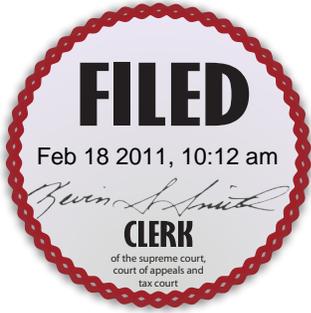


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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SARAH ALLEN, )  
 )  
 Appellant, )  
 )  
 vs. ) No. 48A05-1006-CR-460  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee. )

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APPEAL FROM THE MADISON CIRCUIT COURT  
The Honorable Rudolph R. Pyle III, Judge  
Cause No. 48C01-0905-FA-235

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**February 18, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

Sarah Allen (“Allen”) pleaded guilty in Madison Circuit Court to Class A felony conspiracy to commit burglary resulting in bodily injury. She was ordered to serve a twenty-year sentence in the Department of Correction with seven years executed and thirteen years suspended to probation. Allen appeals and argues that the trial court abused its discretion in its consideration of the aggravating and mitigating circumstances, and also argues that her sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

### **Facts and Procedural History**

On January 5, 2009, Allen conspired with four other individuals to break and enter the dwelling of James Chapman with the intent of robbing and beating him. Because Allen had previously dated Chapman, Allen’s role in the conspiracy was to get Chapman to open the door to his residence.

When Chapman opened the door to Allen, the four other individuals ran around to the front door from the side of Chapman’s house. Chapman attempted to shut the door, but Allen stopped him from completely shutting it by putting her foot in the door. One of Allen’s co-conspirators then aimed a handgun at the door and fired several shots. One bullet went through the door and struck Chapman in the thigh. The bullet nearly hit his femoral artery, and Chapman suffered serious bodily injury from the gunshot wound.

Allen was initially charged with Class A felony robbery resulting in serious bodily injury and Class A felony attempted burglary resulting in bodily injury. An amended information filed was filed on March 3, 2010, and Allen was charged with Class A felony aiding, inducing or causing attempted robbery resulting in serious bodily injury, Class A

felony attempted burglary resulting in bodily injury, and Class A felony conspiracy to commit burglary resulting in bodily injury.

On March 3, 2010, Allen agreed to plead guilty to the Class A felony conspiracy charge, and the remaining charges were dismissed. A sentencing hearing was held on June 28, 2010. The trial court considered Allen's minor criminal history as an aggravating circumstance, and considered her guilty plea, acceptance of responsibility for her actions, her remorse, and her cooperation with law enforcement officers investigating the case as mitigating circumstances. The trial court then ordered her to serve a twenty year sentence, with seven years executed and thirteen years suspended to probation. Allen now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

Allen raises two arguments in challenging her sentence. First, she claims the trial court abused its discretion in its consideration of the aggravating and mitigating circumstances. Allen also argues that her twenty-year sentence with seven years executed and thirteen years suspended to probation is inappropriate in light of the nature of the offense and the character of the offender.

#### *A. The Trial Court's Sentencing Statement*

Trial courts are required to enter sentencing statements when imposing a sentence for a felony offense, and such statements must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007); see also Ind.Code § 35-38-1-1.3 ("After a court has pronounced a sentence for a felony

conviction, the court shall issue a statement of the court's reasons for selecting the sentence that it imposes.”). Sentencing statements serve to guard against arbitrary and capricious sentencing and provide an adequate basis for appellate review. Anglemyer, 868 N.E.2d at 489.

We review the trial court’s sentencing decision for an abuse of discretion. Id. at 490. An abuse of discretion occurs if the trial court fails to issue an adequate sentencing statement. Id. If the sentencing statement includes the finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. Id. at 490. An abuse of discretion occurs if the record does not support the reasons given for imposing sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

First, Allen argues that the trial court improperly considered her “modest criminal history” as an aggravating circumstance. Indiana Code section 35-38-1-7.1 provides that a court may consider a person’s criminal history as an aggravating circumstance. To the extent Allen is arguing that the trial court assigned too much aggravating weight to her minor criminal history, this claim is not available on appeal. See Anglemyer, 868 N.E.2d at 493-94.

Next, Allen argues that the trial court abused its discretion when it failed to consider as mitigating that incarceration will result in undue hardship to her children. A trial court is not obligated to find a circumstance to be mitigating merely because the

defendant advances it. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). Because many persons convicted of crimes have dependents, absent special circumstances showing that the hardship to them is “undue,” a trial court does not abuse its discretion by not finding this to be a mitigating factor. Benefield v. State, 904 N.E.2d 239, 247 (Ind. Ct. App. 2009), trans. denied. Allen has not alleged any special circumstances establishing that her incarceration will result in undue hardship to her dependents, especially in light of the fact that the children will remain in the care of their father and their paternal grandparents who reside nearby.

Allen also argues that the trial court abused its discretion when it failed to consider as mitigating that the crime neither caused nor threatened serious harm to persons or property, or that she did not contemplate that it would do so. See I.C. § 35-38-1-7.1(b)(2). But the trial court did consider this proffered mitigating circumstance and rejected it. See Tr. pp. 36-37. The trial court acted well within its discretion when it refused to consider this proposed mitigating circumstance.

For all of these reasons, we conclude that the trial court did not abuse its discretion in its consideration of the aggravating and mitigating circumstances.

#### *B. Inappropriate Sentence*

The sentencing range for a Class A felony conviction is twenty years to fifty years, with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. Allen argues that her twenty-year minimum sentence with seven years executed in the Department of Correction and thirteen years suspended to probation is inappropriate in light of the nature of the offense and the character of the offender. Specifically, she argues that the

“executed portion of the sentence is inappropriate and should be ordered suspended.”  
Appellant’s Br. at 7.

Indiana Appellate Rule 7(B) provides, “The 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.” “The question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.” Fonner v. State, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007). Allen bears the considerable burden of persuading us that her minimum sentence is inappropriate. See id.

Our supreme court recently held that “appellate review under Indiana Appellate Rule 7 may include consideration of the totality of the penal consequences found in a trial court’s sentence.” Davidson v. State, 926 N.E.2d 1023, 1024 (Ind. 2010). In so holding, the court observed:

In determining the penal consequences for a convicted defendant, trial courts have a variety of options beyond that of determining the length of a sentence. In imposing a sentence, trial judges may order, for example, suspension of the sentence, probation, home detention, placement in a community corrections program, executed time in a Department of Correction facility, or serving of sentences on multiple convictions concurrently rather than consecutively. And the General Assembly provides for additional penalties that can be levied against a defendant such as restitution and fines.

We decline to narrowly interpret the word “sentence” in Appellate Rule 7 to constrict appellate courts to consider only the appropriateness of the aggregate length of the sentence without considering also whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge. This does not

preclude a reviewing court from determining a sentence to be inappropriate due to its overall sentence length despite the suspension of a substantial portion thereof. A defendant on probation is subject to the revocation of probation and may be required to serve up to the full original sentence.

Id. at 1025 (footnotes omitted).

In this case, not only did Allen receive the minimum twenty-year sentence for a Class A felony, but the trial court also suspended thirteen years of that sentence. In spite of the trial court's leniency, Allen argues that the seven-year executed portion of her sentence is inappropriate and the trial court should have suspended the entire twenty year sentence. We disagree. As a matter of law, and under the circumstances presented in this appeal, Allen cannot prevail on her argument that the minimum sentence prescribed by the General Assembly for a Class A felony is inappropriate.

### **Conclusion**

Allen was properly sentenced and her twenty-year sentence with seven years executed and thirteen years suspended to probation is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

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