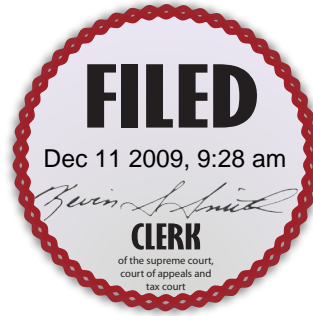


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

DONALD P. JOHNSON,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 48A04-0907-CR-413

APPEAL FROM THE MADISON CIRCUIT COURT

The Honorable Fredrick R. Spencer, Judge

Cause No. 48C01-0805-MR-293

December 11, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Donald P. Johnson pled guilty to murder¹ and received a sentence of fifty-five years executed. He appeals contending that his sentence is inappropriate.

We affirm.

FACTS AND PROCEDURAL HISTORY

On May 21, 2008, Johnson shot his ex-wife, Frederica Johanna Smith, in the chest, at close range, with a .38 caliber revolver. Smith was sixty-seven years of age. Johnson dialed 911 immediately after he shot Smith, and she was taken to the hospital where she was pronounced dead of a gunshot wound. Johnson was arrested and charged with murder. After his arrest, Johnson gave a complete confession as to the events of the day and later pled guilty to Smith's murder. He was sentenced to fifty-five years executed.

During sentencing, the trial judge found Johnson's guilty plea, military service, and lack of criminal history to be mitigating factors. The trial court found Smith's age and the fact that the crime was a crime of violence, committed in the presence of his grandchildren, as aggravating factors. The trial court ultimately sentenced Johnson to the advisory sentence of fifty-five years. *See* Ind. Code § 35-50-2-3. Johnson now appeals.

DISCUSSION AND DECISION

Although Johnson initially frames his argument as whether his sentence was inappropriate in light of the nature of the offense and the character of the offender, his brief argues that the trial court abused its discretion in sentencing him. As our Supreme Court has stated, “[t]hese are two separate inquiries reviewed under different standards.” *Noojin v. State*, 730 N.E.2d 672, 678 (Ind. 2000).

¹ *See* Ind. Code § 35-42-1-1.

Johnson shot his ex-wife while his grandchildren were in the house after arguing with her over a small matter. He has no criminal history and pled guilty, but there is nothing to indicate that the sentence imposed by the trial court was inappropriate in light of the nature of the offense or his character. Granted, Johnson's crime is not the worst murder, nor can he be classified as the worst offender, but Johnson received the advisory sentence for his crime, not the maximum to which he could have been sentenced.

Sentencing is left to the sound discretion of the trial court. An abuse of the trial court's discretion occurs if the decision is "clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007) (citing *K.S. v. State*, 849 N.E.2d 538, 544 (Ind. 2006)). We find no such abuse here.

In this case, Johnson pled guilty to murder. The trial court sentenced him to the advisory sentence of fifty-five years executed. Ind. Code § 35-50-2-3. During sentencing, the trial judge found Smith's age and Johnson's grandchildren being present in the house during the shooting to be aggravating factors. As mitigating factors, the trial judge found Johnson's guilty plea, military service, and lack of criminal history.

Johnson argues that the aggravating factors were weak and were accorded too much weight. The trial court no longer has any obligation to weigh aggravating and mitigating factors when imposing a sentence. *See, e.g., Anglemyer*, 868 N.E.2d at 491. Consequently, the trial court cannot be said to abuse its discretion in failing to properly weigh aggravating and mitigating factors when imposing a sentence. *Id.* Smith's age and the fact that children were in the house when Johnson shot her are aggravating

factors supported by the evidence, and were taken into account by the trial court in the sentencing statement.

We conclude that the trial court did not abuse its discretion in sentencing Johnson to the advisory sentence of fifty-five years and that Johnson has failed to show that his sentence was inappropriate.

Affirmed.

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