

Bryan E. Clark appeals his sentence of twelve years executed in the Department of Correction (DOC). He argues the sentence is inappropriate given his character and the nature of his offense. We affirm.

FACTS AND PROCEDURAL HISTORY

On July 14, 2010, Dennis Clark reported to the Greensburg Police Department that his son, Bryan, forged sixteen checks, totaling \$8,020.00, issued to Dennis and his wife, Betty. When Bryan cashed one of the forged checks at the First Federal Savings and Loan Association of Greensburg, he knew Fifth Third Bank, the issuing bank, would not honor the check.

Around the same time, Bryan rented a vehicle, using Betty as an alternate person to charge for the vehicle. Bryan kept the vehicle for weeks beyond the return date, and he lied to the rental agency about why he needed to keep the car past the return date. When the rental agency told Betty she was being charged for the vehicle rental, Betty denied knowing Bryan rented the vehicle and advised the rental agency to report the car stolen. On July 18, 2010, Officer Anthony Murphy of the Cincinnati Police Department located the stolen vehicle in Cincinnati, Ohio. Bryan was driving it and Officer Murphy arrested him. Bryan was transferred to Indiana.

The State charged Bryan with forgery¹ and fraud on a financial institution, both Class

¹ Ind. Code § 35-43-5-2(b).

C felonies.² The State also filed an habitual offender enhancement³ based on a 2002 conviction of forgery and a 2006 conviction of burglary.

On October 6, 2010, Bryan agreed to plead guilty to all three counts and receive a twelve-year sentence. The agreement left to the trial court's discretion the extent to which the sentence would be executed or suspended to probation. Following a sentencing hearing on November 9, 2010, the trial court ordered Bryan to serve all twelve years in the DOC.

DISCUSSION AND DECISION

Bryan argues the order that he serve all twelve years in the DOC is inappropriate given his character and the nature of his offense. We disagree.⁴

² Ind. Code § 35-42-5-8(a)(1).

³ Ind. Code § 35-50-2-8.

⁴ Clark's sentencing order provides:

The Court . . . now sentences the defendant to imprisonment for an advisory period of four (4) years on Count I and to four years on Count II and adds an additional four (4) years to each count based on the defendant's prior criminal record for a total of eight (8) years on each count to run concurrently. The Court also sentences the defendant on the Habitual Offender Enhancement in Count III to imprisonment for four (4) years to run consecutively to the sentences imposed in Counts I and II of this cause; said sentence therefore totaling twelve years.

(Br. of Appellant at 7; App. at 34.)

While the language of Clark's sentencing order is consistent with the plea agreement, permitted by statute, and otherwise appropriate, we are concerned that the language in the order suggests Clark's sentence was determined under a sentencing scheme no longer in effect. *See Pedraza v. State*, 887 N.E.2d 77, 80 (Ind. 2008) ("Indiana sentencing used to be a two-step process--imposing of the presumptive sentence, then deciding whether any aggravator or mitigators warranted deviation. After the 2005 modifications, it consists of only one discretionary determination."). The order also appears to order the sentence for the habitual offender enhancement to be served consecutively to both felonies. *See Greer v. State*, 680 N.E.2d 526, 527 (Ind. 1997) (Habitual offender finding is not "a separate crime" and does not "result in a separate sentence;" "In the event of simultaneous multiple felony convictions and a finding of habitual offender status, trial courts must impose the resulting penalty enhancement upon only one of the convictions and must specify the conviction to be so enhanced.").

Indiana Appellate Rule 7(B) authorizes our review of sentences to ensure they are appropriate given the nature of the offense and the character of the offender. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The appellant carries the burden of proving the sentence imposed is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *modified on other grounds*, 875 N.E.2d 218 (Ind. 2007).

Bryan argues the nature of his offenses does not merit a twelve-year executed sentence because his illegal behavior was the result of an untreated gambling addiction. Bryan forged sixteen checks for a significant sum of money. This is not the first time he committed this type of crime against his parents, as his mother testified he had forged checks on his parents' account in 2001. Bryan lied to the rental agency about why he had to keep the car past the return date. Bryan's offenses are sufficiently serious to permit a twelve-year executed sentence, despite his alleged addiction. *See Newkirk v. State*, 859 N.E.2d 473, 478-80 (Ind. Ct. App. 2008) (holding a fifteen year term of home detention was appropriate given the facts of Newkirk's offense notwithstanding his addiction to methamphetamine).

Bryan also argues his sentence is inappropriate in light of his character because he is remorseful, he is willing to undergo treatment for his gambling addiction, his family supports his decision to seek treatment, and he is not a dangerous criminal. While we applaud Bryan's expressed desire to overcome his addiction, his criminal history renders a twelve year executed sentence appropriate. *See Vasquez v. State*, 762 N.E.2d 92, 97 (Ind. 2001) (holding prior criminal history was properly considered in determining Vasquez's character and

enhancing sentence).

At the sentencing hearing, the trial judge remarked that Bryan committed “an incredible number [of felonies] in less than a ten year period.” (Tr. at 40.) Bryan’s criminal history includes convictions of theft, forgery, and defrauding a financial institution. His record indicates four probation revocations, and he committed the present offenses shortly after his release from the DOC and while on parole. *See Childress*, 848 N.E.2d at 1081 (holding executed sentence appropriate given the defendant’s criminal history and his commission of offense while on bond for unrelated charge). Bryan’s gambling addiction does not render his incarceration inappropriate because he “has had ample opportunity to do something about his addiction. He’s done nothing until faced with an habitual offender count and the certainty of going to jail for at least six years.” (Tr. at 40). Therefore, we cannot say Bryan’s sentence is inappropriate in light of his character.

Because we cannot say the trial court’s order that Bryan serve all twelve years in the DOC is inappropriate in light of Bryan’s character and offense, we affirm.

Affirmed.

BAKER, J., and BRADFORD, J., concur.