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IN THE
COURT OF APPEALS OF INDIANA

TAMEKA CALDWELL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1007-CR-751
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol J. Orbison, Judge
Cause No. 49G22-0907-FC-64219

May 19, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Tameka Caldwell appeals the sentences imposed after she was convicted of two counts of forgery, as Class C felonies; one count of perjury, as a Class D felony; and two counts of auto theft, as a Class D felony, following a jury trial. Caldwell presents a single issue for our review, namely, whether her aggregate sentence is inappropriate in light of the nature of the offenses and her character.

We affirm

FACTS AND PROCEDURAL HISTORY[1]

In October 2008, a 2005 gold Chevrolet Impala was stolen by a young man from T-Mack Automotive during a test drive. In March 2009, a 2005 maroon Dodge Magnum was stolen from a car lot. Caldwell came into possession of both vehicles by April 2009.

In early 2009, Caldwell asked her landlord, who was also a car dealer, for help in titling the Impala. She told him that the car was not stolen and had been purchased by her daughter's boyfriend, who had not received a title and was incarcerated. With the assistance of Mechanic's Liens Plus, a company that assists with processing automobile titles, the landlord provided Caldwell with the documentation needed to apply for a mechanic's lien on the Impala. The resulting mechanic's lien documentation showed that the landlord's car business had made repairs to the Impala, but the landlord had never seen the car.

On March 25, 2009, Caldwell applied for a mechanic's lien title to the Impala. Along with the application she submitted an Affidavit of Police Officer Physical

[1] We observe that the name of appellant's counsel is incorrect on the cover of the Appellant's Appendix, and the name of the trial court judge is incorrect on the cover of Appellant's Brief.

Inspection of an Indiana Resident's Vehicle (State Form 39530) ("Inspection Affidavit"). The Inspection Affidavit was purportedly executed by Officer T. Harris, ID #20195, of the Indianapolis Metropolitan Police Department ("IMPD"). However, no such officer exists. Caldwell also presented her Indiana Driver's License when she applied for the mechanic's lien title to the Impala. The Indiana Bureau of Motor Vehicles ("BMV") subsequently issued title to the Impala to Caldwell.

On April 1, 2009, Caldwell applied for a duplicate title to the Magnum in the name of Hubler Select. With the application she presented a forged power of attorney, which provided that Ricky Jones of Hubler Select had authorized her to act as an agent of Hubler Select for the transaction. Also on the application she requested a "speed title that would be picked up, not mailed to Hubler Select's listed address." Appellant's App. at 19. In this transaction with the BMV, Caldwell again presented her Indiana driver's license. The BMV issued a duplicate title.

And on April 23, Caldwell applied for title to the Magnum in her name. In so doing, she presented the duplicate title for which she had applied on April 1. The duplicate title was signed by Karen Smith for Hubler Select, showing the sale of the Magnum to Caldwell. Caldwell again presented her Indiana driver's license in this title transaction. The BMV subsequently issued title to the Magnum to Caldwell.

In the course of investigating the theft of certain vehicles, Detective Bryan Reed of IMPD interviewed Caldwell on June 9 at her home. Specifically, he asked her how she had come to possess the Impala and the Magnum. Caldwell told Detective Reed that she

had purchased both vehicles, the Impala from an individual and the Magnum from a car lot. With Caldwell's permission, Detective Reed visually inspected both vehicles.

Detective Reed's further investigation revealed that, in fact, both vehicles had been stolen. Each had a VIN plate that had been taken from similar cars in salvage yards. He also learned that Caldwell's landlord had not worked on the Impala, that neither the landlord nor Mechanic's Lien Plus had obtained a police inspection of the Impala, that police records showed that no physical inspection had ever been ordered on the Impala, that Hubler Select had "ceased dealing with vehicles about December 2008," and that Hubler Select had no employees named Ricky Jones or Karen Smith. Appellant's App. at 19.

