

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:

ATTORNEYS FOR APPELLEE:

**PAUL D. STANKO**  
Appellate Public Defender  
Crown Point, Indiana

**GREGORY F. ZOELLER**  
Attorney General of Indiana

**ANN L. GOODWIN**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

BOBBY D. WRIGHT, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 45A03-0905-CR-235  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

---

APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas P. Stefaniak, Jr., Judge  
Cause No. 45G04-0706-FA-18

---

**December 22, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**NAJAM, Judge**

## **STATEMENT OF THE CASE**

Bobby D. Wright appeals his sentence for two counts of Dealing in Cocaine, as Class A felonies, pursuant to a plea agreement. He presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

## **FACTS AND PROCEDURAL HISTORY**

On May 14 and 22, 2007, Wright sold a confidential informant \$40 worth of crack cocaine. Both sales occurred within 1000 feet of a school, although no minors were present at the time of either sale. The State charged Wright with three counts of Class A felony dealing in cocaine and one count of Class B felony dealing in cocaine. A few days before his scheduled trial, Wright pleaded guilty to two counts of Class A felony dealing in cocaine, and the State dismissed the other charges. The plea agreement required that Wright's sentences be concurrent, but otherwise left sentencing open to the trial court's discretion. The trial court sentenced Wright to concurrent executed terms of twenty-five years. This appeal ensued.

## **DISCUSSION AND DECISION**

Wright contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007)

(alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court’s recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, “a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Roush, 875 N.E.2d at 812 (alteration in original).

Here, the trial court identified the following aggravators: Wright’s criminal history; and he previously was a member of a gang. And the trial court identified the following mitigators: Wright’s guilty plea and acceptance of responsibility for his actions; the fact that he was raised by a drug-addicted mother and lived in a dysfunctional household; and the undue hardship of his incarceration on his dependents. The trial court found that the aggravators “very clearly” outweighed the mitigators. Transcript at 64. Nevertheless, the trial court imposed less than the advisory sentence.

Wright contends that his sentence is inappropriate in light of the nature of the offenses. In particular, Wright points out that he sold only small quantities of crack cocaine to the informant and that no children were present at the time of either sale. And Wright suggests that the State arranged the location of the drug buys within 1000 feet of a school to increase the penalties. But the stipulated factual basis indicates that the drug

buys occurred on school days during normal school hours, when children were likely to be present. And the evidence shows that the State did not lure Wright to the location of both drug buys, which was within 1000 feet of a school. In any event, Wright received five years less than the advisory sentence. Wright has not demonstrated that that sentence is inappropriate in light of the nature of the offenses.

Wright also contends that his character is good in that he admitted responsibility and was raised in a dysfunctional household. But the trial court expressly recognized those facts reflecting on his character in its sentencing statement. And Wright's criminal history reflects a bad character. In particular, Wright's adult criminal history consists of two felony and two misdemeanor convictions, and Wright was once adjudicated a delinquent child for possession of marijuana. Wright has not shown that his aggregate sentence, which, again, is five years less than the advisory sentence for a Class A felony, is inappropriate in light of his character.

Affirmed.

FRIEDLANDER, J., and MAY, J., concur.