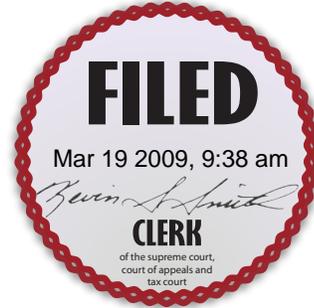


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JONATHON R. MITCHELL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 18A02-0806-CR-576

APPEAL FROM THE DELAWARE CIRCUIT COURT
The Honorable Robert L. Barnet, Judge
Cause No. 18C03-0710-FC-38

March 19, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Jonathan R. Mitchell (“Mitchell”) pleaded guilty in Delaware Circuit Court to Class C felony forgery. Mitchell was sentenced to an eight-year term with four years suspended to probation. Mitchell appeals, and argues that the trial court abused its discretion in failing to find two significant mitigators and that the sentence was inappropriate considering the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On October 19, 2007, Mitchell attempted to cash checks at two banks in Muncie, Indiana. At the first bank, Mitchell presented a check drawn on the victim’s account but the bank refused the check. Mitchell then traveled to a second bank to cash a second check drawn on the same account. The second bank also refused the check tendered by Mitchell. While attempting to cash the second check, Mitchell was arrested and found to possess the victim’s checkbook. The victim had not authorized Mitchell to draw upon her account, and Mitchell knew that he did not have such permission to cash the checks.

On October 20, 2007, the State charged Mitchell with two counts of Class C felony forgery and one count of Class D felony receiving stolen property. Additionally, the State made known its intention to add a habitual offender enhancement. On May 12, 2008, Mitchell pleaded guilty to one count of Class C felony forgery. The plea agreement called for the dismissal of the remaining charges and the habitual offender enhancement and capped any executed sentence at four years. On June 9, 2008, the trial court accepted the plea agreement and sentenced Mitchell to a term of eight years with four years suspended. Mitchell appeals, arguing that the trial court abused its discretion

in failing to recognize two mitigators, namely his stated remorse and cooperation with the State.

Discussion and Decision

A trial court's sentencing decision lies within its sound discretion and will only be reviewed for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Id. at 492 (citations omitted).

In its sentencing statement, the trial court must provide reasonably detailed reasons or circumstances for the imposition of the particular sentence. Id. at 491. The reasons included or omitted, but arguably supported by the record, are reviewable for an abuse of discretion. Id. An allegation that the trial court failed to identify a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. Id. at 493. However, if the trial court does not find the existence of a mitigating factor after it has been argued by counsel, the court is not obligated to explain why it has not found that mitigator. Id.

Mitchell asserts that his remorse and cooperation with the State should be considered as mitigators. Mitchell argued both mitigators to the trial court. The trial court apparently determined that Mitchell's profession of remorse and cooperation with the State did not constitute significant mitigators. Our review of the record does not support Mitchell's assertion that his remorse and cooperation with the State were both

significant and clearly supported. The trial court did not abuse its discretion in not considering Mitchell's remorse and cooperation with the State as significant mitigators.

Next, Mitchell argues that his sentence is inappropriate in light of the nature of the offense and character of the offender. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. “[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review.” Anglemyer, 868 N.E.2d at 494.

The nature of the crime before us is a lesser felony but a felony nonetheless. We also recognize that Mitchell's forgery did not result in any physical injuries or monetary loss to the victim. However, Mitchell's character does not reflect an individual who has respect for the law or the judicial system. At the age of twenty-four, Mitchell has amassed five felony convictions, in addition to the instant conviction: Class B felony burglary, two charges of Class D felony criminal recklessness, Class D felony possession of marijuana, and Class D felony maintaining a common nuisance. While Mitchell appears to have strong family support, that support has not prevented him from becoming involved repeatedly in the criminal justice system.

Additionally and importantly, Mitchell was on probation when he committed this crime. Mitchell has been offered many opportunities to become a productive member of society but has consistently spurned those offers. Under the facts and circumstances of

this case, we cannot say that Mitchell's eight-year sentence with four years suspended is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court did not abuse its discretion when it did not find that Mitchell's remorse and cooperation with the State constituted significant mitigators. Also, Mitchell's eight-year sentence with four years suspended is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

BAILEY, J., and BARNES, J., concur.