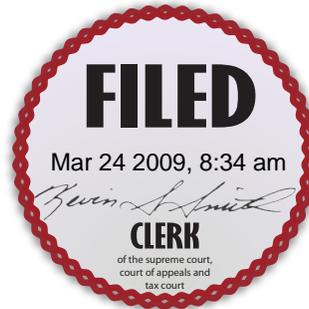


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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CHRISTOPHER E. CASTILLO, )

Appellant-Defendant, )

vs. )

No. 45A04-0807-CR-416

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0708-FC-104

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**March 24, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Judge**

### Case Summary and Issue

Following a jury trial, Christopher Castillo appeals his sentence of twenty-five years, with nine years suspended, for four counts of Class C felony reckless homicide and six counts of Class D felony criminal recklessness. On appeal, Castillo raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offenses and his character. Concluding Castillo's sentence is not inappropriate, we affirm.

### Facts and Procedural History

On April 10, 2006, Castillo and a friend decided to race their vehicles. The race was short lived, however, because Castillo's friend's vehicle broke down, so Castillo proceeded on his own. After accelerating to between 98 and 112 miles per hour, Castillo swerved to avoid a vehicle in the oncoming lane that was turning left. Castillo's vehicle clipped the oncoming vehicle, careened to the right, and struck ten pedestrians, killing four and seriously injuring six. Evidence admitted at trial indicated that Castillo's vehicle was traveling between 85 and 98 miles per hour when it struck the pedestrians and that the speed limit in that area was 45 miles per hour.

On August 24, 2007, the State charged Castillo with four counts of Class C felony reckless homicide and six counts of Class D felony criminal recklessness. A jury found Castillo guilty on all counts. At sentencing, the trial court found that the nature and circumstances of the offenses, the commission of the offenses in the presence of children, and the fact that one of the deceased victims was less than twelve years of age were aggravating circumstances and that Castillo's lack of criminal history was a mitigating

circumstance. Based on these findings, the trial court sentenced Castillo to four years for each reckless homicide count and eighteen months for each criminal recklessness count. The trial court also ordered that Castillo serve the terms consecutively, resulting in an aggregate sentence of twenty-five years, with nine of those years suspended. Castillo now appeals.

### Discussion and Decision<sup>1</sup>

Castillo argues his sentence is inappropriate. This court has authority to revise a sentence “if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). We may “revise sentences when certain broad conditions are satisfied,” Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005), and recognize that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed,” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we examine both the nature of the offenses and the character of the offender. Payton v. State, 818 N.E.2d 493, 498 (Ind. Ct. App. 2004), trans. denied. When making this examination, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 206 (Ind. Ct. App. 2007), trans. denied. In conducting this review, however, the burden is on the defendant to demonstrate that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

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<sup>1</sup> Castillo has not included a copy of the presentence investigation report as part of the record on appeal. Although that document is of great importance when reviewing sentencing decisions, see Perry v. State, 845 N.E.2d 1093, 1094 n.2 (Ind. Ct. App. 2006), trans. denied, we will do our best to address Castillo’s claim based on the record before us.

The trial court sentenced Castillo to four years for each of his four Class C felony reckless homicide convictions and eighteen months for each of his six Class D felony criminal recklessness convictions, all to be served consecutively, resulting in an aggregate term of twenty-five years with nine of those years suspended. As such, Castillo received the advisory term for each of his ten convictions. See Ind. Code § 35-50-2-6(a) (“A person who commits a Class C felony shall be imprisoned for a fixed term of between two (2) and eight (8) years, with the advisory sentence being four (4) years.”); Ind. Code § 35-50-2-7(a) (“A person who commits a Class D felony shall be imprisoned for a fixed term of between six (6) months and three (3) years, with the advisory sentence being one and one-half (1 1/2) years.”); Weaver v. State, 845 N.E.2d 1066, 1072 n.4 (Ind. Ct. App. 2006) (explaining that a defendant’s total sentence includes both the executed and suspended portion of the sentence).

Regarding the nature of the offenses, the trial court noted they were aggravated because Castillo had received several citations for speeding, they occurred in the presence of children, and one of the deceased victims was less than twelve years of age. Castillo’s driving record is more appropriately analyzed in relation to his character, which we address below, and the fact that one of the victims was less than twelve years of age makes the offense relating to that victim more egregious than is typical. Cf. Ind. Code § 35-38-1-7.1(a)(3) (stating that the trial court may consider as an aggravating circumstance that the victim was less than twelve years of age). We are skeptical that the presence of children makes the offenses more egregious because the statute relating to findings of aggravators by the trial court states the defendant must “knowingly” commit

the offenses in the children's presence, Ind. Code § 35-38-1-7.1(a)(4)(B), and Castillo's offenses involve reckless conduct. Nevertheless, we need not address this concern because even if Castillo's offenses are not more egregious than is typical, that point is accounted for in the fact that he received the advisory sentence. That said, we do consider Castillo's offenses more egregious for a reason not found by the trial court, namely, that Castillo was travelling more than twice the legal speed limit immediately prior to striking the pedestrians. That fact certainly makes Castillo's offenses more egregious, and, more to the point, fails to convince us that his sentence is inappropriate.

Regarding Castillo's character, we note, as the trial court did, that he does not have a significant criminal history in terms of felony convictions. We also note, however, again as the trial court did, that although this fact generally would comment favorably on Castillo's character, it is tempered by the fact that Castillo has received several citations for driving-related offenses, particularly speeding.<sup>2</sup> For the trial court, these citations commented negatively on Castillo's character because he "didn't give any fore thought [sic] to the fact that [<sup>1</sup>]hey, I've been getting traffic tickets, I been [sic] going fast. Pretty soon my luck is going to run out, I'm going to have an accident.<sup>[2]</sup>" Id. at 57. We agree with the trial court's assessment.

We also note in closing that Castillo argues his statement of remorse comments favorably on his character. That the trial court did not find Castillo's purported remorse to be a mitigating circumstance suggests it was less than genuine. See Corrales v. State,

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<sup>2</sup> The record does not indicate the precise nature of these offenses, though the prosecutor stated during closing argument at sentencing that Castillo had received "a ticket for a driving offense . . . every month in the five months leading up to [these] offense[s]," tr. at 45, and Castillo himself conceded he had received "a lot of speeding tickets," id. at 55. We reiterate that it would have aided our review to include a copy of the presentence investigation report, as the report could have clarified Castillo's driving record.

815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004) (“[S]ubstantial deference must be given to a trial court’s evaluation of remorse. The trial court, which has the ability to directly observe the defendant and listen to the tenor of his or her voice, is in the best position to determine whether the remorse is genuine.”). Moreover, we note that Castillo’s statement during sentencing could be interpreted as remorse over facing prison time, rather than remorse over the suffering he had caused, as he claimed he was “not a criminal,” and described his decision to drive at a high rate of speed as an “honest mistake.” Tr. at 55. Nevertheless, even if we credited Castillo’s remorse as genuine, such favorable commentary would be balanced against his poor driving record, which again is accounted for by the fact that he was sentenced to advisory terms for each of his offenses.

The burden was on Castillo to prove that his sentence was inappropriate in light of the nature of the offenses and his character. After due consideration of the trial court’s decision and of the record, we conclude Castillo has not sustained his burden. Thus, it follows that Castillo’s sentence is not inappropriate.

#### Conclusion

Castillo’s sentence is not inappropriate in light of the nature of the offenses and his character.

Affirmed.

CRONE, J., and BROWN, J., concur.