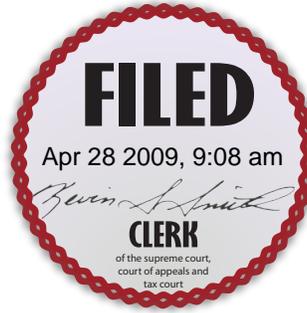


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ADRIAN M. RIOS,)
)
Appellant-Defendant,)
)
vs.) No. 79A02-0811-CR-01041
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Donald C. Johnson, Judge
Cause No. 79D01-0709-FC-62

April 28, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Adrian M. Rios appeals the four-year aggregate sentence that was imposed following his guilty plea to Auto Theft,¹ a class D felony, and Fraud,² a class D felony. Specifically, Rios argues that the trial court abused its discretion in sentencing him because it failed to enter a proper sentencing statement and it erred in identifying two aggravating factors. Rios also argues that the sentence was inappropriate when considering the nature of the offenses and his character. Finding no error, we affirm the judgment of the trial court.

FACTS

On July 30, 2006, Rios and his cousin, Nicola Kokinis, arranged to meet Tony Hodge in Lafayette to purchase a Lexus automobile that Hodge had advertised for sale on the internet. During the meeting, Kokinis handed Hodge a cashier's check for \$16,900 in exchange for the vehicle. Kokinis gave Rios \$500 for his help in driving her to the location. At some point, the bank notified Hodge that the cashier's check was counterfeit.

Thereafter, the State charged Rios with forgery, a class C felony, counterfeiting, a class D felony, and auto theft, a class D felony. On September 11, 2008, Rios entered into a plea agreement, pursuant to which he agreed to plead guilty to auto theft and an additional count of fraud, a class D felony, that the State had filed against him. Sentencing was left to the trial court's discretion, and the State agreed to dismiss the remaining charges.

At the October 10, 2008, sentencing hearing, the trial court identified two aggravating

¹ Ind. Code § 35-43-4-2.5.

² I.C. § 35-43-5-4.

factors: (1) Rios was ineligible for community corrections because of an outstanding warrant regarding a pending auto theft case in Illinois; and (2) Rios failed to accept responsibility for his actions. The trial court also identified several mitigating factors, including Rios’s lack of criminal history, the fact that incarceration would cause undue hardship on his family, he was willing and able to make restitution, and he received a low LSI-R³ score. The trial court then determined that the aggravating factors outweighed the mitigating circumstances and sentenced Rios to two years of incarceration for each conviction. The trial court ordered the sentences to run consecutively, for an aggregate term of four years. Rios now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Rios contends that the trial court abused its discretion when it sentenced him. Specifically, Rios argues that the trial court failed to enter a proper sentencing statement and erred in identifying a “pending criminal case” as an aggravating circumstance because “Rios asserted his innocence” in that case. Appellant’s Br. p. 8. Rios also “questions the Court’s logic in concluding that he was not taking responsibility for his actions.” Id. Thus, Rios requests that we reduce his sentence to one and one-half years on each offense and order them to run concurrently.

In resolving this issue, we initially observe that sentencing decisions rest within the

³ Rios’s “Level of Service Inventory” score indicated that he fell into the “low risk/needs” category, and his “problem areas” were identified as family, leisure and recreation, companions, and attitudes and orientation. Appellant’s App. p. 5.

sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). Consecutive sentences may be imposed “if aggravating circumstances warrant.” Lander v. State, 762 N.E.2d 1208, 1215 (Ind. 2002). When the trial court imposes consecutive sentences not required by statute, we examine the record to ensure that the court explained its reasons for selecting the sentence. Id. Before the trial court can impose a consecutive sentence, the trial court must articulate, explain, and evaluate the aggravating circumstances that support the sentence. Id. The trial court’s assessment of the proper weight of mitigating and aggravating circumstances is entitled to deference on appeal and will be set aside only upon a showing of a manifest abuse of discretion. Patterson v. State, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). Additionally, our Supreme Court has observed that one valid aggravating circumstance adequately supports ordering consecutive sentences. Mathews v. State, 849 N.E.2d 578, 589 (Ind. 2006).

Although Rios contends that the trial court “failed to enter a sentencing statement at all,” appellant’s br. p. 13, the record belies this assertion. Indeed, the trial court detailed each mitigating and aggravating factor that it identified and determined that the aggravating factors outweighed the mitigating circumstances. Appellant’s App. p. 28. Moreover, the trial court assessed Rios’s credibility and sincerity and expressed concern about Rios’s apparent dishonesty and unwillingness to assume responsibility for his participation in the offenses. Tr. p. 29. In short, the trial court’s reasoning supporting the sentence that it imposed is clear from both the colloquy during the hearing and the written sentencing

statement. Thus, Rios has failed to establish that the sentencing statement was inadequate.

Although Rios argues that the trial court should not have identified the pending Illinois case as an aggravating circumstance because he had not been convicted of that charge, Rios admitted some degree of involvement in that matter. More specifically, Rios informed the trial court that someone in Chicago had given him a vehicle to sell, that he received money for selling the car, and that the transaction involved the same individuals who were involved in the instant case. Id. at 29-30. Even more compelling, it is apparent that the trial court noted the pending Illinois case as an aggravating factor only to the extent that it rendered Rios ineligible for community corrections. Appellant's App. p. 27. In light of these circumstances, we cannot say that the trial court abused its discretion in identifying the pending charge as an aggravating factor. See McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007) (observing that criminal charges that do not result in convictions may be considered by the trial court "in context"); see also Tunstill v. State, 568 N.E.2d 539, 545 (Ind. 1991) (noting that criminal activity need not be reduced to a conviction to be considered by the trial court in the context of evaluating the defendant's character).

Rios also admitted at the sentencing hearing that when he is around "bad people who steal cars," he participates. Tr. p. 24. This testimony supports the trial court's conclusion that Rios has engaged in a pattern of dishonesty and has refused to accept full responsibility for his actions. Thus, the trial court properly identified Rios's failure to "accept responsibility for his actions," appellant's app. p. 27, as an aggravating factor. In sum, Rios has failed to demonstrate that the trial court abused its discretion in sentencing him.

B. Appropriate Sentence

Rios also argues that his sentence is inappropriate when considering the nature of the offenses and his character. Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, the evidence established that Rios and his cousin passed a counterfeit cashier's check in the amount of \$16,900 to the victim for the purchase of a vehicle. With regard to Rios's character, the evidence shows that he has exhibited a pattern of dishonesty as evidence by this crime and his other involvement with "bad people who steal cars." Tr. p. 24-25. As discussed above, Rios's pending case in Illinois involves the theft of a vehicle. These circumstances reflect negatively on Rios's character and support the trial court's determination that Rios is likely to reoffend because he has not fully accepted responsibility for his role in the commission of the offenses. See Hightower v. State, 866 N.E.2d 356, 374 (Ind. Ct. App. 2007) (concluding that the defendant's sentence for bribery, theft, and forgery was appropriate, in part, because "this [was] not the first time that [the defendant] has been involved in dishonest activity related to his employment"). Hence, we

do not find Rios's four-year aggregate sentence inappropriate after considering the nature of the offenses and his character.

The judgment of the trial court is affirmed.

MAY, J., and BARNES, J., concur.