

Wardell Wright appeals his conviction and sentence for dealing cocaine as a class B felony.¹ Wright raises two issues, which we revise and restate as:

- I. Whether the trial court erred by denying Wright's motion for discharge under Ind. Criminal Rule 4(C); and
- II. Whether Wright's sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

The relevant facts follow. In October 2003, a confidential informant came to Indianapolis Police Officer Patrick McCloskey and indicated that he had information on a target named Donny English. Officer McCloskey set up an introduction between the informant and an undercover officer. The informant introduced the undercover officer to English as a coworker. On October 16, 2003, the undercover officer purchased cocaine from English. Specifically, English told the undercover officer to pull over, and English went into a residence and returned about five or ten minutes later with cocaine.

On October 20, 2003, the undercover officer attempted to make another purchase. When the officer met English, English directed the officer to pull over to the side of the street and asked him what he wanted. The officer told English that he wanted an "eight ball,"² and English told him how much money he needed. Transcript at 138. The officer

¹ Ind. Code § 35-48-4-1 (2004) (subsequently amended by Pub. L. No. 151-2006, § 22 (eff. July 1, 2006)).

² The undercover officer indicated that an "eight ball" is three and a half grams or an eighth of an ounce of cocaine. Transcript at 147.

gave English money, and English told the officer to stay where he was and he would return, but he did not return. The officer drove to the residence that English had entered the last time the officer had bought cocaine from English. The officer honked his horn but did not get a response. The officer then knocked on the door of the residence, and Wright answered the door. The officer asked if English was around, and Wright indicated that English did not stay at the residence and that he did not know anything about English's business. The officer began walking back to his vehicle when Wright followed him and told the officer that he could come to him for any future purchases and did not need to go through English. Wright gave the officer a phone number and told him that his name was Wardell and that he could find him at the residence.

On October 21, 2003, the undercover officer called Wright and asked him if he had any business. Wright told the officer to stop by his residence. The officer went to the residence and asked Wright for an eight ball. Wright gave the officer a baggy containing cocaine in exchange for money.

On October 27, 2003, the undercover officer called Wright and asked him if he had any business, and Wright told him to stop by the residence. The officer went to the residence, and Wright invited him inside. Wright walked over to one of the drawers in the kitchen, pulled out a scale, and weighed an eight ball for the officer. Wright handed him the cocaine and the officer handed Wright the money.

On October 27, 2003, officers arrested Wright. On October 28, 2003, the State charged Wright with: (1) Count I, dealing in cocaine as a class A felony;³ (2) Count II, possession of cocaine as a class C felony;⁴ (3) Count III, possession of cocaine and a firearm as a class C felony;⁵ (4) Count IV, possession of marijuana as a class A misdemeanor;⁶ (5) Count V, resisting law enforcement as a class A misdemeanor;⁷ (6) Count VI, dealing in cocaine as a class B felony; and (7) Count VII, possession of cocaine as a class D felony.⁸

On December 23, 2003, Wright requested a continuance, which the trial court granted. The trial court vacated the jury trial set for December 29, 2003, and set a jury trial for February 23, 2004.

On February 18, 2004, at a pretrial conference, Wright requested a continuance, which the trial court granted. The trial court vacated the trial date set for February 23, 2004, and held a pretrial conference on March 3, 2004.

³ I.C. § 35-48-4-1.

⁴ Ind. Code § 35-48-4-6 (2004) (subsequently amended by Pub. L. No. 151-2006, § 24 (eff. July 1, 2006)).

⁵ Id.

⁶ Ind. Code § 35-48-4-11 (2004).

⁷ Ind. Code § 35-44-3-3 (2004) (subsequently amended by Pub. L. No. 143-2006, § 2 (eff. July 1, 2006)).

⁸ I.C. § 35-48-4-6.

On March 3, 2004, the trial court held a hearing. Wright's counsel filed a motion to withdraw, and new counsel made an appearance for Wright. The trial court set a jury trial for April 26, 2004.

