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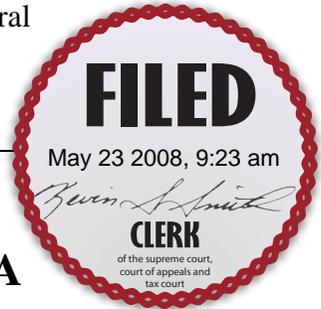
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**IN THE  
COURT OF APPEALS OF INDIANA**

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JOHN T. MANN, )

Appellant-Defendant, )

vs. )

No. 49A02-0710-CR-862

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT

The Honorable Mark Stoner, Judge

The Honorable Jeffrey Marchal, Commissioner

Cause Nos. 49G06-0708-FC-161601, 49G06-0707-FC-143776, and 49G06-0708-FC-167109

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**May 23, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**MATHIAS, Judge**

John Mann (“Mann”) pleaded guilty in Marion Superior Court to five counts of Class C felony forgery and one count of Class D felony theft. He was ordered to serve an aggregate sentence of four years in the Department of Correction. Mann appeals arguing that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

### **Facts and Procedural History**

On July 19, 2007, Mann was charged with three counts of Class C felony forgery and three counts of Class D felony theft under cause number 49G06-0707-FC-143776 (“cause number 143776”). In that cause, the State alleged that Mann forged checks from the accounts of Holly Mount, his former girlfriend, and Janet Canter, Mann’s aunt. Mann presented the checks for payment at National City Bank and Forum Credit Union.

On August 7, 2007, Mann was charged with two counts of Class C felony forgery and one count of Class D felony theft under cause number 49G06-0708-FC-161601 (“cause number 161601”). In that cause, the State alleged that Mann forged checks from the account of John Perme, and presented those checks for payment at National City Bank.

On August 14, 2007, Mann was charged with two counts of Class C felony forgery and one count of Class D felony theft under cause number 49G06-0708-FC-167109 (“cause number 167109”). The State alleged that Mann forged checks from the account of June Manning, and presented the checks for payment at National City Bank. Mann was residing with Manning at the time he stole her checks.

On September 4, 2007, Mann pleaded guilty to two counts of forgery and one count of theft under cause number 143776, two counts of forgery under cause number 161601, and one count of forgery under cause number 167109. Pursuant to the plea agreement, the State agreed to dismiss the remaining counts. The State also agreed to a “cap of four (4) years on total sentence, open to argument as to placement. Time to be concurrent on charges and cases.” Appellant’s App. p. 26. Mann also agreed to pay restitution in the amount of \$2280 to National City Bank and \$500 to Forum Credit Union.

At sentencing, the trial court found one aggravating circumstance: Mann’s history of criminal or delinquent activity. The trial considered Mann’s guilty plea, willingness to make restitution, and that incarceration would constitute an undue hardship on his dependent child as mitigating circumstances. The court then assigned equal weight to the aggravating circumstance and mitigating circumstances and ordered Mann to serve concurrent terms of four years for each Class C felony forgery conviction and one and one-half years for the Class D felony theft conviction, for an aggregate sentence of four years. Mann now appeals. Additional facts will be provided as necessary.

### **Discussion and Decision**

Mann argues that his aggregate four-year sentence is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our court “may revise a sentence authorized by statute 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.” 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).

The trial court imposed an aggregate four-year executed sentence. Four years is the advisory sentence for a Class C felony. See Ind. Code 35-50-2-6 (2004 & Supp. 2007). Pursuant to Mann's plea agreement, the State agreed to a cap of four years on the total sentence to be imposed. Mann received a sentence that he bargained for, and therefore, he bears the considerable burden of persuading our court that his sentence is inappropriate. See Childress, 848 N.E.2d at 1081 (Dickson, J., concurring) ("A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness.")

Mann argues that his four-year executed sentence is inappropriate because the court "failed to take into account the nature of the offenses, which were non-violent and unrelated to his previous criminal history." Br. of Appellant at 8. Although forgery and theft were certainly non-violent offenses, Mann does not acknowledge that he victimized his aunt, former girlfriend, and a friend who was providing him with a place to stay when he had nowhere to go.

We are equally unpersuaded by Mann's argument that his sentence is inappropriate because his criminal history is unrelated to his current offenses of forgery and theft. Mann, who is twenty-four years old, has been convicted of Class D felony possession of a controlled substance, Class D felony theft, Class D felony auto theft, and Class A misdemeanor carrying a handgun without a license. He also committed two

probation violations. Moreover, as a juvenile, Mann committed the following offenses: criminal trespass, possession of a controlled substance, resisting law enforcement, criminal recklessness, possession of marijuana, failure to stop after a property damage accident, and operating a vehicle having never received a license.

For all of these reasons, we conclude that Mann's four-year aggregate sentence for his five Class C felony forgery convictions and Class D felony theft conviction is not inappropriate in light of the nature of the offense and the character of the offender.<sup>1</sup>

Affirmed.

MAY, J., and VAIDIK, J., concur.

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<sup>1</sup> Mann also argues that the trial court should have considered a placement other than the Department of Correction. Given Mann's criminal history and inability to successfully complete probation, the trial court appropriately ordered Mann to serve his sentence in the Department of Correction. See Fonner v. State, 876 N.E.2d 340, 344 (Ind. Ct. App. 2007) (The defendant's placement in the Department of Correction was not inappropriate given his history of several prior misdemeanor and felony convictions and a failed prior community corrections placement.)