

DEFENDANT’S SENTENCING MEMORANDUM

PURPOSE

Pursuant to I.C. 35-38-1-11, this Memorandum is presented to assist the Court in its determination of an appropriate sentence to be imposed and to offer sentencing alternatives available to the Court.

The format of this Memorandum will present the applicable law authorizing this Court to impose a discretionary sentence, the particular facts of this case that must be considered in arriving at a just decision and the Defendant’s sentencing proposals. A sentence must be appropriate in light of the character of the Defendant and the circumstances of the offense. Walker v. State, 747 N.E.2d 536 (Ind. 2001). Despite the statutory amendments to Indiana’s sentencing scheme, Ind. Code § 35-38-1-3(3) still requires that the Court make a statement setting forth the court's reasoning for selecting a sentence and the mitigators and aggravators that it found. Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007). The important purpose behind these requirements “is to guard ‘against arbitrary sentences and provid[e] an adequate basis for appellate review.’” Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006) (quoting Morgan v. State, 675 N.E.2d 1067, 1074 (Ind. 1996)).

MITIGATORS

[Insert statutory and non-statutory mitigators, along with applicable facts supporting the mitigators].

AGGRAVATORS

[Insert statutory and non-statutory aggravators that could possibly be used against the Defendant]. The Defendant must have the opportunity to refute information in the pre-sentence report. Yates v. State, 429 N.E.2d 992 (Ind.Ct.App. 1982).

SENTENCING PROPOSAL

Based on the nature and character of the crime and the Defendant, the following sentenced is appropriate: [insert sentencing proposal].

REFERENCES

I.C. 35-38-1-11 (the defendant may attach written statements of others in support of facts alleged in the memorandum).

A.B.A. STANDARDS FOR CRIMINAL JUSTICE PROSECUTION FUNCTION AND DEFENSE FUNCTION, Standard 4-8.1 (3rd Ed.).

CASE LAW

Anglemyer v. State, 868 N.E.2d 482 (Ind. 2007) (under Indiana's new statutory sentencing regime, trial courts are required to issue sentencing statements whenever imposing sentence for a felony offense; sentencing statement must include a reasonably detailed recitation of trial court's reasons for imposing a particular sentence. If recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. The standard of review on appeal of a trial court's sentencing decision is abuse of discretion. The relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse, but defendant may challenge appropriateness of his sentence on grounds outlined in Appellate Rule 7(B)).

Ramos v. State, 869 N.E.2d 1262 (Ind.Ct.App. 2007) (trial court erred in failing to enter a sentencing statement setting forth its reasons for imposing an executed sentence of ten years).

Berry v. State, 904 N.E.2d 365 (Ind.Ct.App. 2009) (sentencing statement not required for probation revocations).