

**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:

**ALAN K. WILSON**  
Muncie, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**JUSTIN F. ROEBEL**  
Deputy Attorney General  
Indianapolis, Indiana

---

**IN THE  
COURT OF APPEALS OF INDIANA**

---

ALVIN BUCHANAN,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

No. 18A05-0612-CR-719

---

APPEAL FROM THE DELAWARE CIRCUIT COURT  
The Honorable John Feick, Judge  
Cause No. 18C04-0412-MR-1

---

**July 17, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**VAIDIK, Judge**

## Case Summary

Alvin Buchanan (“Buchanan”) appeals his consecutive sentences of forty-five years for voluntary manslaughter as a Class A felony and ten years for attempted robbery as a Class B felony. He contends that in ordering consecutive sentences for the two convictions, the trial court was required by Indiana Code § 35-50-2-1.3(c)(1) to impose the advisory sentence for each conviction, i.e., thirty years for the Class A felony and ten years for the Class B felony. In accordance with *White v. State*, 849 N.E.2d 735 (Ind. Ct. App. 2006), *reh’g denied, trans. denied*, we must disagree. We therefore affirm the judgment of the trial court.

## Facts and Procedural History

After Buchanan committed several crimes on December 5, 2004, the State charged him with: Count I, Murder, a felony;<sup>1</sup> Count II, Possession of Altered Handgun, a Class C felony;<sup>2</sup> Count III, Murder, a felony;<sup>3</sup> Count IV, Voluntary Manslaughter as a Class A felony;<sup>4</sup> and Count V, Attempted Robbery as a Class B felony.<sup>5</sup> Pursuant to a plea agreement, Buchanan agreed to plead guilty to voluntary manslaughter and attempted robbery, and the State agreed to dismiss the remaining counts. The trial court imposed a sentence of forty-five years for the voluntary manslaughter conviction and a consecutive

---

<sup>1</sup> Ind. Code § 35-42-1-1(1).

<sup>2</sup> Ind. Code § 35-47-2-18(2); Ind. Code § 35-47-2-23(b).

<sup>3</sup> I.C. § 35-42-1-1(2).

<sup>4</sup> Ind. Code § 35-42-1-3(a).

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

sentence of ten years for the attempted robbery conviction, for a total executed sentence of fifty-five years. Buchanan appeals.

### **Discussion and Decision**

On appeal, Buchanan argues that the trial court erred in sentencing him. He directs us to Indiana Code § 35-50-2-1.3(c)(1), which provides, in pertinent part, “In imposing consecutive sentences in accordance with IC 35-50-1-2, a court is required to use the appropriate advisory sentence in imposing a consecutive sentence or an additional fixed term.” (Formatting altered). Buchanan contends that Indiana Code § 35-50-2-1.3(c)(1) required the trial court, in ordering consecutive sentences, to impose the advisory sentence of thirty years for the voluntary manslaughter conviction and the advisory sentence of ten years for the attempted robbery conviction. We disagree.

Initially, we note that even though Buchanan was sentenced after April 25, 2005—the effective date of Indiana’s current “advisory” sentencing scheme—he committed his offenses in December 2004 and was therefore entitled to be sentenced under the former “presumptive” sentencing scheme. *See Walsman v. State*, 855 N.E.2d 645, 650-51 (Ind. Ct. App. 2006), *reh’g denied*; *Weaver v. State*, 845 N.E.2d 1066 (Ind. Ct. App. 2006), *trans. denied*; *but see Samaniego-Hernandez v. State*, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005). However, Buchanan asserts that Indiana Code § 35-50-2-1.3(c)(1), which did not exist under the presumptive sentencing scheme and was introduced as part of the advisory sentencing scheme, is ameliorative and therefore should apply to him. *See Richards v. State*, 681 N.E.2d 208, 213 (Ind. 1997) (“The doctrine of amelioration provides that ‘a defendant who is sentenced after the effective date of a statute providing

for more lenient sentencing is entitled to be sentenced pursuant to that statute rather than the sentencing statute in effect at the time of the commission or conviction of the crime.”). He is incorrect. All but one panel of the Court of Appeals that have addressed the effect of Indiana Code § 35-50-2-1.3(c)(1) have determined that it places no new limits on the ability of a trial court to impose consecutive sentences. *See White v. State*, 849 N.E.2d 735, 743 (Ind. Ct. App. 2006), *reh’g denied, trans. denied*; *see also Dixson v. State*, 865 N.E.2d 704, 717 (Ind. Ct. App. 2007), *trans. pending*; *Luhrsen v. State*, 864 N.E.2d 452, 456 (Ind. Ct. App. 2007), *trans. pending*; *Barber v. State*, 863 N.E.2d 1199, 1209-12 (Ind. Ct. App. 2007), *trans. pending*. Therefore, it is not ameliorative and does not apply to defendants, such as Buchanan, who committed their crimes before April 25, 2005. *See White*, 849 N.E.2d at 743.

As Buchanan notes, one panel of this Court has held that this statute prohibits a trial court from “deviat[ing] from the advisory sentence for any sentence running consecutively” and is therefore ameliorative. *Robertson v. State*, 860 N.E.2d 621, 625 (Ind. Ct. App. 2007), *trans. granted*.<sup>6</sup> However, the Indiana Supreme Court has granted transfer in *Robertson*, thereby vacating the opinion of the Court of Appeals. Therefore, unless our Supreme Court instructs otherwise, we will follow the conclusion reached in

---

<sup>6</sup> Buchanan also maintains that “[a]nother panel of this Court construed this statute in the same way in *Weaver v State*[.]” Appellant’s Br. p. 7. In *Weaver v. State*, this Court stated, in a footnote, “A court is required to use an advisory sentence in imposing consecutive sentences in accordance with Ind. Code § 35-50-1-2 (addressing crimes of violence) and in adding an additional fixed term to an habitual offender or to a repeat sexual offender.” 845 N.E.2d 1066, 1070 n.3 (Ind. App. 2006), *trans. denied*. However, in *White*, we noted that the *Weaver* panel was “basically track[ing] the language of Indiana Code § 35-50-2-1.3” and “was not deciding the consecutive sentencing issue” Buchanan raises. 849 N.E.2d at 743 n.8. Buchanan himself concedes that the above-cited statement from *Weaver* “is probably dictum.” Appellant’s Br. p. 7.

*White* and its progeny. Here, we cannot say that the trial court erred in imposing a forty-five-year sentence for Buchanan's voluntary manslaughter conviction.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.