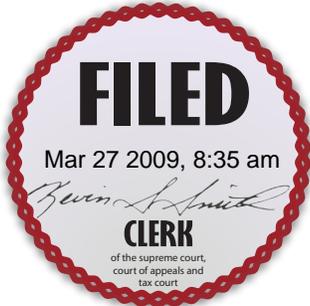


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CRAIG DOUGLAS, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A05-0810-CR-587  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Sheila A. Carlisle, Judge  
Cause No. 49G03-0711-FA-253445

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**March 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Craig Douglas appeals his conviction and sentence for class A felony attempted murder.<sup>1</sup> We affirm.

### **Issues**

Douglas raises two issues, which we restate as follows:

- I. Whether the evidence is sufficient to support his conviction; and
- II. Whether his sentence is inappropriate in light of the nature of the offense and his character.

### **Facts and Procedural History**

The facts most favorable to the verdict follow. On November 22, 2007, Douglas's girlfriend, Reneeca Williams, called her sister, Ashley Golliday, to pick her up from Douglas's apartment. Golliday in turn called their uncle, Michael Parham, to drive her to pick up Williams. Parham picked up Golliday, and they drove to a bus stop where Williams was waiting. Parham's wife and Golliday's eight-year-old son were also in the car.

Douglas was at the bus stop with Williams. Williams got in Parham's car, and Parham got out of the car to talk to Douglas. Parham stood a "couple of feet" from Douglas, pointed his finger at him, and told him that if Douglas hit Williams again, Parham was going to "knock [him] out." Tr. at 204-05. Douglas replied, "I'll kill you." *Id.* at 207. Parham said, "[O]nce they made one gun, they didn't stop making them." *Id.* Parham turned to walk back to the car, but Douglas said something that prompted Parham to turn around and face Douglas. Douglas took a handgun out of his pocket and shot Parham twice, once in the

abdomen and once in the arm. Douglas then turned and ran away. Parham's bullet wounds required a stay of eighteen days in the hospital. Parham's liver, pancreas, and spleen were damaged, and his spleen had to be removed. His right arm bone was shattered.

The State charged Douglas with class A felony attempted murder and class A misdemeanor carrying a handgun without a license. A jury found Douglas guilty as charged. At sentencing, the trial court found that Douglas's expression of remorse, young age (twenty-one years), and lack of education were mitigating factors, but did not find them significant. The trial court found Douglas's progressively serious criminal history, consisting of seven misdemeanor convictions, one felony conviction, and multiple probation violations, a significant aggravating factor. The trial court found that the aggravating factor outweighed the mitigating factors and sentenced Douglas to forty years in the Department of Correction, with thirty-five years executed and five years suspended. Douglas appeals.

## **Discussion and Decision**

### ***I. Sufficiency of the Evidence***

Douglas contends that the evidence was insufficient to rebut his claim of self-defense.

The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. We neither reweigh the evidence nor judge the credibility of witnesses. If there is sufficient evidence of probative value to support the conclusion of the trier of fact, then the verdict will not be disturbed.

*Wallace v. State*, 725 N.E.2d 837, 840 (Ind. 2000).

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<sup>1</sup> Ind. Code §§ 35-42-1-1; 35-41-5-1.

Self-defense is a legal justification for an otherwise criminal act. Ind. Code § 35-41-3-2(a). To prevail on such a claim, the defendant must show that he “(1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm.” *Hobson v. State*, 795 N.E.2d 1118, 1121 (Ind. Ct. App. 2003), *trans. denied*. When a claim of self-defense is raised and supported by the evidence, the State has the burden of negating at least one of the necessary elements beyond a reasonable doubt. *Wilson v. State*, 770 N.E.2d 799, 800 (Ind. 2002). “The State may meet this burden by rebutting the defense directly, by affirmatively showing the defendant did not act in self-defense, or by simply relying upon the sufficiency of its evidence in chief.” *Miller v. State*, 720 N.E.2d 696, 700 (Ind. 1999). “Whether the State has met its burden is a question of fact for the jury.” *Id.*

“The ‘reasonableness’ of a defendant’s belief that he was entitled to act in self-defense is determined from that point in time at which the defendant takes arguably defensive action.” *Henson v. State*, 786 N.E.2d 274, 277-78 (Ind. 2003). “That belief must be supported by evidence that the alleged victim was imminently prepared to inflict bodily harm on the defendant.” *Id.* at 278. Here, although it was Parham who got out of the car, approached Douglas, and pointed his finger at Douglas, Parham did not threaten any immediate harm. Rather, he stated that he would harm Douglas if Douglas hit Williams again. Parham then turned to walk back to his car. Douglas could have walked away, too, and the altercation would have concluded. Instead, Douglas said something, and Parham turned around. Douglas then shot him twice. Parham never raised his voice or made a fist at

Douglas. There was evidence from which the jury could conclude that Douglas did not have a reasonable fear of death or great bodily harm. Douglas's argument is merely an invitation to reweigh the evidence, which we must decline. In sum, we conclude that the State presented sufficient evidence to disprove Douglas's claim of self-defense.

## ***II. Appropriateness of Sentence***

Article 7, Section 6 of the Indiana Constitution authorizes this Court to independently review and revise a sentence imposed by the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Indiana Appellate Rule 7(B) states, "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." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*. The defendant bears the burden of persuading us that the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

"When determining whether a sentence is inappropriate, we recognize that the advisory sentence 'is the starting point the Legislature has selected as an appropriate sentence for the crime committed.'" *Filice v. State*, 886 N.E.2d 24, 39 (Ind. Ct. App. 2008) (quoting *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006)), *trans. denied*. The sentencing range for

a class A felony is twenty to fifty years' imprisonment, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4. Douglas received a forty-year sentence.

As for the nature of the crime, the evidence indicates that Parham was unarmed and did not threaten to kill Douglas, whereas Douglas threatened to kill Parham. Douglas had an opportunity to walk away. Instead, he shot an unarmed man not once, but twice, causing severe injury to his internal organs and shattering his right arm. Moreover, the shooting occurred in front of Parham's wife, two nieces, and eight-year old great nephew. As such, the nature of the crime would support a sentence above the advisory.

As for Douglas's character, although we recognize that he experienced a troubled childhood, his criminal history reveals an entrenched disrespect for the law and a growing propensity for violence. Douglas's criminal history includes the following: a 1997 misdemeanor conversion conviction; a 1999 misdemeanor criminal recklessness conviction; a 2004 misdemeanor disorderly conduct conviction; a 2004 class D felony resisting law enforcement conviction and a misdemeanor carrying a handgun without a license conviction; and two 2007 class A misdemeanor battery convictions. Furthermore, we note that Douglas did not have a license to carry the handgun he used in the shooting and that he had previously been convicted of carrying a handgun without a license. He also violated probation numerous times. In fact, Douglas had an opportunity to reduce his 2004 class D felony resisting law enforcement conviction to a misdemeanor conviction, which should have encouraged him to obey the probation rules, yet he eliminated that opportunity by violating probation. Thus, Douglas has neglected to take advantage of numerous chances for

rehabilitation. Accordingly, we find that Douglas has failed to carry his burden to show that his forty-year sentence is inappropriate in light of the nature of the offense and his character.<sup>2</sup>

Affirmed.

RILEY, J., and MATHIAS, J., concur.

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<sup>2</sup> The State asserts that Douglas's sentence should be increased, citing *McCullough v. State*, 900 N.E.2d 745, 750-51 (Ind. 2009). Douglas's sentence has already been enhanced beyond the advisory, and the State has failed to carry its burden to establish that it should be increased even more.