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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**

JOSHUA E. DAVIS,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0704-CR-296

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0510-FB-305

September 28, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Joshua E. Davis appeals from the sentence imposed following his convictions for Class B felony Possession of a Firearm by a Serious Violent Felon¹ (“unlawful possession”) and Class A misdemeanor Resisting Law Enforcement.² We affirm.

FACTS

At approximately 2:30 a.m. on October 22, 2005, Madison County Sheriff’s Lieutenant James Clever stopped a white Jaguar, driven by Davis, that he saw cross over the centerline three times. (Tr. 34-36). Lieutenant Clever asked Davis to step out and identify himself. (Tr. 36). When Davis produced identification, Lieutenant Clever recognized his name as one that had recently appeared on a list of persons subject to active arrest warrants and asked him to empty his pockets. (Tr. 37).

Davis partially emptied his pockets but kept his right hand in his right rear pocket. (Tr. 37). When Lieutenant Clever asked Davis if he had anything in the pocket, Davis replied that he had a “slug[,]” which Lieutenant Clever knew to be a slang term for “handgun.” (Tr. 37). When Lieutenant Clever removed Davis’s hand from his pocket and his handgun from his hand, Davis “started pulling away[.]” (Tr. 37-38). After a brief struggle, Davis broke free from Lieutenant Clever’s grasp and ran off. (Tr. 38). Davis eventually surrendered to authorities. (Tr. 70).

Following a bifurcated trial, a jury convicted Davis of Class B felony unlawful possession and Class A misdemeanor resisting law enforcement. (Tr. 124, 167). The

¹ Ind. Code § 35-47-4-5 (2005). Davis’s unlawful possession conviction was elevated to a Class B felony by virtue of a prior conviction for Class C felony robbery. (State’s Ex. 17; Tr. 140-41).

² Ind. Code § 35-44-3-3 (2005).

trial court sentenced Davis to twelve years of incarceration for unlawful possession and one year for resisting law enforcement, both sentences to be served concurrently. (Appellant's App. 9). The trial court found, as aggravating circumstances, Davis's criminal history, that he had violated probation in the past, and that he committed multiple offenses. (Tr. 195-96). The trial court found Davis's learning disability and his "mental status" to be a mitigating circumstance. (Tr. 196; Appellant's App. 2).

DISCUSSION AND DECISION

Whether the Trial Court Abused its Discretion in Sentencing Davis

Davis's offenses were committed after the April 25, 2005, revisions to Indiana's sentencing scheme. Under this new scheme, "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). 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." *Id.*

A trial court abuses its discretion if it fails (1) "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 490-91. 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 to those which should have been found, is not subject to review for abuse of discretion. *Id.*

Davis contends not that the trial court abused its discretion in finding aggravating circumstances or in failing to find mitigating circumstances, but only that the trial court improperly assigned weight to those that it did find.³ As *Anglemyer* makes clear, however, we cannot review the trial court’s weighing of aggravating or mitigating circumstances for an abuse of discretion. *Id.* Consequently, we cannot address the specific claim Davis makes in this appeal.

The judgment of the trial court is affirmed.

NAJAM, J., and MATHIAS, J., concur.

³ Although Davis mentions Indiana Appellate Rule 7(B), which is the source of our power to review sentences for appropriateness, and Article I, Section 16, of the Indiana Constitution, which provides that “all penalties shall be proportioned to the nature of the offense[.]” he develops no independent arguments on these bases. Consequently, we will not review Davis’s sentence for appropriateness or proportionality.