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:

CHRISTOPHER C. CRAWFORD
Garcia & Crawford
Elkhart, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

RICHARD C. WEBSTER
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

EDUARDO OROZCO,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

No. 20A05-0704-CR-209

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry Shewmaker, Judge
Cause No. 20C01-0610-FC-15

December 13, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Eduardo Orozco appeals his sentence for three counts of criminal recklessness as class C felonies.[1] Orozco raises two issues, which we revise and restate as whether the trial court abused its discretion in sentencing him. We affirm.[2]

The relevant facts follow. On October 8, 2006, Orozco and Danny Rocha were drinking alcohol and using marijuana and cocaine. Orozco drove a vehicle from which Rocha shot a firearm into three different inhabited dwellings in Elkhart County. The State charged Orozco with three counts of criminal recklessness as class C felonies, operating while intoxicated as a class A misdemeanor,[3] and operating a vehicle with a BAC of 0.15 or more as a class A misdemeanor.[4] On February 1, 2007, Orozco pleaded

---

[1] Ind. Code § 35-42-2-2(c)(3) (Supp. 2006).

[2] A copy of the presentence investigation report on white paper is located in the appellant's appendix. We remind the parties that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in his appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

> Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:
>
> (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
>
> (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

[3] Ind. Code § 9-30-5-2(b) (2004).

guilty to three counts of criminal recklessness as class C felonies, and the State dropped the remaining charges. The plea agreement left sentencing to the trial court's discretion.

At the sentencing hearing, the trial court found the following mitigating factors: (1) Orozco's acceptance of responsibility for the crime; (2) his young age; and (3) his acknowledged problems with drug and alcohol addiction. The trial court found the following aggravating factors: (1) Orozco's illegal alien status; (2) his criminal history; (3) his failure to appear in a previous juvenile case; (4) the fact that "there were multiple cases involved here;" and (5) the fact that Orozco committed the present offense while consuming alcohol and drugs. Appellant's Appendix at 12. Finding that the aggravators outweighed the mitigators, the trial court sentenced Orozco to the Indiana Department of Correction for the advisory term of four years for each of the first two counts and ordered that those sentences be served concurrently. The court sentenced Orozco to a term of six years for the third count and ordered that it be served consecutively to the second count, for a total sentence of ten years in the Indiana Department of Correction.

The sole issue is whether the trial court abused its discretion in sentencing Orozco. We note that Orozco's offenses were committed after the April 25, 2005, revisions of the sentencing scheme. In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (Ind. 2007). The reasons given,

---

[4] Ind. Code § 9-30-5-1(b) (2004).

and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion. Id. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse of discretion. Id. Remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record. Id.

Orozco first argues that the trial court abused its discretion in sentencing him because his sentence "should have been the same on all three counts, meaning four . . . years, with all time to run concurrent." Appellant's Brief at 8-9. The determination of whether to impose consecutive or concurrent sentences is entirely at the discretion of the trial judge so long as the trial court does not exceed the combined statutory maximums. See Bryant v. State, 841 N.E.2d 1154, 1157 (Ind. 2006). The simple fact of a criminal history, when taken into consideration with a factor that demonstrates some increased degree of culpability, is sufficient to support the decision to impose consecutive sentences. Id. at 1158. Ind. Code § 35-50-1-2(c) provides that, "except for crimes of violence, the total of the consecutive terms of imprisonment . . . to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted."

Here, the trial court found five aggravating factors, including Orozco's criminal history and the fact that he was using drugs when he committed the present offense. Taken together, these factors are sufficient to support the decision to impose consecutive

sentences. See Bryant, 841 N.E.2d at 1157. The total sentence imposed by the trial court was ten years. Criminal recklessness is not a crime of violence as enumerated at Ind. Code § 35-50-1-2(a). Therefore, the trial court could not sentence Orozco to a term longer than the advisory sentence of a felony one class higher than a class C felony. Because the advisory sentence for a class B felony is ten years, Orozco's total sentence of ten years for three counts of criminal recklessness as class C felonies does not exceed the statutory limit. Accordingly, we cannot say that the trial court abused its discretion in sentencing Orozco to an enhanced consecutive term on the third count of criminal recklessness as a class C felony.[5] See Bryant, 841 N.E.2d at 1158 (holding that the trial court did not abuse its discretion in ordering consecutive sentences for armed robbery and criminal confinement where it found defendant's criminal history and the fact that he had been "lying in wait" before commission of the crime to be aggravating factors); McCarthy v. State, 751 N.E.2d 753, 756 (Ind. Ct. App. 2001) (holding that defendant's six year sentence for involuntary manslaughter, which was a crime of violence, could be ordered to be served consecutively to two consecutive four-year sentences for two counts of criminal recklessness, which were not crimes of violence, even though all crimes arose

---

[5] Orozco also argues that the trial court abused its discretion when, while sentencing him on the third count, it "used both the same aggravating and mitigating circumstances that it used in sentencing [him] on the first two offenses." Appellant's Brief at 7. He argues that it was "inappropriate" to give "the same aggravating factors more emphasis as to the third count." Id at 8. Orozco cites no authority in support of these propositions. Failure to put forth a cogent argument or cite to authority acts as a waiver of the issue on appeal. Davenport v. State, 734 N.E.2d 622, 623-624 (Ind. Ct. App. 2000), trans. denied. Thus, Orozco has waived the issue on appeal. Waiver notwithstanding, we have previously held that a trial court does not err in imposing an enhanced sentence on one count while imposing the presumptive sentence on four other counts of the same offense. See Altes v. State, 822 N.E.2d 1116, 1126 (Ind. Ct. App. 2005) (holding that the trial court did not err in imposing an enhanced sentence on one count of child molesting while imposing the presumptive sentence on four other counts of child molesting), trans. denied.

out of same criminal episode, considering that the total of eight years for criminal recklessness, a Class C felony, was less than the ten year presumptive sentence for a Class B felony), trans. denied.

Orozco also argues that his sentence was "inappropriate" because the trial court gave his criminal history "too much weight." Appellant's Brief at 9-10. He argues that his criminal history, consisting only of juvenile adjudications, is too chronologically remote from the present offense to carry aggravating weight and notes, further, that he has no prior adult arrests or convictions.[6] We conclude that Orozco would merely have us review for an abuse of discretion the weight the trial court assigned to his criminal history, which we cannot do. See Anglemyer, 868 N.E.2d at 491.

For the foregoing reasons, we affirm Orozco's sentence for three counts of criminal recklessness as class C felonies.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur

---

[6] We note that Orozco "had just barely gotten over the age of 18" when he committed the present offense. Transcript at 25.