On April 21, 2004, Wright failed to appear for a pretrial conference. The trial court ordered the bondsman to surrender Wright immediately and issued a rearrest warrant. On April 26, 2004, Wright failed to appear for the jury trial. On September 13, 2004, Wright was arrested.

On September 20, 2004, Wright filed a pro se correspondence with the trial court. On September 22, 2004, Wright and his counsel appeared at a pretrial conference, and the trial court set the jury trial for November 22, 2004. On September 30, 2004, Wright indicated at a pretrial conference that his family was still trying to hire an attorney.

On October 7, 2004, the trial court held a hearing, and an attorney filed an appearance for Wright. Wright's counsel indicated that he had a conflict with the November 22, 2004, trial date. Wright's counsel indicated that he could begin trial on November 29, 2004. The trial court set the jury trial for November 29, 2004.

On November 17, 2004, Wright filed a verified petition to stay the proceedings. On November 19, 2004, the trial court granted Wright's petition to stay the proceedings.

On November 24, 2004, Wright requested a continuance, which the trial court granted. The trial court set a pretrial hearing for January 19, 2005.

At the January 19, 2005, hearing, Wright's counsel indicated to the trial court that he needed a month to six weeks to prepare. Wright's counsel suggested March 21, 2005,

for the jury trial. The parties agreed, and the trial court set the final pretrial hearing for March 16, 2005, and the jury trial for March 21, 2005. On February 16, 2005, the State filed a motion for continuance, which the trial court granted.

On March 16, 2005, the trial court held a pretrial hearing. Wright's counsel informed the trial court that he needed "a sufficient amount of time" to complete discovery. Transcript at 598. At the request of Wright's counsel, the trial court set the jury trial for May 16, 2005.

On May 11, 2005, at a pretrial hearing, the trial court told Wright's counsel that this was the oldest case the court had "by far." Id. at 625. Wright's counsel asked for a continuance due to a conflict. The trial court set a pretrial hearing for the next day.

On May 12, 2005, Wright's counsel indicated that he was "ready to go." Id. at 631. The prosecutor moved to continue for "at least one week." Id. at 632. Wright's counsel objected and stated that one week was not good for him. The trial court asked Wright's counsel to tell him "the next Monday and Tuesday you're good." Id. at 633. Wright's counsel stated that he was clear on July 25th and July 26th. The trial court stated, "That's fine with me. I was – because I would set it for next week but you can't do it next week. So now that – you've asked to continue that and so now I don't care when we set it." Id. at 633. The trial court stated that "[s]o it goes in the minutes that the State moved to continue today. It was reset for next week. The Defense moved to continue next week. Okay. And now it's set for July." Id. at 634.

On July 20, 2005, at a pretrial conference, Wright's counsel informed the trial court that it had filed a motion to suppress and a motion to reconsider the trial court's ruling on the notice of alibi defense. The trial court requested available dates for the hearings. The parties agreed on September 2, 2005, for the hearing, and the trial court denied Wright's motion on September 28, 2005.

On October 12, 2005, the trial court held a pretrial hearing. Wright's counsel indicated that he was ready for trial, but when the trial court informed him that the first available date was November 21, 2005, Wright's counsel indicated that that date would not work for him. The trial court asked about December 5, 2005, and Wright's counsel indicated that that would not work. Wright's counsel suggested December 12, 2005, and the trial court agreed.

