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**IN THE  
COURT OF APPEALS OF INDIANA**

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DAVID A. DOBBS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 18A02-0604-CR-352

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APPEAL FROM THE COURT  
The Honorable Marianne Vorhees, Judge  
Cause No. 18C01-0507-FC-31

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**December 12, 2006**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, David A. Dobbs (Dobbs), appeals his sentence for robbery, a Class C felony, Ind. Code § 35-42-5-1(2), and resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3(a)(1).

We affirm.

## ISSUE

Dobbs raises one issue on appeal, which we restate as: Whether the trial court properly sentenced Dobbs.

## FACTS AND PROCEDURAL HISTORY

On July 22, 2005, at approximately 3:30 a.m., Dobbs entered a Village Pantry in Muncie, Indiana. In the presence of a fearful clerk, Dobbs took money from the cash register. After the robbery, Dobbs resisted arrest by a Muncie law enforcement officer.

On July 28, 2005, the State filed an Information charging Dobbs with Count I, robbery, a Class C felony, I.C. § 35-42-5-1(2), Count II, resisting law enforcement, a Class A misdemeanor, I.C. § 35-44-3-3(a)(1), and Count III, habitual offender, I.C. § 35-50-2-8(a). On January 9, 2006, Dobbs pled guilty to Count I, robbery, and Count II, resisting law enforcement; in exchange, the State agreed to dismiss Count III, habitual offender. The plea agreement required all sentences to run concurrently.

On March 23, 2006, Dobbs was sentenced under the new advisory sentencing guidelines, which took effect April 25, 2005. The trial court recognized two aggravating circumstances: (1) Dobb's criminal history of six misdemeanor and eight felony convictions, and (2) Dobbs' premature withdrawal from a drug treatment program

approximately one month before the instant offenses were committed. The trial court recognized two mitigating circumstances: (1) Dobbs' guilty plea, and (2) Dobbs' claim of remorse. The trial court found the aggravating factors completely outweighed the mitigating factors and sentenced Dobbs to the maximum eight years on Count I, and one year on Count II, sentences to be served concurrent for an executed sentence of eight years.

Dobbs now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Dobbs contends that the trial court improperly sentenced him to the maximum sentence available and that his sentence is inappropriate in light of the nature of the offense and his character. Specifically, Dobbs believes that the trial court did not afford enough weight to the recognized mitigators, resulting in an improper balance of the aggravators and mitigators, and imposed an inappropriate sentence in light of his character. Thus, Dobbs claims his sentence is excessive and that it should be revised.

#### *I. Standard of Review*

Recently, in *McMahon v. State*, \_\_\_ N.E.2d \_\_\_, 2006 WL 3258325 (Ind. Ct. App. November 13, 2006), this court discussed in detail the recent developments of Indiana's sentencing laws. We concluded, in pertinent part, "a claim that a sentence arose from an abuse of discretion under our statutory guidelines is no longer viable" since "trial courts are allowed to impose *any* sentence authorized by statute *regardless* of the presence or absence of aggravating and mitigating circumstances." *Id.* at 4. However, we will continue to include "an assessment of the trial court's finding and weighing of

aggravators and mitigators” in our independent review under Ind. Appellate R. 7(B). *Id.* As such, “the burden falls to the defendant to persuade the appellate court that his or her sentence is inappropriate” given that our review is by no way limited “to a simple rundown of the aggravating and mitigating circumstances found by the trial court.” *Id.* at 5-6.

## II. *Dobbs’ Sentence*

Dobbs contends his eight-year sentence is inappropriate because he pled guilty, suffered from a drug addiction, and was “ready to deal with his addiction.” (Appellant’s Br. p. 10). We disagree. In reviewing Dobbs’ sentence for appropriateness, we will only review the character of the offender portion of Ind. Appellate R. 7(B), as he fails to offer any support with respect to the nature of the offense.

Dobbs is essentially arguing only that the trial court did not properly balance his guilty plea and remorse with his criminal history and previous attempts at drug rehabilitation. Dobbs cites *Williams v. State*, 840 N.E.2d 433 (Ind. Ct. App. 2006), *reh’g granted*, as support. However, the crime in *Williams* was committed before the new advisory sentencing scheme took effect. The new advisory sentencing scheme eliminated our review of the trial court’s sentencing pronouncement for abuse of discretion. Rather, as aforementioned, the burden is now Dobbs’ to persuade us that his sentence is inappropriate. *See McMahon*, 2006 WL at 5.

We do not find Dobbs’ argument persuasive. To the contrary, we find the trial court’s sentence to be appropriate. And although not required, we acknowledge the trial

court's explanation of Dobbs' sentence based on the balancing of the aggravating and mitigating factors it recognized.

With respect to Dobbs' character, we believe his criminal history of six misdemeanor and eight felony convictions alone warrants a maximum sentence. Perhaps more notable is Dobbs' argument that the trial court gave no weight to his "willingness to come to grips with his drug addiction." (Appellant's Br. p. 10). However, based on our review of the record, approximately one month prior to committing the instant offenses Dobbs checked himself out of a drug treatment program against medical advice. As a result, we are less than eager to revisit the sentence of the trial court only upon the belief that this time Dobbs is telling the truth about his readiness to overcome his drug addiction. Thus, we find the trial court's sentence of eight years appropriate in light of Dobbs' character.

#### CONCLUSION

Based on the foregoing, we find the trial court properly sentenced Dobbs.

Affirmed.

MAY, J., concurs.

BAILEY, J., concurs in result.