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:

CHARLES E. STEWART, JR.
Appellate Public Defender
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JUSTIN F. ROEBEL
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

LESLIE MCGUIRE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0512-CR-615
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0410-FA-48

November 16, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Leslie McGuire appeals the sentence imposed by the trial court after he pleaded guilty to one count of battery, as a class C felony.

We affirm.

ISSUE

Whether the trial court abused its discretion when it sentenced McGuire to serve four years at the Department of Correction, with two years executed and two years suspended.

FACTS

On October 1, 2004, the State charged McGuire with attempted murder, a class A felony; aggravated battery, a class B felony; and battery, a class C felony. The information alleged that the victim was Gregory Warren, and that the acts giving rise to these charges occurred on April 11, 2004. On June 27, 2005, McGuire filed a motion for a change of plea hearing and tendered a signed plea agreement. The plea agreement provided that McGuire would plead guilty to battery, as a class C felony; that by pleading guilty he would "be admitting the truth of all the facts alleged in the Information"; that the State would dismiss the other two charges; and that McGuire's sentence would not exceed an executed term of four years. (App. 45).

At a hearing on July 7, 2005, McGuire testified that he was pleading guilty to the charge that on April 11, 2004, he "did knowingly or intentionally, in a rude, angry or insolent manner touch Gregory Warren by means of an unknown iron metal object . . . [a] deadly weapon[]." (Plea Hrg. Tr. 8). In addition, he expressly admitted that on that day

he had "struck [Warren] with [a] metal object . . . . in . . . an angry manner." *Id.* at 10. At the conclusion of the hearing, the trial court accepted McGuire's guilty plea.

The trial court held a sentencing hearing on August 18, 2005. McGuire's counsel explained the circumstances surrounding the offense. The trial court described the scenario as "a soap opera." (Aug. 2005 Sentg. Hrg. Tr. 63). McGuire asked that he be sentenced to probation; the State asked that he be ordered to serve four years executed. The trial court found as a mitigating circumstance that McGuire acted "under strong provocation in that he believed his niece was in someway being threatened," and the aggravating circumstance of a criminal history that included five misdemeanor and two adult felony convictions. It imposed a sentence of four years at the Department of Correction and then suspended all four years and placed McGuire on probation for four years.

On November 22, 2005, the trial court held a hearing "to correct [McGuire's] prior sentence." (Nov. 2005 Sentg. Hrs. Tr. 4). It stated that because it had "neglected to notice that [McGuire] had just gotten off parole in 2004," it was necessary "to correct that sentence." *Id.* The trial court then again imposed a sentence of four years in the Department of Correction but ordered that two years thereof be executed, with two years suspended and on probation.

DECISION

McGuire acknowledges that sentencing decisions lie within the sound discretion of the trial court. *See Jones v. State*, 790 N.E.2d 536, 539 (Ind. Ct. App. 2003). Nevertheless, he asserts that the trial court committed "a manifest abuse of discretion"

when it sentenced him because it cited his criminal history, and his "only felony convictions occurred in 1970, over thirty years ago." McGuire's Br. at 6. We disagree.

Pursuant to the statute in effect at the time of McGuire's offense, the presumptive term for a class C felony offense was four years. *See* Ind. Code. § 35-50-2-6(1). Despite the statutory authority to add up to four years for aggravating circumstances, *see id.*, the trial court did not do so. It is true that the trial court found McGuire's criminal history to be an aggravating factor. The PSI reflects that McGuire had a felony conviction in 1972. In 1979, he was charged with robbery and murder, and he pleaded guilty to murder. He was either incarcerated, on probation, or on parole from 1979 until his discharge on March 27, 2004. Therefore, we cannot say that the dates of McGuire's prior felony convictions preclude their consideration with respect to sentencing on the current conviction. Further, as the Indiana Supreme Court recently declared, when the trial court imposes the statutory presumptive sentence, it is "not required to list aggravating or mitigating factors"; it "must set forth its reasoning only when deviating from the statutory presumptive sentence." *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

Moreover, as already noted, the presumptive sentence for a class C felony offense is four years; the statutory minimum sentence is two years. I.C. § 35-50-2-6. Pursuant to Indiana Code section 35-50-2-2, if the class C felony offense is committed less than seven years after the person was discharged from parole for a prior unrelated felony conviction, the trial court "may suspend only that part of the sentence that is in excess of the minimum sentence." The class C felony battery to which McGuire pleaded guilty was committed on April 11, 2004, which appears to be only fifteen days after McGuire

was discharged from parole on March 27, 2004. The trial court imposed the presumptive sentence, and it ordered suspended the two years of that sentence that is in excess of the minimum sentence. We find no error here.

Affirmed.

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