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**IN THE  
COURT OF APPEALS OF INDIANA**

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ROSCOE CLARK, )  
 )  
Appellant-Defendant, )  
 )  
vs. ) No. 49A02-0809-CR-819  
 )  
STATE OF INDIANA, )  
 )  
Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Jose Salinas, Judge  
Cause Nos. 49G14-0503-CM-34141; 49G14-0503-FC-43485;  
49G14-0501-FC-11079; 49G14-0410-FD-184736

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**March 27, 2009**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**DARDEN, Judge**

## STATEMENT OF THE CASE

Roscoe Clark appeals his sentence following a plea of guilty to three counts of class C felony forgery;<sup>1</sup> four counts of class D felony theft;<sup>2</sup> and one count of class A misdemeanor possession of paraphernalia.<sup>3</sup>

We affirm.

### ISSUE

Whether the trial court erred in sentencing Clark.

### FACTS

On October 19, 2004, the State charged Clark with class D felony theft under Cause Number 49G14-0410-FD-184736 (“Cause No. 736”) after Clark took \$130.00 from Margie Hutchinson’s purse.

On January 27, 2005, the State charged Clark with one count of class C felony forgery and one count of class D felony theft under Cause Number 49G14-0501-FC-011079 (“Cause No. 079”) after he cashed an unauthorized check in the amount of \$345.22 at an Indianapolis Marsh store.

On March 1, 2005, the State charged Clark with one count of class A misdemeanor possession of paraphernalia under Cause Number 49G14-0503-CM-034141 (“Cause No. 141”) after an Indianapolis Police Officer observed him with a crack pipe.

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<sup>1</sup> Ind. Code § 35-43-5-2.

<sup>2</sup> I.C. § 35-43-4-2.

<sup>3</sup> I.C. § 35-48-4-8.3.

On March 15, 2005, the State charged Clark with two counts of class C felony forgery and two counts of class D felony theft under Cause Number 49G14-0503-FC-043485 (“Cause No. 485”) after he cashed two counterfeit checks totaling \$990.55 at an Indianapolis Kroger store.

On February 21, 2006, the State and Clark filed a plea agreement with the Marion County Drug Treatment Court (the “Drug Court”), whereby Clark agreed to plead guilty to class D felony theft under Cause No. 736; class C felony forgery and class D felony theft under Cause No. 079; class A misdemeanor possession of paraphernalia under Cause No. 141; and two counts of class C felony forgery and two counts of class D felony theft under Cause No. 485. The plea agreement provided that failure to complete the Drug Court’s requirements would result in Clark being “convicted of the charges as filed and sentenced,” with the sentence to be open. (App. 46). The plea agreement also provided that “failure to appear for court dates, treatment appointments, urinalysis testing, and the testing positive for illegal substances constitutes a violation of the conditions of the agreement.” (App. 48).

Clark failed to appear for several court dates. After he failed to appear for a compliance hearing on July 10, 2007, the trial court issued an arrest warrant. On May 21, 2008, the trial court entered judgment of conviction pursuant to the plea agreement and held a sentencing hearing. The pre-sentence investigation report indicated that Clark had a prior criminal history consisting of convictions for class B misdemeanor disorderly conduct in 1992 and class A misdemeanor criminal mischief in 1999. He also had

several arrests, including arrests for resisting law enforcement; disorderly conduct; public intoxication; and invasion of privacy.

Under Cause No. 736, the trial court sentenced Clark to 365 days, with 357 days suspended. Under Cause No. 079, it sentenced him to two years on both counts and ordered that those sentences be served concurrently. Under Cause No. 141, the trial court sentenced him to a suspended sentence of one year. Under Cause No. 485, the trial court sentenced Clark to four years, with two years suspended, on each of the four counts and ordered that the sentences be served concurrently for a total executed sentence of two years. The trial court also ordered that the sentences under Cause Nos. 485 and 079 be served consecutively, stating, in pertinent part, as follows:

I feel the criminal history is an aggravator and also the fact that . . . there's [sic] victims in this case and it does have a criminal history . . . . Again, I found as aggravators, the reason for the consecutive, the victims that were on this case and the fact that the defendant has a criminal history. I believe that warranted given those two factors.

(Tr. 14-15). Thus, Clark received an aggregate sentence of six years and an executed sentence of four years.

### DECISION

Clark asserts that the trial court erred in sentencing him. Specifically, he argues that trial court abused its discretion in imposing consecutive sentences and that his sentence is inappropriate.

#### 1. Consecutive Sentences

Clark maintains that the trial court's "use of 'victims' as an aggravating circumstance" in imposing consecutive sentences was an abuse of discretion because the

existence of a victim is “an inherent element of the crime of forgery . . . .” Clark’s Br. at 8, 7. We review a trial court’s sentencing decision for an abuse of discretion. *Plummer v. State*, 851 N.E.2d 387, 390 (Ind. Ct. App. 2006).