On December 7, 2005, the trial court held a pretrial hearing, and the State informed the trial court that it had previously granted the State's motion to continue over Wright's objection. The prosecutor informed the trial court that it could be ready on January 23, 2006. Wright's counsel indicated that this date would not work for him and objected to any date set as "beyond his CR-4 time." Id. at 695. The trial court stated, "I'm going to – you have now raised Criminal Rule 4 which now tolls all the other things." Id. at 697. The prosecutor informed the trial court that she could attend the Rule 4 hearing the same day or the next day. Wright's counsel indicated that he would not be ready by that afternoon and had a conflict the next day. Wright's counsel left the setting

of the hearing to the trial court's discretion. The trial court set a hearing for January 24, 2006. Specifically, the trial court stated:

So we'll show that the Criminal Rule 4 Motion, if you – because of defense counsel's inability to be ready within the time limit that the prosecutor has because she's going for surgery which I find to be a traumatic event, her first day back is February – or January the 23rd. So we will set it for January the 24th on a Criminal Rule Four Motion at nine o'clock.

Id. at 698-699.

On January 23, 2006, Wright filed a motion for discharge. On January 24, 2006, the trial court held a hearing on Wright's motion. The trial court took Wright's motion under advisement and set a trial date for March 6, 2006. On February 28, 2006, the trial court granted Wright's motion. On March 1, 2006, the State filed a motion to reconsider, which the trial court granted on March 3, 2006.

On March 3, 2006, Wright requested an interlocutory appeal, which the trial court granted. The trial court granted Wright's motion to certify interlocutory appeal. On May 31, 2006, this court denied Wright's motion requesting this court to accept jurisdiction of the interlocutory appeal.

On July 19, 2006, the trial court held a pretrial hearing and set a trial date of July 31, 2006, over Wright's objection. On July 27, 2006, Wright filed a motion for discharge, which the trial court denied. On July 31, 2006, the jury trial began. Wright moved for judgment on the evidence for Count V, which the trial court granted. The jury

was unable to render verdicts on Counts I and II,⁹ found Wright not guilty of Counts III and IV, and found Wright guilty of Counts VI and VII.

The trial court merged Count VII into Count VI. The trial court found the fact that Wright had a dependent child and one on the way as a mitigator. The trial court found Wright's criminal history, which included a handgun charge, a prior drug offense, and two current unrelated dealing offenses, as an aggravator. The trial court sentenced Wright to serve sixteen years in the Indiana Department of Correction.

I.

The first issue is whether the trial court erred by denying Wright's motion for discharge under Ind. Criminal Rule 4(C). Wright argues that he should be discharged because the State failed to bring him to trial within the one-year period under Ind. Criminal Rule 4(C). Ind. Criminal Rule 4(C) provides:

No person shall be held on recognizance or otherwise to answer a criminal charge for a period in aggregate embracing more than one year from the date the criminal charge against such defendant is filed, or from the date of his arrest on such charge, whichever is later; except where a continuance was had on his motion, or the delay was caused by his act, or where there was not sufficient time to try him during such period because of congestion of the court calendar; provided, however, that in the last-mentioned circumstance, the prosecuting attorney shall file a timely motion for continuance as under subdivision (A) of this rule. Provided further, that a trial court may take note of congestion or an emergency without the necessity of a motion, and upon so finding may order a continuance. Any continuance granted due to a congested calendar or emergency shall be

⁹ On September 13, 2006, the State filed a motion to dismiss Counts I and II, which the trial court granted.

reduced to an order, which order shall also set the case for trial within a reasonable time. Any defendant so held shall, on motion, be discharged.

The rule places an affirmative duty on the State to bring a defendant to trial within one year of being charged or arrested but allows for extensions of that time for various reasons. Ritchison v. State, 708 N.E.2d 604, 606 (Ind. Ct. App. 1999), reh'g denied, trans. denied. The one-year period is extended by any delay due to: (1) a defendant's motion for a continuance; (2) a delay caused by the defendant's act; or (3) congestion of the court calendar. Isaacs v. State, 673 N.E.2d 757, 762 (Ind. 1996). Delays caused by actions taken by a defendant are chargeable to the defendant regardless of whether a trial date has been set. Cook v. State, 810 N.E.2d 1064, 1065 (Ind. 2004). Upon appellate review, a trial court's finding of court congestion will be presumed to be valid and need not be contemporaneously explained or documented by the trial court. Clark v. State, 659 N.E.2d 548, 552 (Ind. 1995). When a motion for discharge for an Ind. Criminal Rule 4 violation is made prematurely, it is properly denied. Stephenson v. State, 742 N.E.2d 463, 487, n. 21 (Ind. 2001), cert. denied, 534 U.S. 1105, 122 S. Ct. 905 (2002).

