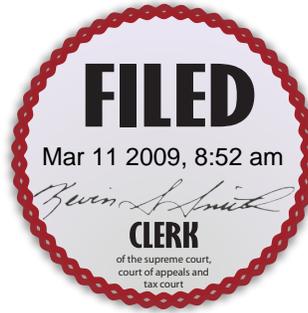


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

**JEFFREY SCHLESINGER**  
Crown Point, Indiana

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

**JOBY D. JERRELLS**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

ARLENE AMBROSE,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 45A03-0806-CR-303

---

APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0608-MR-8

---

**March 11, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BROWN, Judge**

Arlene Ambrose appeals her sentence for dangerous control of a child as a class C felony.<sup>1</sup> Ambrose raises one issue, which we revise and restate as whether the trial court abused its discretion in sentencing her. We affirm.

The relevant facts, as stipulated by Ambrose, follow. On August 16, 2006, while Ambrose was present, Ambrose's fifteen-year-old son J.T. was involved in a shoving match with Jermaine Martin over money allegedly owed by Martin to Ambrose. J.T. later retrieved a rifle from Ambrose's residence, and Ambrose observed J.T. put the rifle in her car. Ambrose and J.T. picked up J.T.'s friend Kneepo Isabell, and the three of them drove to Martin's residence.

J.T. and Isabell exited the vehicle with the rifle and walked to a van parked across the street from Martin's residence. Ambrose observed Martin run across the street to his residence and then observed J.T. point the rifle at Martin as Martin ran away. Ambrose observed J.T. fire the rifle when Martin reached his front yard and had his back to J.T. Ambrose observed Martin fall to the ground and then drove J.T., who was still in possession of the rifle, and Isabell from the scene.

The State charged Ambrose with murder. On September 26, 2007, the State filed an amended information charging her with murder and dangerous control of a child as a class C felony.<sup>2</sup> That same day, Ambrose pled guilty to dangerous control of a child as a class C felony, and the State dismissed the remaining charge.

---

<sup>1</sup> Ind. Code § 35-47-10-7 (2004).

<sup>2</sup> Ind. Code § 35-47-10-7 provides:

A child's parent or legal guardian who knowingly, intentionally, or recklessly permits the child to possess a firearm:

At sentencing, the State presented evidence that Martin had a learning disability and was mentally infirm. Ambrose argued that her guilty plea, willingness to testify against her son, and lack of criminal record were mitigating factors. The trial court responded that it could not “give her any credit for testifying or preparing to testify against her son in this matter.” Transcript at 16. The trial court found Ambrose’s admission of guilt, acceptance of responsibility, and lack of criminal history to be mitigating factors and the “appalling” nature and circumstances of the crime, the fact that Martin was mentally infirm, and the fact that Ambrose had a close family relationship with Martin to be aggravating factors. *Id.* at 18. The trial court found that the aggravating factors outweighed the mitigating factors and sentenced Ambrose to seven years in the Indiana Department of Correction.

The issue is whether the trial court abused its discretion in sentencing Ambrose. The Indiana Supreme Court has held that “the trial court must enter a statement including reasonably detailed reasons or circumstances 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

- 
- (1) while:
    - (A) aware of a substantial risk that the child will use the firearm to commit a felony; and
    - (B) failing to make reasonable efforts to prevent the use of a firearm by the child to commit a felony; or
  - (2) when the child has been convicted of a crime of violence or has been adjudicated as a juvenile for an offense that would constitute a crime of violence if the child were an adult;

commits dangerous control of a child, a Class C felony. However, the offense is a Class B felony if the child’s parent or legal guardian has a prior conviction under this section.

(Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances before the court.” Id. A trial court abuses its discretion if it: (1) fails “to enter a sentencing statement at all;” (2) enters “a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration;” or (4) considers reasons that “are improper as a matter of law.” Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those which should have been found, is not subject to review for abuse of discretion. Id.

Ambrose argues that there is no support in the record for the finding that Martin was mentally infirm. At the sentencing hearing, Martin’s mother testified that Martin had a learning disability and was “easily led to do as anybody asked him to do. If they asked him to do things for them, he would do it, and he (sic) was kind of hard to understand a lot of things.” Transcript at 5-6. Ambrose did not object to the State’s argument that Martin was mentally infirm or present evidence to the contrary. We cannot say that there is no support in the record for the finding that Martin was mentally infirm.

Ambrose next argues that Martin's mental infirmity is not a valid aggravator. Ind. Code § 35-38-1-7.1(7) provides that, in determining what sentence to impose for a crime, the trial court may consider whether "[t]he victim of the offense was mentally or physically infirm." In light of this statutory authority, we cannot say that Martin's mental infirmity is an invalid aggravator or that the trial court abused its discretion by considering it.

Finally, Ambrose argues that the trial court abused its discretion by not finding her willingness to testify against her son to be a mitigating factor. "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 (quoting Fugate v. State, 608 N.E.2d 1370, 1374 (Ind. 1993)). At sentencing, the trial court heard Ambrose's argument that her willingness to testify was a mitigating factor and rejected it, stating that it could not give her credit for testifying against her son. This was the trial court's call, and we cannot say that the trial court abused its discretion in making it. See id. To the extent that Ambrose is arguing that the trial court should have given this factor greater weight, this claim is not available for appellate review. Id.

For the foregoing reasons, we affirm Ambrose's sentence for dangerous control of a child as a class C felony.

Affirmed.

ROBB, J. and CRONE, J. concur

