

## ARGUMENT

### **Trial courts should be required to continue the decades-old practice of finding aggravating and mitigating circumstances and making sentencing statements.**

Anglemyer advanced three distinct bases on which this Court could affirm the venerable requirement that trial courts articulate and weigh aggravating and mitigating circumstance in well-reasoned sentencing statements: statutory construction, Article VII, Section 4 of the Indiana Constitution, and this Court's supervisory power. Pet. to Trans. at 5-12. The State says little about the first, nothing about the third, and seems to suggest the second is a panacea. Rather than conceding that sentencing statements, a staple of sentencing hearings for the past three decades, should be continued, the State instead posits that review under Appellate Rule 7(B) is good enough. Br. in Opp'n to Trans. at 5-6. As previously argued, though, 7(B) review, with its "central focus on the role of the trial judge," cannot function effectively without a sentencing statement from trial courts. Pet. to Trans. at 9 (quoting Serino v. State, 798 N.E.2d 852, 856-57 (Ind. 2003)).

Without a sentencing statement, an appellate court has no way to know which factors were considered and weighed in the trial court's decision, which makes giving "due consideration" to the trial court's sentencing decision," id. at 6, wholly impossible. Appellate courts cannot adequately "review a trial court's sentencing decision and determine whether the [trial] court failed to consider or incorrectly considered relevant sentencing factors" without a reasoned sentencing statement. Br. in Opp'n to Trans. at 5-6. If the trial court says nothing at sentencing, "appellate courts will [not] still be able to consider whether a trial court properly considered mitigating circumstances such as age or a guilty plea and aggravating circumstances such as criminal history," id. at 6, except perhaps through ESP. Even more troubling, under this trial-court-says-nothing regime a

trial court could presumably forbid defendants (and the State) from offering any evidence at sentencing before imposing sentence within a broad range with no explanation. Pet. to Trans. at 10-11. The State offers no response to this possibility, which is only a short step beyond the abolition of sentencing statements, which it has endorsed.

Next, as regards statutory construction, the State acknowledges that the court of appeals found “a conflict” between the requirement of sentencing statements, Ind. Code § 35-38-1-3(3), and the newly added language that allows imposition of any statutorily or constitutionally permissible sentence “regardless of the presence or absence of aggravating or mitigating circumstance,” *id.* § 35-38-1-7.1(d). Nevertheless, the State curiously contends that “there was no actual conflict which would require the court to harmonize these provisions.” Br. in Opp’n to Trans. at 5. Whether “actual” or something other than actual, there is a conflict here—and conflicting statutes pertaining to the same subject should be harmonized to produce a logical result. Santignon v. State, 749 N.E.2d 1134, 1137 (Ind. 2001). If there is any ambiguity, the ambiguity must be construed strictly against the State. State v. Downey, 770 N.E.2d 794, 797 (Ind. 2002).

Finally, the State offers no response to Anglemyer’s view that the 2005 amendments “were intended to do nothing more than eliminate the requirement of jury trials for aggravating circumstances in the wake of Blakely v. Washington, 542 U.S. 296 (2004) and Smylie v. State, 823 N.E.2d 679 (Ind. 2005).” Pet. to Trans. at 6-7. The comments of Senator Long and unanimous passage of the amendments strongly support this view, and this Court can easily “give effect to, and implement the intent of the legislature” by simply requiring trial courts to continue doing what they have done for three decades: articulate and weigh aggravating and mitigating circumstances in well-

reasoned sentencing statements. Pet. to Trans. at 6-7 (quoting In re K.G., 808 N.E.2d 631, 637 (Ind. 2004)).

In sum, there are at least three roads that lead to the same important destination of consistency in sentencing through well-reasoned sentencing statements in trial courts, which are then thoughtfully reviewed on appeal. In contrast, the road proposed by the court of appeals and embraced by the State will lead to haphazard, if any, consistency, more appeals, and needless consternation with sentencing, an aspect of Indiana's criminal justice system that has largely worked well for the past three decades. Taking the well-traveled road of requiring sentencing statements will likely make all the difference.

### **CONCLUSION**

For these reasons and those previously advanced, Alex Anglemyer respectfully requests this Court grant transfer and reduce his sentence to ten years.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that two copies of the foregoing were duly served by personal delivery upon the Attorney General of Indiana and Deputy Attorney General Justin F. Roebel, 219 Statehouse, Indianapolis, Indiana, this 8th day of June, 2006.

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