



Appellant-defendant Accie D. Smith appeals the sentence that was imposed following his guilty plea to Forgery,<sup>1</sup> a class C felony, claiming that the trial court abused its discretion in sentencing him. Smith also contends that his sentence is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). Finding that the trial court did not abuse its discretion in sentencing Smith to six years of incarceration with two years suspended to probation and that the sentence is not inappropriate, we affirm.

### FACTS

On February 3, 2007, Smith presented a counterfeit check that had been made out to Charles L. Kinner in the amount of \$816.91 to the Meijer store in Kokomo. After Meijer reported the incident to the police, Smith was subsequently arrested and charged with forgery, a class C felony.

Thereafter, Smith negotiated a plea agreement with the State. The agreement provided that Smith would plead guilty as charged with sentencing left to the trial court's discretion. It was also agreed that Smith would serve no more than four years of executed time.<sup>2</sup>

The trial court accepted the plea agreement, and at the sentencing hearing that commenced on January 16, 2009, the trial court identified Smith's juvenile and adult criminal history and a probation violation as aggravating circumstances. The trial court

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<sup>1</sup> Ind. Code § 35-43-5-2(b)(1).

<sup>2</sup> The penalty range for a class C felony is from two to eight years with an advisory sentence of four years. Ind. Code § 35-50-2-6.

identified Smith's decision to plead guilty as the sole mitigating factor. Thereafter, the trial court sentenced Smith to six years of incarceration with two years suspended to probation. He now appeals.

## DISCUSSION AND DECISION

### I. Abuse of Discretion

Smith first claims that the trial court abused its discretion in sentencing him. Specifically, Smith maintains that he was entitled to a lesser sentence because the trial court should have identified the undue hardship that incarceration would have on his children as a mitigating factor.

In resolving this issue, we initially observe that sentencing decisions rest within the trial court's sound discretion and are reviewed on appeal only for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (2007). It is within the trial court's discretion to determine both the existence and weight of a significant mitigating circumstance. Creager v. State, 737 N.E.2d 771, 782 (Ind. Ct. App. 2000). An allegation that the court did not identify or find a mitigating circumstance requires the defendant on appeal to establish that the mitigating evidence is both significant and clearly supported by the record. Pennington v. State, 821 N.E.2d 899, 905 (Ind. Ct. App. 2005). In other words, a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced as such by the defendant. Spears v. State, 735 N.E.2d 1161, 1167 (Ind. 2000).

Notwithstanding Smith's contention, we note that a trial court is not required to find that a defendant's incarceration amounts to an "undue hardship" on his or her

dependents. Davis v. State, 835 N.E.2d 1102, 1116 (Ind. Ct. App. 2005). Many persons convicted of crimes have one or more children and, “absent special circumstances, trial courts are not required to find that imprisonment will result in an undue hardship.” Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Moreover, our Supreme Court has determined that the hardship to a defendant’s dependents is not always a significant mitigating factor. McElroy v. State, 865 N.E.2d 584, 592 (Ind. 2007). We will not find error when a defendant fails to show “definite hardship to a dependent.” Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007).

In this case, Smith presented evidence that he had three children, paid child support for one of them, and “did what he could” for the others. Tr. p. 38. Smith also testified that he had a “good relationship” with the children. Id. Although Smith may have established a genuine concern for his children, he has failed to show any circumstances out of the ordinary such that his incarceration would result in “undue” hardship to them. Dowdell, 720 N.E.2d at 1154. Accordingly, we find no abuse of discretion.

## II. Appropriate Sentence

Smith also argues that his sentence is inappropriate when considering the nature of the offense and his character. 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 Smith possessed and cashed a counterfeit check that was purportedly made payable to another individual. Appellant's App. p. 7, 12-13. As for Smith's character, the evidence demonstrates that he accumulated juvenile adjudications that, if committed by an adult, would have been the offenses of conversion and battery. Id. at 26. As an adult, Smith has prior convictions for trespass, theft, carrying a handgun without a license, dealing in cocaine, and forgery. Id. at 26-27. When Smith was sentenced for this offense, he had an additional pending forgery charge. Id. Moreover, Smith had violated the conditions of his probation. Tr. p. 45.

In sum, the evidence shows that Smith was only twenty-one years old when he committed the instant offense and has three prior felony convictions. Smith has been in constant trouble with the law and has not been deterred from criminal conduct. Therefore, when considering the nature of the offense and Smith's character, we cannot conclude that his sentence was inappropriate.

The judgment of the trial court is affirmed.

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