-Defendant, )

vs. )

No. 49A02-0904-CR-341

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Reuben B. Hill, Judge  
The Honorable Mary Ann G. Oldham, Commissioner  
Cause No. 49F18-0806-FD-140307

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October 29, 2009

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**KIRSCH, Judge**

Rodney Word pled guilty to prostitution<sup>1</sup> as a Class D felony and received a sentence of three years executed. He appeals, arguing that the sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

On June 7, 2008, four days after his release from parole for a Class C felony transferring blood containing HIV conviction, Word was approached by an undercover police officer. Word got into the police officer's car and offered to perform fellatio in exchange for \$20.00. Word was arrested and charged with Class D felony prostitution. Word then entered into an open plea agreement and was sentenced to three years executed.

During sentencing, the trial judge found Word's guilty plea to be a mitigating factor. As an aggravating factor, the trial court found that Word had an extensive criminal history that consisted of thirty-one prior criminal convictions, ten of which were felonies, with seven of those being Class D felony prostitution convictions. Additionally, during the time Word was incarcerated between 1988 and 1997, he amassed thirty-nine conduct violations. *Tr.* at 4. The trial court ultimately sentenced Word to the statutory maximum of three years. *See* Ind. Code § 35-50-2-7. Word now appeals.

### **DISCUSSION AND DECISION**

Word argues that the trial court's sentence was inappropriate in light of the nature of the offense and the character of the offender. "Although a trial court may have acted

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<sup>1</sup> *See* Ind. Code § 35-45-4-2.

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.’” *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)) (changes in original). Indiana Appellate Rule 7(B) outlines this appellate authority, permitting revision of a sentence authorized by statute if, “after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The onus is on the defendant to persuade this court that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

“In determining whether a sentence is inappropriate, the advisory sentence ‘is the starting point the Legislature has selected as an appropriate sentence for the crime committed.’” *Ross v. State*, 908 N.E.2d 626, 632 (Ind. Ct. App. 2009) (quoting *Childress*, 848 N.E.2d at 1081). Word pled guilty to prostitution as a Class D felony for which the advisory sentence is one and one half years. Ind. Code § 35-50-2-7.

Word argues that the three year maximum sentence imposed by the trial court is inappropriate in light of the nature of the offense. Here, Word approached an undercover police officer, entered his car, and offered to perform fellatio in exchange for \$20.00. He engaged in this act only four days after his release from parole for a Class C felony transferring blood containing HIV conviction. As evidenced by his prior conviction, Word knew he was HIV positive and that by engaging in acts of prostitution, he endangered the health and lives of others. Clearly, the nature of the offense is serious.

Word also argues that his sentence is inappropriate in light of his character. In support of his argument he recounts his history of drug and alcohol abuse and the steps he has taken to fight his addictions. *Appellant's Br.* at 2. Word's involvement in treatment programs is commendable, but not enough to show that the imposed sentence was inappropriate.

The most pointed evidence of Word's character is his criminal history, which consists of thirty-one prior criminal convictions, ten of which were felonies, with seven of those being Class D felony prostitution convictions. Word's thirty-nine conduct violations while he was in prison also do not speak well of his character. Additionally, we note that Word engaged in the conduct for which he was convicted only four days after his release from parole for a Class C felony transferring blood containing HIV conviction. *Appellee's Br.* at 4.

After considering the nature of Word's offense and his character, we cannot say that his three year sentence was inappropriate.

Affirmed.

NAJAM, J., and BARNES, J., concur.