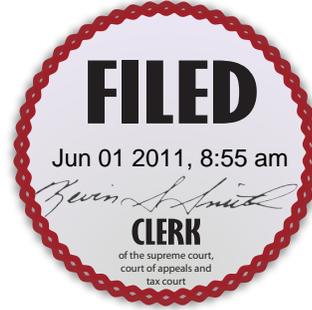


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOSEPH K. TODD, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 43A03-1011-CR-566  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE KOSCIUSKO SUPERIOR COURT III  
The Honorable Joe V. Sutton, Judge  
Cause No. 43D03-1004-FD-59

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**June 1, 2011**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Joseph K. Todd (Todd), appeals his sentence following a plea of guilty for failure to appear, a Class D felony, Ind. Code § 35-44-3-6.

We affirm.

## ISSUE

Todd raises one issue on appeal, which we restate as follows: Whether his sentence is appropriate in light of the nature of the offense and his character.

## FACTS AND PROCEDURAL HISTORY

On June 12, 2009, the State filed an Information charging Todd with non-support of a child, a Class D felony. The trial court tried Todd *in absentia*, found him guilty, and ordered him to appear in person for sentencing which was set for March 1, 2010. That day, Todd appeared and requested a court-appointed counsel for purposes of sentencing. The trial court granted his request and continued the sentencing hearing to April 12, 2010.

On April 12, 2010, Todd failed to appear. At the time of the hearing, Todd, who worked as a commission-based sales representative, was in Indianapolis, Indiana, visiting a customer. Although Todd was aware of the scheduled hearing, he kept the appointment in Indianapolis and attempted to meet both obligations. When Todd noticed that he would not be able to timely appear for the sentencing hearing, he contacted the trial court “to explain [his] situation and [] then they said that [he] would hear something one way or the other.” (Transcript p. 43). When it became clear Todd was not going to appear, the State filed an additional Information, charging him with the instant offense of failure to appear, a Class D

felony. Upon his return home, Todd discovered that a warrant had been issued for his arrest. After taking care of his personal affairs, he turned himself in.

On October 10, 2010, Todd pled guilty to failure to appear, a Class D felony. On October 28, 2010, during a sentencing hearing, the trial court considered Todd's guilty plea as a mitigator and his criminal history as an aggravator. Upon conclusion of the evidence, the trial court sentenced Todd to twelve months executed.

Todd now appeals. Additional facts will be provided as necessary.

### DISCUSSION AND DECISION

Todd contends that his sentence is inappropriate in light of the nature of the offense and his character. This court has authority to revise a sentence "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." Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. *Calvert v. State*, 930 N.E.2d 633, 644 (Ind. Ct. App. 2010). Nevertheless, the defendant bears the burden to persuade the appellate court that his or her sentence has met this inappropriateness standard of review. *Id.*

Here, the trial court sentenced Todd to twelve months executed for a Class D felony. "A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 ½) years." I.C. § 35-50-2-7. As such, Todd received less than the advisory term.

With respect to the nature of the offense, we note that Todd was charged with failure to appear for sentencing in the underlying charge of non-support of a child. In and of itself, the nature of this offense is not exceptional.

Turning to the character of the offender, we recognize that Todd accepted responsibility for his decision to choose his Indianapolis appointment over his court hearing by turning himself in after he discovered he had an open warrant. During his incarceration, Todd was considered a model inmate and was a trustee at the jail.

However, on the other side, Todd has a criminal history. While his history commences with charges unrelated and remote in time to the current charges—*i.e.*, battery in 1995 and 1999—Todd was convicted of the identical underlying offense of non-support of a child in 2002 and served one-year on non-reporting probation. Additionally, in November 2009, Todd was charged with intimidation. In April 2010, he was convicted of check deception and in May 2010, he was charged with forgery and theft.

Over the course of these legal proceedings, we find that Todd has developed an almost chronic habit of failing to appear for hearings. In 1995, Todd failed to appear for his initial hearing on the battery charge and a warrant was issued. In 2002, during the proceedings for his previous conviction of non-support of a child, Todd failed to appear for a status conference and for the final pre-trial conference, after which the trial court issued a warrant for his arrest. In June 2009, Todd was charged with the underlying charge of non-support of a child. During these proceedings, he failed to appear for hearings on August 3, 2009, August 31, 2009, and February 10, 2010. He failed to appear for the bench trial, at which he

was found guilty, and he failed to appear for the sentencing hearing. Over time, Todd has clearly demonstrated a disrespect for our judicial system.

In light of the circumstances before us and mindful of the fact that Todd received less than the advisory sentence, we conclude that the trial court properly sentenced Todd.

### CONCLUSION

Based on the foregoing, we conclude that Todd's sentence was appropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and BARNES, J., concur.