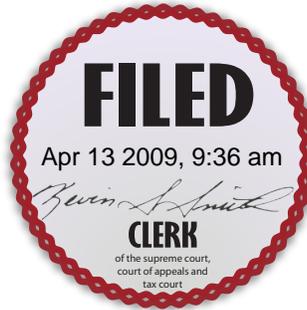


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE  
COURT OF APPEALS OF INDIANA**

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MIGUEL ANGEL GUZMAN, )

Appellant-Defendant, )

vs. )

No. 02A03-0810-CR-520

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE ALLEN SUPERIOR COURT

The Honorable John F. Surbeck, Jr., Judge

Cause Nos. 02D04-0703-FC-59

02D04-0703-FC-60

02D04-0703-FC-61

02D04-0703-FC-62

02D04-0705-FC-136

02D04-0707-FC-171

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**April 13, 2009**

## MEMORANDUM DECISION - NOT FOR PUBLICATION

**ROBB, Judge**

### Case Summary and Issue

Following a guilty plea, Miguel Guzman appeals his convictions for six counts of forgery, all Class C felonies; five counts of check fraud, all Class D felonies; and one count of fraud on a financial institution, a Class C felony. On belated appeal, Guzman raises one issue, which we restate as whether his sentence of thirty years, with six years suspended, is inappropriate in light of the nature of the offenses and his character. Concluding Guzman's sentence is not inappropriate, we affirm. However, for reasons explained below, we also remand for the trial court to correct an error in one of its judgments of conviction and to sentence Guzman accordingly. See infra, note 1.

### Facts and Procedural History

On six separate occasions from June 2006 to January 2007, Guzman fraudulently purchased approximately \$16,500 in merchandise from several retailers in the Fort Wayne area. On five of these occasions, Guzman procured the fraudulent purchases by forging checks under an assumed identity; on the sixth occasion, Guzman opened a checking account at a bank under an assumed identity, wrote a check drawn on the account, and withdrew the funds from the account before the check cleared. The State charged Guzman with six counts of forgery, all Class C felonies; five counts of check fraud, all Class D felonies; and one count of fraud on a financial institution, a Class C felony. Guzman pled guilty to these offenses without benefit of a plea agreement.

After accepting Guzman's plea, the trial court found that Guzman's criminal history and "the number of different transactions and number of different victims" were aggravating circumstances and that Guzman's guilty plea was a mitigating circumstance. Transcript at 43. Based on these findings, the trial court sentenced Guzman to five years, with one year suspended, for each of the Class C felony forgery convictions; one and one-half years on each of the Class D felony check fraud convictions; and one and one-half years on the Class C felony fraud on a financial institution conviction.<sup>1</sup> The trial court also ordered that Guzman serve the terms for the check fraud and fraud on a financial institution convictions concurrent to the forgery convictions and that Guzman serve the terms for the forgery convictions consecutively, resulting in an aggregate sentence of thirty years, with six of those years suspended. Guzman now appeals.

### Discussion and Decision

Guzman 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 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

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<sup>1</sup> The trial court's judgment states that Guzman's conviction for fraud on a financial institution was entered as a Class D felony. See Appellant's Appendix at 147. The offense, however, was charged as a Class C felony, see id. at 72; see also Ind. Code § 35-43-5-8(a), and Guzman pled guilty to the offense as a Class C felony, see appellant's app. at 139. We therefore instruct the trial court to correct its judgment of conviction to reflect that Guzman was convicted of fraud on a financial institution as a Class C felony and to sentence Guzman for that offense accordingly.

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).

The trial court sentenced Guzman to five years, with one year suspended, for each of his six Class C felony forgery convictions, all to be served consecutively, and one and one-half years for each of his five check fraud and fraud on a financial institution convictions, all to be served concurrently with the terms for the forgery convictions, resulting in an aggregate term of thirty years with six of those years suspended. Accordingly, the term for each of Guzman's six Class C felony forgery convictions was one year in excess of the advisory term. 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."); 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, Guzman argues his sentence is inappropriate because the offenses were not "the absolute worst." Appellant's Brief at 12. This argument is beside the point, however, because Guzman received a sentence only slightly in excess of the advisory. To the extent Guzman argues his above-advisory sentence is unwarranted, we note that at the sentencing hearing, the lead detective described in detail

how Guzman's offenses were "a very calculated and pre-meditated scheme." Tr. at 15. Specifically, the detective explained that the offenses required Guzman to have fairly sophisticated knowledge of how retailers and banks processed checks and that Guzman's preparation for committing the offenses included purchasing social security cards stolen from children and using them to obtain driver's licenses. The detective's description of the offenses as "calculated" and "pre-meditated" is therefore an accurate one, which makes them more egregious than is typical. Cf. Purvis v. State, 829 N.E.2d 572, 589 (Ind. Ct. App. 2005) (concluding defendant's statutory maximum sentence of fifty years was not inappropriate in part because the offense was "planned" and "calculated"), trans. denied, cert. denied, 547 U.S. 1026 (2006).