The State charged Wright on October 28, 2003. Thus, the State was required to bring Wright to trial by October 28, 2004, unless the one-year period was extended by delays not chargeable to the State. On December 23, 2003, Wright requested a continuance without objection by the State, which the trial court granted. The trial court vacated the jury trial set for December 29, 2003, and set a jury trial for February 23,

2004. This extended the one-year period by fifty-six days.¹⁰ (Cumulative extension (hereinafter, “C.E.”) 56 days).

On February 18, 2004, at a pretrial conference, Wright requested a continuance of the February 23, 2004, trial date, which the trial court granted, and the trial court held a pretrial conference on March 3, 2004. This extended the deadline by nine days.¹¹ (C.E. 65 days).

On April 21, 2004, Wright failed to appear for a pretrial conference. The trial court ordered the bondsman to surrender Wright immediately and issued a rearrest warrant. On April 26, 2004, Wright failed to appear for the jury trial. On September 13, 2004, Wright was arrested on this warrant. Wright concedes that this extended the deadline by 145 days.¹² (C.E. 210 days).

On October 7, 2004, the trial court held a hearing, and an attorney filed an appearance for Wright. Wright’s counsel indicated that he had a conflict with the

¹⁰ This represents the delay between December 29, 2003, and February 23, 2004.

¹¹ This represents the delay between February 23, 2004, and March 3, 2004. We use February 23, 2004, as the beginning point for this calculation because the previous calculation included the days between December 29, 2003, and February 23, 2004. See Henderson v. State, 647 N.E.2d 7, 13 (Ind. Ct. App. 1995) (holding that this court does not charge defendant twice for those days of delay that overlap), reh’g denied, trans. denied.

¹² This represents the delay between April 21, 2004, and September 13, 2004. The State argues that Wright should be charged with the 212 days between April 26, 2004, and November 24, 2004. Specifically the State argues that “[t]he two hundred and twelve days from his trial date until the hearing where he requested a continuance are not charged against the rule because of his flight, his actions of seeking new counsel, and his motion for continuance.” Appellee’s Brief at 11. Even assuming that Wright’s delay accounted for 145 days, the overall delay made Wright’s motions for discharge premature. Thus, we need not address the State’s argument.

November 22, 2004, trial date. Wright's counsel indicated that he could begin trial on November 29, 2004.¹³ The trial court set the jury trial for November 29, 2004. Wright argues that this extended the one-year deadline by seven days.¹⁴ However, when a defendant requests a continuance of his trial date, the delay attributable to the defendant runs from the time the motion is filed through the new date upon which the trial is scheduled to begin. State v. Goble, 717 N.E.2d 1268, 1272 (Ind. Ct. App. 1999) (relying on Henderson v. State, 647 N.E.2d 7, 13 (Ind. Ct. App. 1995), reh'g denied, trans. denied). Thus, the delay attributed to Wright is from October 7, 2004, to November 29, 2004. See, e.g., Goble, 717 N.E.2d at 1272 (holding that the delay between the date the defendant requested a continuance and the date of the rescheduled trial was attributable to the defendant). This extended the one-year period by fifty-three days. (C.E. 263 days).

On November 24, 2004, Wright requested a continuance, which the trial court granted. The trial court set a pretrial date for January 19, 2005. This extended the one-year deadline by fifty-one days.¹⁵ (C.E. 314 days).

¹³ We also note that Wright filed a verified petition to stay the proceedings on November 17, 2004. On November 19, 2004, the trial court granted Wright's petition to stay the proceedings.