[I]f a trial court imposes consecutive sentences when not required to do so by statute, the trial court must explain its reasons for selecting the sentence imposed, including: (1) the identification of all significant aggravating and mitigating circumstances; (2) the specific facts and reasons that lead the court to find the existence of each such circumstance; and (3) an articulation demonstrating that the mitigating and aggravating circumstances have been evaluated and balanced in determining the sentence.

*Plummer*, 851 N.E.2d at 390.

“When sentencing a defendant on multiple counts, an Indiana trial judge may impose a consecutive sentence if he or she finds at least one aggravator.” *Smylie v. State*, 823 N.E.2d 679, 686 (Ind. 2005), *cert. denied*, 546 U.S. 976 (2005). The existence of multiple victims is a valid aggravator. *French v. State*, 839 N.E.2d 196, 197 (Ind. Ct. App. 2005), *trans. denied*.

Here, the trial court found Clark’s criminal history to be an aggravating circumstance. The trial court also twice referred to the fact that there were “victims,” meaning more than one, to be an aggravating circumstance. (Tr. 14, 15). We therefore cannot say that the trial court abused its discretion in imposing consecutive sentences when it set forth two valid aggravators.<sup>4</sup>

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<sup>4</sup> In his reply brief, Clark argues that the trial court’s reference to “victims” was not detailed enough to “imply multiple victims . . . .” Clark’s Reply Br. at 2. We disagree. Nonetheless, the trial court did find an additional valid aggravating circumstance; namely, Clark’s criminal history. Thus, any error would be harmless. See *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006) (“When the reviewing court finds an irregularity in a trial court sentencing determination,” it may “affirm the sentence if the error is harmless.”) (quoting *Cotto v. State*, 829 N.E.2d 520, 525 (Ind. 2005)), *trans. denied*.

## 2. Inappropriate Sentence

Clark next asserts that his aggregate sentence of six years is inappropriate. Clark's Br. at 8. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. App. R. 7(B). It is the defendant's burden to "persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

The "nature of the offense" refers to the statutory presumptive (now advisory) sentence for the class of crimes to which the offense belongs. *Id.* Thus, the presumptive (advisory) sentence is meant to be the starting point for the trial court's consideration of the appropriate sentence for the particular crime or crimes committed. *Id.* The "character of the offender" refers to the sentencing considerations in Indiana Code section 35-38-1-7.1, which contains general sentencing considerations, the balancing of aggravating and mitigating circumstances, and other factors within the trial court's discretion. *Id.* "This court is mindful of the principle that 'the maximum sentence enhancement permitted by law should be reserved for the very worst offenses and offenders.'" *Matshazi v. State*, 804 N.E.2d 1232, 1241 (Ind. Ct. App. 2004) (citing *Borton v. State*, 759 N.E.2d 641, 648 (Ind. Ct. App. 2001), *trans. denied*), *trans. denied*.

As to the nature of Clark's offenses, he committed four crimes against three separate victims within a very short period of time. As to his character, he has a criminal history consisting of two misdemeanor convictions and multiple arrests.

[A] record of arrest, particularly a lengthy one, may reveal that a defendant has not been deterred even after having been subject to the police authority of the State. Such information may be relevant to the trial court's assessment of the defendant's character in terms of the risk that he will commit another crime.

*Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005) (citations omitted). He also failed to comply with the terms of the Drug Court. Although Clark's criminal history may be relatively minor, it is clear that prior attempts to rehabilitate him and deter him from future unlawful conduct have failed.

Furthermore, Clark pleaded guilty to several crimes, including three class C felonies and four class D felonies, for which he received an aggregate sentence of six years. Clearly, he received a sentence significantly less than the maximum possible under the plea agreement, which provided for an open sentence.<sup>5</sup> Based on the above, we conclude that the sentence imposed by the trial court was not inappropriate.

Affirmed.

RILEY, J., and VAIDIK, J., concur.

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<sup>5</sup> Subsequent to the date of Clark's offenses and prior to the date of his sentencing, the legislature amended Indiana's sentencing statutes to provide for "advisory" rather than "presumptive" sentences. *See* P.L. 71-2005, § 7 (eff. Apr. 25, 2005). Thus, at the time of his offenses, the statutory sentencing range for a class C felony was two to eight years, with the presumptive sentence being a fixed term of four years. I.C. § 35-50-2-6 (amended 2005). The statutory sentencing range for a class D felony was one-half to three years, with the presumptive sentence being a fixed term of one and one-half years. I.C. § 35-50-2-7 (amended 2005).