

NOTE: This motion applies only to offenses committed before April 25, 2005, prior to the advisory sentencing scheme.

DEFENDANT’S MOTION TO PRECLUDE THE STATE FROM CHARGING, FILING OR PRESENTING ANY SENTENCING AGGRAVATORS

The Defendant, by counsel, respectfully requests the Court to issue an Order precluding the State from filing, charging or presenting, in any way, sentencing aggravators. In support, the Defendant states the following:

1. On [insert date], the Court ordered the State to disclose, charge and file, any aggravating sentencing factors, pursuant to Ind. Code § 35-38-1-7.1, by the omnibus date which in this case was on [insert date].

2. The State failed: [PICK ONE; to file any charged aggravator or filed untimely charged aggravators on [insert date] and/or the State failed to file the charge aggravator with particularity or failed to produce discovery regarding the charge].

3. Under, Blakely v. Washington, 542 U.S. 296, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), the U.S. Supreme Court, in considering the Sixth Amendment right to a trial by jury, held that a trial judge lacks the authority to impose a sentence that depends upon a fact not found by a jury or admitted in a guilty plea. The Blakely Court found sentencing factors that act as enhancements are, in essence, charges or elements that must be charged, presented to a jury, and found beyond a reasonable doubt. Id. at 301, 2536.

4. The State’s failure to timely charge aggravators, or charge with particularity in violation of Ind. Code § 35-34-1-2, or to produce discovery denies the Defendant the opportunity to prepare his defense in violation of both the federal and state constitutions. United States Constitution, 14th Amendment; Indiana Constitution, Art. I, §§ 12 & 13.

WHEREFORE, the Defendant respectfully requests the Court issue an Order precluding the State from filing, charging or presenting, in any way, sentencing aggravators, and for all other relief just and proper in the premises.