¹⁴ This represents the delay between November 22, 2004, and November 29, 2004.

¹⁵ This represents the delay between November 29, 2004, and January 19, 2005. We use November 29, 2004, as the beginning point for this calculation because the previous calculation included the days between October 7, 2004, and November 29, 2004. See Henderson, 647 N.E.2d 7 at 13 (holding that this court does not charge defendant twice for those days of delay that overlap).

At the January 19, 2005, hearing, Wright’s counsel indicated to the trial court that he needed a month to six weeks to prepare. Wright’s counsel suggested March 21, 2005, for the jury trial. The parties agreed, and the trial court set the final pretrial hearing for March 16, 2005, and the jury trial for March 21, 2005. This extended the one-year deadline by sixty-one days.¹⁶ (C.E. 375 days).

On March 16, 2005, the trial court held a pretrial hearing. Wright’s counsel informed the trial court that he needed “a sufficient amount of time” to complete discovery. Transcript at 598. At the request of Wright’s counsel, the trial court set the jury trial for May 16, 2005. This extended the one-year deadline by fifty-six days.¹⁷ (C.E. 431 days)

On May 12, 2005, Wright’s counsel indicated that he was “ready to go.” Transcript at 631. The prosecutor moved for a motion to continue for “at least one week” and indicated that she could be ready “a week from Monday.” *Id.* at 632. Wright’s counsel objected and stated that one week was not good for him. The trial court asked

¹⁶ This represents the delay between January 19, 2005, and March 21, 2005.

Wright appears to argue that the State should be charged with the twenty-nine days between January 19, 2005, and February 17, 2005, because the State requested a continuance. The record reveals that State did not request a continuance on January 19, 2005. Rather, at the January 19, 2005, hearing, Wright’s counsel indicated to the trial court that he needed a month to six weeks. Wright’s counsel suggested March 21, 2005, for the jury trial, and the trial court complied.

¹⁷ This represents the delay between March 21, 2005, and May 16, 2005. We use March 21, 2005, as the beginning point for this calculation because the previous calculation included the days between January 19, 2005, and March 21, 2005. See Henderson, 647 N.E.2d 7 at 13 (holding that this court does not charge defendant twice for those days of delay that overlap).

Wright's counsel to tell him "the next Monday and Tuesday you're good." Id. at 633. Wright's counsel stated that he was clear on July 25th and July 26th. The trial court stated, "That's fine with me. I was – because I would set it for next week but you can't do it next week. So now that – you've asked to continue that and so now I don't care when we set it." Id. at 633. The trial court stated that "[s]o it goes in the minutes that the State moved to continue today. It was reset for next week. The Defense moved to continue next week. Okay. And now it's set for July." Id. at 634. This extended the one-year deadline by sixty-three days.¹⁸ (C.E. 494 days).

On July 20, 2005, at a pretrial conference, Wright's counsel informed the trial court that it had filed a motion to suppress and a motion to reconsider the trial court's ruling on the notice of alibi defense. The trial court requested available dates for the hearings. The parties agreed on September 2, 2005, for the hearing, and the trial court denied Wright's motion on September 28, 2005. Wright concedes that this extended the one-year deadline by sixty-five days.¹⁹ (C.E. 559 days).

On October 12, 2005, the trial court held a pretrial hearing. Wright's counsel indicated that he was ready for trial, but when the trial court informed him that the first available date was November 21, 2005, Wright's counsel indicated that that date would

¹⁸ This represents the delay between May 23, 2005, and July 25, 2005. We use May 23, 2005 because this date represents one week after trial date of May 16, 2005, and represents the State's request for a continuance of a week.

¹⁹ This represents the delay between July 25, 2005, and September 28, 2005.

not work for him. The trial court asked about December 5, 2005, and Wright's counsel indicated that date would not work either. Wright's counsel suggested December 12, 2005, and the trial court agreed. This extended the one-year deadline by twenty-one days.²⁰ (C.E. 580 days).