Turning to Guzman's character, we note he argues that his difficult upbringing and offer to provide law enforcement with additional details regarding how he perpetrated his crimes comment favorably on his character. Our supreme court has rejected Guzman's first point, Coleman v. State, 741 N.E.2d 697, 700 (Ind. 2000) ("[T]his court has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight."), cert. denied, 542 U.S. 1057 (2001), and although we applaud Guzman's offer to assist law enforcement, we cannot say it necessarily comments favorably on his character, as there is no indication in the record that his motive for doing so was altruistic, as opposed to an opportunistic attempt to secure a more lenient sentence. Moreover, that the trial court declined to find Guzman's offer was a mitigating circumstance suggests it was less than altruistic.

Aside from these rather minor commentaries on Guzman's character, we note the trial court specifically cited his criminal history as the reason it was imposing a sentence in excess of the advisory. See Tr. at 44-45. Guzman's criminal history includes felony convictions for theft and forgery in 1995 and 1997, respectively, and five misdemeanor convictions for check deception in 1996. As Guzman notes, the mitigating weight assigned to a defendant's prior criminal history "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Wooley v. State, 716 N.E.2d 919, 929 (Ind. 1999). Although Guzman's prior offenses are less numerous than the instant offenses, and some are less serious, all are sufficiently similar to the instant offenses to convince us that Guzman has a serious problem when it comes to deception-based crimes and, more to the point, that his criminal history comments very negatively on his character.

Against the aggravating weight of Guzman's criminal history is the fact that he pled guilty without the benefit of a plea agreement. Our supreme court has noted that "a defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return." Williams v. State, 430 N.E.2d 759, 764 (Ind. 1982). In that respect, we acknowledge Guzman's guilty plea is entitled to significant mitigating weight, but are not convinced the plea offsets his criminal history for two reasons.

First, to the extent a guilty plea "demonstrates [a defendant's] acceptance of responsibility for the crime and at least partially confirms the mitigating evidence regarding his character," Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995), Guzman's

was nothing of the sort because his statements during the sentencing hearing indicate he blamed his behavior on his difficult upbringing and substance abuse problems and also tried to minimize the severity of the offenses by emphasizing that the victims were large retailers, as opposed to “mom and pop shops.” Tr. at 33. The trial court also was apparently skeptical of these arguments because it interrupted Guzman and asked, “Miguel, is there anything that you’re truly responsible for?” Id. at 32.

Second, this court has observed that the mitigating weight of a guilty plea may be diminished if the evidence against the defendant indicates the plea was merely pragmatic. See Wells v. State, 836 N.E.2d 475, 479-80 (Ind. Ct. App. 2005), trans. denied. In that respect, we note the probable cause affidavits and the lead detective’s statements during the sentencing hearing indicate that the employee-witnesses of each of the banks and retailers Guzman visited to perpetuate his crimes positively identified him and that driver’s licenses depicting Guzman and displaying the assumed names Guzman used to perpetuate his crimes were recovered by police, along with some of the items Guzman had purchased. Although we hesitate to say this evidence would have made an open-and-shut case for the State, it certainly undercuts any argument that Guzman’s plea was based on genuine remorse, especially when Guzman’s statements at sentencing discussed above are considered.

In sum, we conclude Guzman’s guilty plea comments favorably on his character, but does not offset his significant criminal history. Coupling this conclusion with our

observation that the offenses are slightly more egregious than is typical, it becomes apparent that a sentence slightly in excess of the advisory is not inappropriate.<sup>2</sup>

### Conclusion

Guzman's sentence is not inappropriate in light of the nature of the offenses and his character. However, we remand for the trial court to correct an error in one of its judgments of conviction and to sentence Guzman accordingly. See supra, note 1.

Affirmed and remanded.

CRONE, J., concurs.

BROWN, J., concurs with opinion.

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<sup>2</sup> Because we conclude Guzman's sentence is not inappropriate, we do not address the State's argument on cross-appeal that the trial court abused its discretion when it granted Guzman's motion to file a belated appeal.

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Appellant-Defendant,	)	
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vs.	)	No. 02A03-0810-CR-520
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

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**BROWN, Judge concurring**

I concur with the majority in light of Guzman’s Presentence Report which reveals four findings of delinquency for three burglaries and possession of a controlled substance in the mid-70s, the last two of which offenses both resulted in commitments to Indiana Boys School; four misdemeanor convictions in 1980; a felony battery conviction in 1981; a felony marijuana possession conviction in 1983 as a result of which Guzman was imprisoned in the Indiana Department of Correction; a probation revocation in 1983 on the felony battery for which he received two years in the Department of Correction; a 1991 misdemeanor; a 1995 felony theft conviction in Iowa; and four prior OWIs, in 1992, 1996 and two in 2002. Additionally, the well- prepared presentence report, a reflection of a dedicated, professional probation department, shows that at the time of sentencing for the instant offense, Guzman had forgery and theft charges pending in Adams County; a warrant out of Elkhart County for check deception; felony check fraud charges from Hamilton County; misdemeanor charges and a warrant therefor from Lake County;

felony check charges and a warrant from Ohio; and felony check charges and a warrant from Illinois. Probation's recommendation was an executed sentence of forty-eight years. In sum, this is a defendant who has demonstrated that only long-term incarceration will prevent him from committing criminal acts.

For these reasons I concur.