The State charged Caldwell with two counts of forgery, as Class C felonies; one count of perjury, as a Class D felony; and two counts of auto theft, as Class D felonies. Following trial, a jury found Caldwell guilty as charged, and the trial court entered judgment of conviction accordingly. The court then sentenced her to eight years for each forgery count, three years for perjury, and three years for each auto theft count. The court ordered the sentences to be served concurrently, for an aggregate sentence of eight years. Caldwell now appeals her sentence.

DISCUSSION AND DECISION

Caldwell contends that her sentence is inappropriate in light of the nature of the offenses and her character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence

imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See App. R. 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration original).

The Indiana Supreme Court recently stated that "sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." Cardwell v. State, 895 N.E.2d 1219, 1222 (Ind. 2008). Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented. See id. at 1224. The principal role of appellate review is to attempt to "leaven the outliers." Id. at 1225. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." Id. at 1224.

Again, the trial court imposed an aggregate eight-year sentence for one Class C felony and four Class D felonies. The sentence for a Class C felony is between two and eight years, with an advisory sentence of four years. Ind. Code § 35-50-2-6. The

sentence for a Class D felony is between six months and three years, with an advisory sentence of one and one-half years. Ind. Code § 35-50-2-7. Caldwell received the maximum sentence on each count, although she was ordered to serve them concurrently.

We first consider Caldwell's argument that her sentence is not appropriate in light of the nature of the offenses. In support, she points out that she did not personally steal the cars and that she was "not the person who went into the scrap yards and stripped the VIN plates" off of other cars. Appellant's Brief at 5. Thus, she argues, she is "not as culpable as others unnamed who played a much larger role in the theft of these cars." Id. at 6.

In essence, Caldwell argues that hers are not the worst offenses and she is not the worst offender. We addressed such arguments generally in Brown v. State, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), trans. denied:

> There is a danger in applying this principle . . . . If we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense. . . . This leads us to conclude the following with respect to deciding whether a case is among the very worst offenses and a defendant among the very worst offenders, thus justifying the maximum sentence: We should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

Here, Caldwell twice took elaborate steps to obtain car titles in her name. In one case, she engaged the unwitting assistance of her landlord and a mechanic's lien company to obtain a false mechanic's lien, falsified and presented a forged Inspection Affidavit, and presented a falsified application for a mechanic's lien title to the Impala. Later she forged a power of attorney to fraudulently obtain a "speed title" and then submitted the

resulting "speed title," with a forged signature, in order to have title to the Magnum issued to her. And although neither party has cited to parts of the record to show how Caldwell was involved in the auto thefts, the jury convicted her on both auto theft counts. Given Caldwell's five felony convictions in this case and the deliberate and elaborate steps she took to falsely obtain titles to two stolen vehicles, we cannot say that the nature of the offenses renders her aggregate eight-year sentence inappropriate.

Caldwell also has not shown that her sentence is inappropriate in light of her character. She has a lengthy criminal history, including a 1990 conviction for battery, as a Class A misdemeanor; 1991 convictions for burglary, as a Class C felony, and theft, as a Class D felony; a 1993 conviction for criminal conversion, as a Class A misdemeanor; a 1994 conviction for forgery, as a Class C felony; two 1994 convictions for battery, as a Class D felony; and 2000 convictions for theft, as a Class D felony, and battery, as a Class D felony. Although she has had no convictions for the last decade, the instant offenses are similar to some of her past conduct. She also has convictions for two violent crimes. And despite having received various rehabilitation services offered in connection with her previous convictions, her decision to re-offend in this case does not work in her favor.

Caldwell emphasizes that she is a mother of five children, has not had a conviction in ten years, and has been gainfully employed as a home health care aid for seven years despite her lack of a high school education. But the trial court relied in part on its finding that her criminal history shows a risk that she would reoffend. The court also found that she had only one dependent, an eleven-year-old child, and that imprisonment of Caldwell

would be a hardship for the child but would also show the child "that one is responsible for one's misconduct and that one can expect to be punished when one chooses to repeatedly commit criminal acts." Transcript at 271. Caldwell has not shown that her aggregate eight-year sentence for five felonies is inappropriate in light of the nature of the offenses or her character.

Affirmed.

ROBB, C.J., and CRONE, J., concur.