ATTORNEY FOR APPELLANT:

THOMAS D. SARVER
Goebel Law Offices
Crawfordsville, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

THOMAS J. EATON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 54A04-0708-CR-432
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MONTGOMERY SUPERIOR COURT
The Honorable David A. Ault, Judge
Cause No. 54D01-0609-FB-231

December 26, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Thomas J. Eaton appeals the six-year term of incarceration that was imposed following his conviction for Attempted Manufacture of Methamphetamine,[1] a class B felony. Eaton contends that the trial court erred when it did not issue a sentencing statement and claims that a period of incarceration was not warranted because he was not directly involved in the manufacture of the drug. Hence, Eaton argues that the trial court should have placed him on work release or house arrest. Moreover, Eaton claims that his sentence is inappropriate in light of the nature of the offense and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

On June 4, 2006, Eaton assisted Ryan Hodges in stealing some anhydrous ammonia, which was the final ingredient that Hodges needed to manufacture methamphetamine. Early that morning, Eaton drove Hodge to a Co-Op in Wingate and waited in the vehicle while Hodge took the ammonia.

Sometime after Hodges had manufactured the methamphetamine and given some of it to Eaton, the police arrested Eaton and charged him with the above offense and four other offenses that related to the theft of the anhydrous ammonia. The State also alleged that Hodges was a habitual substance offender.

On May 22, 2007, a plea agreement was filed in the trial court, which provided that Eaton would plead guilty to attempted manufacture of methamphetamine in exchange for the

[1] Ind. Code § 35-48-4-1.

dismissal of the remaining counts.[2] The agreement also provided that the executed portion of the sentence would be capped at six years. Eaton pleaded guilty to the attempted manufacturing charge on June 21, 2007, and the trial court imposed a six-year sentence of incarceration. Eaton now appeals.

DISCUSSION AND DECISION

Eaton claims that his sentence must be set aside because the trial court did not articulate its reasons for imposing a six-year executed sentence.[3] Moreover, Eaton contends that the six-year minimum sentence was inappropriate because the trial court should have sentenced him to work release or placed him on house arrest.

In resolving Eaton's contentions, we initially observe that alternative sentences including placement of a defendant in a work release program is not an entitlement, "but, as with probation, placement in the program is a matter of grace and a conditional liberty that is a favor, not a right." Patterson v. State, 750 N.E.2d 879, 882 (Ind. Ct. App. 2001). Notwithstanding the general rule, Eaton maintains that his sentence must be vacated because the trial court did not issue a sentencing statement detailing the reasons for imposing the sentence.

In Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), our Supreme Court observed that

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[2] The plea agreement further provided that Eaton would plead guilty to the charge of possession of precursors for the manufacture of methamphetamine. However, the State dismissed this charge at the guilty plea hearing. Appellant's App. p. 24-25.

[3] Indiana Code section 35-50-2-5 provides in relevant part that "[a] person who commits a Class B felony shall be imprisoned for a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years."

> construing what we believe is a legislative intent to retain the traditional significance of sentencing statements we conclude that under the new statutory regime Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. In order to facilitate its underlying goals, . . . the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence.

(Emphasis added). That same day, our Supreme Court also decided Windhorst v. State, 868 N.E.2d 504 (Ind. 2007), a case in which the trial court did not issue a sentencing statement. In affirming the defendant's sentence, the Windhorst court observed:

> Obviously not having the benefit of our ruling in Anglemyer, the trial court in this case did not enter a sentencing statement. Rather, adhering to long-standing precedent, which required no such statement when imposing the presumptive sentence, the trial court simply sentenced Windhorst to the advisory term without explaining its reasons.
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> . . .
>
> Here, even if the trial court were on notice of its obligation to enter a sentencing statement—which it was not—and simply failed to do so, we nonetheless would not be inclined to remand this cause for further consideration.
>
> . . .
>
> In this case, the Court of Appeals . . . reviewed Windhorst's sentence under Indiana Appellate Rule 7(B) and declined to revise it.

Id. at 507. In accordance with Windhorst, we will proceed to analyze Eaton's claims under Indiana Appellate Rule 7(B).

Pursuant to Indiana Appellate Rule 7(B), this court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, it is determined that the sentence is inappropriate in light of the nature of the offense and the character of the offender. It is the burden of the defendant appealing his sentence to "persuade the appellate court" that his sentence "has met this inappropriateness standard of review." Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

In this case, although Eaton maintains that his participation in the offense was only "minimal," appellant's br. p. 7, it is apparent that Hodges could not have completed manufacturing the methamphetamine without his assistance. Moreover, even assuming for the sake of argument that Eaton's participation in the commission of the crime was nominal, the trial court nonetheless imposed the minimum sentence of six years for the offense. Indeed, the trial court did not have the option of suspending any of the sentence because Eaton had a prior felony conviction. Ind. Code § 35-50-2-2(b)(1). Therefore, we cannot say that the nature of the offense aids Eaton's inappropriateness argument.

Turning to his character, the pre-sentence investigation report indicates that Eaton was convicted of operating a vehicle while intoxicated in 1991. Appellant's App. p. 42. In 1998, he was convicted of attempted dealing in a methamphetamine and sentenced to ten years. Although the trial court permitted Eaton to serve the first year of that sentence on home detention, he was arrested for possession of precursors in 2004. Id. at 43. Additionally, it was determined at the sentencing hearing in the instant case that Eaton had ingested one gram of methamphetamine every day for nearly six months. Id. at 105.

In light of Eaton's history of criminal activity and continued substance abuse, we do not find his sentence to be inappropriate. As a result, we will not disturb Eaton's six-year executed sentence, and conclude that the trial court did not err in ordering Eaton to serve the executed sentence instead of imposing work release or house arrest.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.