On December 7, 2005, the trial court held a pretrial hearing, and the State informed the trial court that it had previously granted its motion to continue due to the prosecutor's surgery over Wright's objection. The prosecutor informed the trial court that it could be ready on January 23, 2006.²¹ Wright's counsel indicated that this date would not work for him and objected to any date set as "beyond his CR-4 time." Transcript at 695. The trial court stated, "I'm going to – you have now raised Criminal Rule 4 which now tolls all the other things." *Id.* at 697. The prosecutor informed the trial court that she could attend the Rule 4 hearing the same day or the next day. Wright's counsel indicated that he would not be ready by that afternoon and had a conflict the next day. Wright's counsel left the setting of the hearing to the trial court's discretion. The trial court set a hearing for January 24, 2006. Specifically, the trial court stated:

²⁰ This represents the delay between November 21, 2005, and December 12, 2005.

²¹ The State argues that the prosecutor informed the trial court that it could be ready for trial on December 23, 2005. At the hearing, the prosecutor stated "my first day back is the 23rd" but did not specify a month. The State's motion for continuance states that "Deputy Prosecutor Andrea Props is scheduled to have back surgery on 12-9-2005 and must be off work for six (6) weeks and will not be returning until around 1-23-06." Appellant's Appendix at 78. Thus, we will use January 23, 2006, in our calculation.

So we'll show that the Criminal Rule 4 Motion, if you – because of defense counsel's inability to be ready within the time limit that the prosecutor has because she's going for surgery which I find to be a traumatic event, her first day back is February – or January the 23rd. So we will set it for January the 24th on a Criminal Rule Four Motion at nine o'clock.

Id. at 698-699. On January 23, 2006, Wright filed a motion for discharge.

The State relies on Loyd v. State, 272 Ind. 404, 398 N.E.2d 1260 (1980), cert. denied, 449 U.S. 881, 101 S. Ct. 231 (1980), to argue that the delay between the December 7, 2005, hearing and the date that the prosecutor returned from her surgery was not attributable to the State because of the “emergency and medically related nature of the prosecutor’s request for a delay.” Appellee’s Brief at 14. In Loyd, two days prior to the date scheduled for the defendant’s trial, the prosecutor, who was to try the case, learned that his father had just suffered a massive heart attack and that his mother had terminal cancer. 272 Ind. at 410, 398 N.E.2d at 1266. The prosecutor needed to attend to the emergency needs of his parents in Columbus, Indiana, some 100 miles away. Id. The prosecutor was the sole attorney for the State who was prepared for trial and no other attorney in the prosecutor’s office could reasonably have prepared for trial upon such short notice. Id. Here, unlike in Loyd, the record does not reveal that the prosecutor was the sole attorney for the State who was prepared for trial or could have prepared for trial. Thus, the delay between December 12, 2005, and January 24, 2006, is attributable to the State.

The above delays extended the one-year limit by 538 days to April 19, 2006. We conclude that Wright’s motion for discharge on January 23, 2006, was premature and his

right under Ind. Criminal Rule 4(C) to be brought to trial within one year of being charged had not been violated. Thus, the trial court properly denied Wright's motion for discharge under Ind. Criminal Rule 4(C). See, e.g., Cook, 810 N.E.2d at 1068 (holding that defendant's right under Ind. Criminal Rule 4(C) was not violated).

The trial court set a hearing for Wright's motion for discharge on January 24, 2006. This extended the one-year deadline by one day.²² (C.E. 581 days). On January 24, 2006, the trial court held a hearing on Wright's motion. The trial court took Wright's motion under advisement and set a trial date for March 6, 2006. On February 28, 2006, the trial court granted Wright's motion. On March 1, 2006, the State filed a motion to reconsider, which the trial court granted on March 3, 2006.

