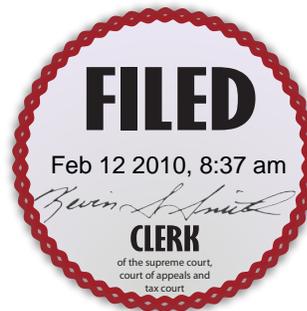


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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TAYLOR C. HAY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 87A04-0907-CR-376

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APPEAL FROM THE WARRICK SUPERIOR COURT  
The Honorable Keith A. Meier, Judge  
Cause No. 87D01-0703-FD-79

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**February 12, 2010**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## **Case Summary**

Taylor C. Hay appeals his thirty-five-month sentence for Class D felony operating a motor vehicle while intoxicated causing serious bodily injury. Specifically, Hay argues that the trial court abused its discretion by failing to find his assistance in the victim's civil suit as a mitigating circumstance and by failing to give his guilty plea sufficient mitigating weight. Hay also argues that his sentence is inappropriate. Finding no abuse of discretion and that Hay has failed to persuade us that his sentence is inappropriate, we affirm.

## **Facts and Procedural History**

In June 2009 Hay pled guilty pursuant to a plea agreement to Class D felony operating a motor vehicle while intoxicated causing serious bodily injury.<sup>1</sup> At the guilty plea hearing, the State laid a factual basis that on February 2, 2007, Hay, drinking at the Fox & Hound pub although he was only twenty years old, had several pints of beer and four shots of tequila. Hay then left the pub in his truck and drove through a stop sign, pinning Anthony Helms' vehicle between his truck and a utility pole. When Boonville Police arrived, Hay admitted that he had been drinking and that he was driving too fast to stop when he saw the stop sign. The Boonville Fire Department had to extract Helms from his vehicle, after which he was life-lined to Deaconess Hospital. Hay was taken to Warrick County Hospital where he consented to a blood draw, which revealed that his blood alcohol content was .20.

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<sup>1</sup> Ind. Code § 9-30-5-4(a)(3).

At the sentencing hearing, the trial court found Hay's criminal record, which included three misdemeanor and two felony convictions, as an aggravating circumstance. The trial court recognized as mitigators that Hay was substance dependent and pled guilty. The court sentenced Hay to thirty-five months, all executed, in the Indiana Department of Correction. Hay now appeals.

### **Discussion and Decision**

Hay contends that the trial court abused its discretion by failing to find his assistance in the victim's civil suit as a mitigating circumstance and by failing to give his guilty plea sufficient mitigating weight. He also contends that his sentence is inappropriate in light of the nature of the offense and his character.<sup>2</sup>

#### **I. Abuse of Discretion**

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* We review the presence or absence of reasons justifying a sentence for an abuse of discretion, but we cannot review the relative weight given to these reasons. *Id.* at 491. When an allegation is made that the trial court failed to find a mitigating factor, the defendant is required to establish that the mitigating evidence is both significant and

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<sup>2</sup> Hay frames his argument on appeal as “[w]hether the trial court erroneously sentenced Mr. Hay to essentially the maximum sentence allowed . . . when Mr. Hay was not in the worst class of OWI offenders.” Appellant’s Br. p. 1. The State construes Hay’s argument, as do we, as two separate arguments challenging the trial court’s sentencing discretion and the appropriateness of his sentence.

clearly supported by the record. *Id.* at 493. However, a trial court is not obligated to accept a defendant's claim as to what constitutes a mitigating circumstance. *Rascoe v. State*, 736 N.E.2d 246, 249 (Ind. 2000). "If the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the trial court is not obligated to explain why it has found that the factor does not exist." *Anglemyer*, 868 N.E.2d at 493 (quotation omitted).

Hay contends that the trial court abused its discretion when it failed to consider his assistance in Helms' DRAM shop civil suit as a mitigating circumstance. Appellant's Br. p. 7. At the sentencing hearing, Hay admitted a letter to show that he had provided information to Helms' private investigator which would assist him in filing a civil suit against Fox & Hound. Tr. p. 20-21. However, there is no evidence that the information given to the private investigator required anything more than minimal effort on Hay's part. Hay has not shown that this mitigating circumstance was significant. Accordingly, the trial court did not abuse its discretion by failing to identify Hay's assistance as a mitigating circumstance.

Hay next argues that the court abused its discretion by failing to afford his guilty plea sufficient mitigating weight. The trial court did acknowledge the guilty plea as a mitigating circumstance and assigned it "a little [weight] . . . but not much." *Id.* at 37. Since this Court cannot review the relative weight given to a mitigating circumstance, this is not a cognizable claim on appeal. *See Anglemyer*, 868 N.E.2d at 491.

## II. Inappropriate Sentence

Hay also argues that his sentence is inappropriate. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article 7, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his or her sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Hay was convicted of a Class D felony. A person who commits a Class D felony shall be imprisoned for a fixed term of between six months and three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7(a).

Regarding the nature of Hay’s offense, the factual basis laid by the State shows that Hay, only twenty years old, consumed beer and tequila at a bar. Hay, whose blood alcohol content reached .20, drove his truck through a stop sign, causing an accident that required Anthony Helms to be life-lined to a nearby hospital. As a result of the accident, Helms will have only fifty percent of his normal lung capacity for the rest of his life. Tr. p. 18; State’s Ex. 1. We cannot say that the nature of this offense renders Hay’s thirty-five-month sentence inappropriate.

Regarding Hay's character, Hay has a history of criminal activity linked to his substance abuse. He has three misdemeanor convictions related to drug charges, and two felony convictions, the second of which he pled guilty to in 2009. Tr. p. 30-31, 35. Hay committed this offense while still on probation and parole from his earlier drug offenses. *Id.* at 33. As the trial court noted, "[G]etting in trouble doesn't seem to change [Hay's] behavior." *Id.* at 35. Nothing about Hay's character renders his sentence inappropriate. Hay has failed to persuade us that his thirty-five-month sentence is inappropriate.

Affirmed.

RILEY, J., and CRONE, J., concur.