

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

MOTION TO DISMISS ALLEGED AGGRAVATING FACTORS

The Defendant, by counsel, respectfully requests this Court to dismiss the following aggravators alleged in the State's Notice of Aggravating Factors: (1) Defendant is at risk of committing another crime; (2) The nature and circumstances of the crime committed; (3) The Defendant's character; (4) Defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility; (5) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime; (6) Defendant shows lack of remorse; and (7) the commission of the crime was well-planned rather than spur of the moment. In support of the Motion, the Defendant states the following:

1. [Include if appropriate: On [insert date], the Court of Appeals vacated the Defendant's sentence and remanded the case to the trial court for re-sentencing].
2. On [insert date], the State of Indiana filed a Notice of Aggravating Factors in the above-captioned cause.
3. The Notice of Aggravating Factors in the above-captioned cause is defective for the following reasons:
 - a. The alleged aggravators that the Defendant is at risk of committing another crime, the Defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility and imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime fail to state proper aggravators for a sentencing jury trial.
 - b. The alleged aggravators that the Defendant is at risk of committing another crime, the nature and circumstances of the crime committed, the Defendant's character and the Defendant's need of correctional or rehabilitative treatment that

can best be provided by commitment of the person to a penal facility fail to state the aggravators with sufficient specificity to enable the Defendant to prepare a defense or ensure unanimity of the verdicts. Thus, the alleged aggravators do not comply with the requirements of Article I, Section 13 of the Indiana Constitution and the 6th and 14th Amendments of the United States Constitution.

- c. The alleged aggravators of the Defendant's risk to commit another crime, the Defendant's lack of remorse and the commission of the crime being well-planned were all aggravators available to the State during the original sentencing hearing before the Defendants successful appeal. The State elected not to pursue these aggravators at the original sentencing hearing. Thus, the State's filing of the additional aggravators violates Defendant's due process right under the 14th Amendment to the United States Constitution.

WHEREFORE, the Defendant, by counsel, respectfully requests this Court to dismiss the following alleged aggravators: (1) Defendant is at risk of committing another crime; (2) The nature and circumstances of the crime committed; (3) The Defendant's character; (4) Defendant is in need of correctional or rehabilitative treatment that can best be provided by commitment of the person to a penal facility; (5) Imposition of a reduced sentence or suspension of the sentence and imposition of probation would depreciate the seriousness of the crime; (6) Defendant shows lack of remorse; and (7) The commission of the crime was well-planned rather than spur of the moment, and for all other relief just and proper in the premises.

(Signature)

CASELAW

See Memorandum In Support of Motion to Dismiss Alleged Aggravators