On March 3, 2006, Wright requested an interlocutory appeal, which the trial court granted. The trial court granted Wright's motion to certify interlocutory appeal. On May 31, 2006, this court denied Wright's motion requesting this court to accept jurisdiction of the interlocutory appeal. Wright concedes that this extended the one-year deadline by eighty-nine days.²³ (C.E. 670 days).

On July 19, 2006, the trial court held a pretrial hearing and set a trial date of July 31, 2006, over Wright's objection. On July 27, 2006, Wright filed a motion for discharge, which the trial court denied. The above delays extended the one-year limit by

²² This represents the delay between January 23, 2006, and January 24, 2006.

²³ This represents the delay between March 3, 2006, and May 31, 2006.

670 days to August 29, 2006. We conclude that Wright's motion for discharge on July 27, 2006, was premature and his right under Ind. Criminal Rule 4(C) to be brought to trial within one year of being charged had not been violated. Thus, the trial court properly denied Wright's motion for discharge under Ind. Criminal Rule 4(C). See, e.g., Cook, 810 N.E.2d at 1068 (holding that defendant's right under Ind. Criminal Rule 4(C) was not violated).

II.

The next issue is whether Wright's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Our review of the nature of the offense reveals that Wright pursued the undercover officer as a customer after the officer knocked on Wright's door looking for English. On October 21, 2003, and October 27, 2003, Wright sold the officer cocaine.

Our review of the character of the offender reveals that Wright has convictions for carrying a handgun without a license as a class A misdemeanor, operating a vehicle never having received a license as a class C misdemeanor, and possession of cocaine as a class C felony.

After due consideration of the trial court's decision, we cannot say that the sentence is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., *Donnegan v. State*, 809 N.E.2d 966, 979 (Ind. Ct. App. 2004) (holding that the defendant's sentence for dealing in cocaine was not inappropriate in light of the nature of the offense and the character of the offender), trans. denied.

Wright also argues that even if the length of his sentence is not inappropriate, his placement at the Department of Correction is inappropriate. Wright relies on *Davis v. State*, 851 N.E.2d 1264 (Ind. Ct. App. 2006), trans. denied, and argues that community corrections is a more appropriate option because he has expressed a desire to provide for his children.

In *Davis*, the defendant pleaded guilty to two counts of operating a vehicle while intoxicated as class C felonies and a criminal recklessness charge. 851 N.E.2d at 1266. The trial court sentenced the defendant to concurrent eight-year sentences on the operating convictions with two years suspended and a concurrent one-year sentence on the criminal recklessness conviction. Id. The trial court ordered that the first four years of the defendant's executed sentence be served at the Department of Correction and the last two years be served in Community Corrections. Id. at 1266-1267.

On appeal, the defendant argued that her sentence was inappropriate. This court noted that the defendant had made significant efforts to improve herself during the pendency of the case by attending Alcoholics Anonymous meetings and a job-skills training program. Id. at 1268. The defendant had worked to provide for her children and

desired to continue working so that she could pay restitution to the victims. Id. The defendant accepted responsibility for her actions and apologized to the victims. Id. The defendant also did not have a criminal history that could be used as an aggravator. Id. at 1267 (holding that the defendant's prior conviction for operating a vehicle while intoxicated was used to elevate her current conviction from a class D felony to a class C felony and could not be used as a separate aggravator). This court concluded that given the defendant's lack of criminal history and her efforts to improve herself, provide for her children, and pay restitution to the victims, the trial court's sentence was inappropriate. Id. at 1268. We revised the defendant's sentence to four years with the time remaining on her sentence to be served through Community Corrections so that she could continue to work to provide for her children and to pay restitution to the victims. Id. at 1269.

Here, unlike in Davis, Wright does not indicate that he has made significant efforts to improve himself or that he has a history of working. Wright also has a criminal history. After due consideration of the trial court's decision, we cannot say that the placement in the Department of Correction is inappropriate in light of the nature of the offense and the character of the offender.

For the foregoing reasons, we affirm Wright's conviction and sentence for dealing cocaine as a class B felony.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur