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:

JEFFREY SCHLESINGER
Crown Point, 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

JOSE RODRIGUEZ,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A05-0510-CR-614
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Diane Ross Boswell, Judge
Cause No. 45G03-0504-FD-38

October 30, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jose Rodriguez asserts the trial court abused its discretion when it sentenced him "without addressing evidence of mitigating factors." (Br. of Appellant at 1.) We affirm.[1]

FACTS AND PROCEDURAL HISTORY

On April 7, 2005, a Hammond Police Officer pulled over the stolen car Rodriguez was driving. In the car with Rodriguez were four other individuals, one of whom was a sixteen-year-old girl. Rodriguez drove away at a high rate of speed, nearly colliding with other cars. He eventually crashed into a building, causing the upper floors of the building to collapse.

The State charged Rodriguez with auto theft as a Class D felony,[2] five counts of resisting law enforcement as Class D felonies,[3] and one count of resisting law enforcement as a Class A misdemeanor.[4] Rodriguez pled guilty to one count of resisting law enforcement as a Class D felony, and in exchange the State dismissed the remaining counts. Sentencing was left to the discretion of the trial court. After a sentencing hearing, the court found:

> I think we could aggravate him based on any other aggravators that we found because this is a plea agreement, he was advised of his Blakely rights and waived those when he entered into the plea agreement. Also, I'm not using any of that as an aggravator.
>
> The Court is going to find - - we're going to accept the plea agreement today, we're going to find that the mandatory consideration is

[1] The Table of Contents in Rodriguez's Appendix provides:

Clerk's Portion	1-30
Sentencing Hearing Transcript	31-44
Pre-Sentence Investigation Report	1-10

(App. of Appellant.) Such a Table of Contents does not facilitate our review, as it does not provide us with the location of such relevant documents as the Abstract of Judgment or the Charging Information. *See* Ind. Appellate Rule 50C ("The table of contents shall specifically identify each item contained in the Appendix, including the item's date.").

[2] Ind. Code § 35-43-4-2.5.

[3] Ind. Code § 35-44-3-3.

[4] Ind. Code § 35-44-3-3.

> that the risk that he'll commit another crime is high, that he has no employment, no GED, he has a history of making bad choices and being a follower.
>
> The nature and circumstances of the crime is that he, while fleeing the police in a stolen vehicle, whether he knew it was stolen or not at the time, he created a substantial risk of bodily harm to the citizens, and he created property damage to a building, that his prior criminal history shows that he has three juvenile convictions or three juvenile adjudications, five misdemeanors and one felony adjudication. The Court finds no mitigators in this case.
>
> The aggravators, the Court finds, are the defendant's criminal history, and based on his criminal history, the Court is going to sentence him to three years in the Department of Correction.

(Tr. at 42-43.)

DISCUSSION AND DECISION

The "Argument" section of Rodriguez's brief is less than one page in length. After setting out the general standard of review for sentencing decisions, Rodriguez provides:

> In this case, evidence was presented at the sentencing hearing that Rodriguez was only twenty years old. There was evidence that he was easily influenced, and his friends lead him into trouble. There was also evidence that he had employment waiting following his incarceration. Because the trial court failed to recognize any of these mitigating factors in sentencing Rodriguez, his sentence should be corrected.

(Br. of Appellant at 3.) Rodriguez provides no citation to the Transcript or Appendix to support those factual allegations. Nor has he provided any legal authority suggesting the court should have found mitigating circumstances under those facts. Because he failed to cite to the Record or to authority, his only appellate argument has been waived. *See Davis v. State*, 835 N.E.2d 1102, 1113 (Ind. Ct. App. 2005) ("A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record."), *trans. denied*. Waiver notwithstanding, we find

Rodriguez was properly sentenced.

Sentencing lies within the discretion of the trial court. *Bocko v. State*, 769 N.E.2d 658, 667 (Ind. Ct. App. 2002), *reh'g denied, trans. denied* 783 N.E.2d 702 (Ind. 2002). The trial court is not required to find mitigating circumstances. *Id.* When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are mitigating, and it is not required to explain why it does not find the proffered factors to be mitigating. *Id.* The trial court's assessment of the proper weight of mitigating and aggravating circumstances and the appropriateness of the sentence as a whole is entitled to great deference and will be set aside only upon a showing of a manifest abuse of discretion. *Id.* Even a single aggravating circumstance may support the imposition of an enhanced sentence. *Id.*

Young age does not "automatically" qualify as a significant mitigator. *Gross v. State*, 769 N.E.2d 1136, 1141 n.4 (Ind. 2002). In fact, it "is neither a statutory nor a per se mitigating factor. There are cunning children and there are naïve adults." *Sensback v. State*, 720 N.E.2d 1160, 1164 (Ind. 1999). When a defendant is in his teens or early twenties, we must determine whether the young offender is "clueless" or "hardened and purposeful." *Monegan v. State*, 756 N.E.2d 499, 504 (Ind. 2001). Rodriguez's criminal history includes three adjudications as a juvenile, five misdemeanor convictions, and one felony conviction. In light of that history, we cannot say the court abused its discretion in declining to find Rodriguez's age a mitigating factor.

Similarly we cannot find the court abused its discretion in declining to find as mitigating that Rodriguez "was easily influenced, and his friends lead him into trouble."

(Br. of Appellant at 3.) This alleged mitigator would have had more credibility if Rodriguez had not already committed at least nine other crimes. Rodriguez had been convicted or arrested in each place he had lived: Chicago, Hammond, and Colorado. In addition, he has an open warrant in Kansas for possession of marijuana based on a stop made when Rodriguez was traveling from Colorado to Hammond. That Rodriguez was succumbing to peer pressure in all of these situations, rather than acting on his own impulses, defies logic.

As for the allegation work was available to Rodriguez on release from prison, the record indicates his mother testified Rodriguez's sister could hire him immediately if he moved to Colorado, and his brother-in-law could get him a job at an oil well making $24 per hour "in about a month or so." (Tr. at 11.) Counsel argued the court should place Rodriguez on a strict probation program, so the court could monitor him closely and help him turn his life around. No testimony indicated work was waiting for Rodriguez in Hammond. To the contrary, his mother testified: "He's been looking for work and because of his past history, nobody would hire him." (*Id.* at 7.) The evidence does not demonstrate the court erred when it declined to find this mitigating factor.

The record does not support Rodriguez's allegation the court abused its discretion by failing to recognize the three mitigators he cites on appeal. Accordingly, we affirm.

Affirmed.

BAILEY, J., and RILEY, J., concur.