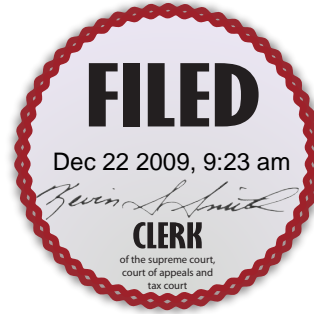


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

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Kokomo, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

ROBERTO ARREOLA,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 34A02-0910-CR-981

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0802-FB-36

December 22, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Roberto Arreola challenges the appropriateness of his three-year sentence following his guilty plea to Class D felony Neglect of a Dependent.¹ We affirm.

FACTS AND PROCEDURAL HISTORY

On November 29, 2007, Howard County Department of Child Services investigators responded to a report regarding Arreola's then three-month-old dependent son, P.M., who was in Arreola's care at a home Arreola shared with P.M.'s mother and others. A medical evaluation revealed that P.M. had sustained multiple injuries in his short life, including fractures to his ribs and leg, bruising on his ear, sores on his hands, and a swollen toe. P.M. was removed from the home.

On February 14, 2008, the State charged Arreola with Class B felony neglect of a dependent resulting in serious bodily injury. Arreola subsequently entered into a plea bargain with the State in which he agreed to plead guilty to the lesser-included offense of Class D felony neglect of a dependent. Pursuant to this plea bargain, the parties agreed that they would leave sentencing to the discretion of the trial court.

At the June 15, 2009 plea hearing, Arreola admitted that he had knowingly placed P.M., a dependent in his care, in a situation that endangered P.M.'s life or health. The trial court entered judgment of conviction and sentenced Arreola to a maximum term of three years in the Department of Correction. This appeal follows.

¹ Ind. Code § 35-46-1-4(a)(1) (2007).

DISCUSSION AND DECISION

Arreola challenges the appropriateness of his maximum three-year sentence by claiming that his young age (twenty), lack of criminal history, agreement to plead guilty, and expression of remorse demonstrate that he is not the type of “worst offender” deserving of such 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) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the “Court may revise 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.” We exercise deference to a trial court’s sentencing decision, both because Rule 7(B) requires that we give “due consideration” to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant’s burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

Arreola committed a Class D felony, which carries a sentencing range of from six months to three years, with the advisory sentence being one and one-half years. *See* Ind. Code § 35-50-2-7 (2007). Here, the trial court imposed the maximum three-year sentence. In imposing this sentence, the trial court paid special attention to P.M.’s young age and the life-threatening nature of his injuries.

We cannot conclude that this sentence is inappropriate. The nature of this offense, namely Arreola's ongoing failure to seek treatment for what were, by all accounts, apparent and severe injuries to his own infant child, justifies a three-year sentence. While Arreola points to certain factors such as his lack of criminal history, expression of remorse, and guilty plea as indicators of his allegedly good character, these factors are overshadowed by Arreola's ability to ignore the suffering of his own baby, which clearly reflects poorly upon his character. In addition, of course, Arreola's guilty plea is arguably less a reflection of his good character than a strategic decision to avoid the potentially greater criminal liability for the Class B felony originally charged. *See Scott v. State*, 840 N.E.2d 376, 383 (Ind. Ct. App. 2006), *trans. denied*. Further, while Arreola should be commended for apparently completing parenting classes and visiting P.M., such *post hoc* efforts on the child's behalf are arguably too little too late. At the very least, they do not operate to minimize the egregious nature of the instant crime or militate against the imposition of a maximum three-year sentence.

The judgment of the trial court is affirmed.

NAJAM, J., and FRIEDLANDER, J., concur.