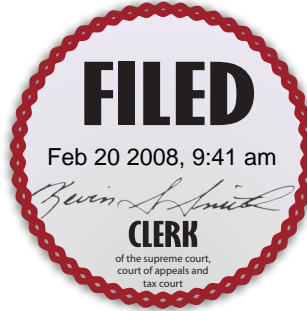


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

DAVID ROSSELOT
Kokomo, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHN W. FERGUSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)

No. 34A04-0703-CR-176

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable Stephen M. Jessup, Judge
Cause No. 34D02-0511-FB-446

February 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

John W. Ferguson appeals his conviction of battery as a Class C felony.¹ Because he failed to cite any authority in support of his arguments, they are waived for appeal. Waiver notwithstanding, we find no abuse of discretion in his six-year sentence. Accordingly, we affirm.

STATEMENT OF FACTS

Ferguson was in the backyard of the house where he lived with his girlfriend Tracy Marsh and Tracy's minor daughter ("A.M."). Visiting that day were Tracy's niece, Krishawana Marsh, and Krishawana's eight-month-old child. Elinathan Green arrived to pick up his girlfriend Krishawana and their child. Although he was asked to park down the street, Green parked in the driveway. A verbal and then physical altercation erupted between Green, Tracy, and A.M. During this fight, Ferguson hit Green in the forehead with a pipe, causing injury requiring a partial craniotomy.

The jury found Ferguson guilty of battery as a Class C felony. The trial court sentenced Ferguson to six years in the Department of Correction.²

DISCUSSION AND DECISION

Ferguson asserts the trial court erroneously denied a jury instruction on defense of others and erroneously sentenced him to six years imprisonment. However, Ferguson's

¹ Ind. Code § 35-42-2-1(a)(3).

² Ferguson's counsel included the Presentence Investigation Report ("PSI") on white paper in the Appendix. As noted on the first page of that document, "This report is confidential according to Ind. Code §§ 35-38-1-13 and may only be released with specific authorization." (App. at 182.) Therefore, the PSI should have been filed pursuant to Ind. Trial Rule 5(G). *See* Ind. App. R. 9(J). We admonish counsel to protect the privacy of his clients by filing documents in accordance with those rules.

brief barely contains a cogent argument and is devoid of citation to authority.³ “A party waives an issue where the party fails to develop a cogent argument or provide adequate citation to authority and portions of the record.” *Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005), *trans. denied* 841 N.E.2d 191 (Ind. 2005); Ind. Appellate Rule 46(A)(8). Thus, Ferguson’s issues are waived for appeal.

Because resolution of Ferguson’s sentencing argument is straightforward, we briefly address it despite the waiver. For his Class C felony conviction, the court had authority to sentence Ferguson to serve between two and eight years, with four years the presumptive sentence. *See* Ind. Code § 35-50-2-6 (2003). Ferguson claims his six-year sentence is excessive because he has dependents, the “victim may have contributed to the situation giving rise to the charge herein,” (Appellant’s Br. at 11), and the only aggravator was his criminal history and noncompliance with prior probation.

Trial courts have broad discretion to determine a sentence. *Henderson v. State*, 769 N.E.2d 172, 179 (Ind. 2002). That discretion includes the ability to increase or decrease the sentence from the presumptive based on aggravating or mitigating factors. *Id.* We will not modify the sentence imposed by the trial court unless a clear abuse of discretion has occurred. *Id.*

We cannot find the court erred in giving little mitigating weight to Ferguson’s need to support his dependents. His three daughters were 27, 18, and 17 years old at the time the PSI was completed. (*See* App. at 188.) He also asserts he has to raise his

³ Ferguson does cite the battery statute in his Statement of Facts.

granddaughter, but his brief does not explain why she is his dependent and his PSI does not list her as a dependent. (*See id.*) “The trial court is not required to assign the same value to a mitigating circumstance as does the defendant.” *Glass v. State*, 801 N.E.2d 204, 208 (Ind. Ct. App. 2004).

When we compare the significance of Ferguson’s criminal history⁴ with the two minor mitigators found by the court, Green’s role in the fight and Ferguson’s dependents, we cannot find the court abused its discretion in imposing a six-year sentence. *See id.* at 209 (finding criminal history justified aggravated sentence despite minor mitigators). Accordingly, we affirm.

Affirmed.

DARDEN, J., and CRONE, J., concur.

⁴ The PSI indicates Ferguson’s criminal history “includes five felony convictions, ten misdemeanors,” and repeated non-compliance with the terms of probation. (App. at 188.)