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**IN THE  
COURT OF APPEALS OF INDIANA**

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GREGORY GREEN, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0610-CR-951  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William E. Young, Judge  
The Honorable Michael Jensen, Magistrate  
Cause No. 49G20-0005-CF-87246

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**September 13, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Gregory Green asserts the trial court erred in conducting his trial in his absence.<sup>1</sup>

We affirm.

## DISCUSSION AND DECISION

### 1. Trial in Absentia

Green argues the trial court erred in denying his counsel's request for a continuance when Green did not appear for trial. The burden is on the defendant to explain his absence from trial. *Diaz v. State*, 775 N.E.2d 1212, 1217 (Ind. Ct. App. 2002). Once the trial court determined Green's absence the day of trial was knowing and voluntary, it was incumbent on Green to refute the trial court's initial finding. *Phillips v. State*, 543 N.E.2d 646, 648 (Ind. Ct. App. 1989). The record does not reflect any such explanation, and Green therefore has not met his burden.<sup>2</sup> We must conclude his absence was knowing and voluntary. *Id.*

Affirmed.

SHARPNACK, J., and BAILEY, J., concur.

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<sup>1</sup> Green also asserts the court should not have ordered his enhanced sentences served consecutively. Under Ind. Code § 35-50-2-1.3, which governed the imposition of consecutive terms when Green was sentenced, a trial court was not required to impose the advisory sentence when sentencing a defendant to consecutive terms. *Robertson v. State*, 871 N.E.2d 280, 286 (Ind. 2007).

<sup>2</sup> Green also asserts the trial court should have given him an opportunity at sentencing to explain his absence at trial. The recording equipment malfunctioned at the sentencing hearing, and there was no transcript. The trial court ordered counsel to submit their recollections of the evidence and attached those submissions as exhibits to its sentencing Order. Those exhibits are silent regarding whether Green sought or was improperly denied such an opportunity.