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IN THE
COURT OF APPEALS OF INDIANA

TROY A. MARTIN,	)	
	)	
Appellant/Defendant,	)	
	)	
vs.	)	No. 43A03-0904-CR-181
	)	
STATE OF INDIANA,	)	
	)	
Appellee/Plaintiff.	)	

APPEAL FROM THE KOSCIUSKO SUPERIOR COURT
The Honorable Joe V. Sutton, Judge
Cause No. 43D03-0903-FD-38

October 13, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Troy Martin appeals from the sentence imposed following his guilty pleas to Class D felony Fraud[1] and Class D felony Attempted Fraud,[2] contending that it is inappropriately harsh. We affirm.

FACTS AND PROCEDURAL HISTORY

On January 8, 2009, in Kosciusko County, Martin used a credit card to purchase gasoline without the consent of the owner of the card. Later that day, Martin attempted to purchase some food and cigarettes using the same card, also without the consent of the owner. On March 11, 2009, the State charged Martin with fraud and attempted fraud, both Class D felonies. On March 19, 2009, at his initial hearing, Martin pled guilty as charged. On April 6, 2009, the trial court sentenced Martin to three years of incarceration for each conviction, with eighteen months suspended to probation and both sentences to be served concurrently. The trial court found Martin's guilty pleas to be a mitigating circumstance and his criminal history and that alternative sentencing has failed in the past to be aggravating circumstances. The trial court also specifically ordered that it would not object to Martin's participation in a work release program, subject to the approval of the Kosciusko County Sheriff and Work Release Director.

DISCUSSION AND DECISION

Whether Martin's Sentence is Inappropriate

[1] Ind. Code § 35-43-5-4 (2008).

[2] Ind. Code §§ 35-43-5-4; 35-41-5-1 (2008).

We "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." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

First, we would observe that Martin's crimes seem clearly to have arisen from separate episodes of criminal conduct, thereby allowing for an actual maximum sentence of six years, which the trial court did not impose. *See* Ind. Code §§ 35-50-2-7; 35-50-1-2 (2008). We would further note that Martin's offenses were not particularly egregious when compared to other cases of fraud. The record indicates that Martin was able to purchase $22.58 of gasoline at a Marathon station before the card was deactivated and that his wife attempted later purchases of $118.24 and $71.49. There is no indication that the cardholder, Adelin Larrowe, has suffered any financial damage or other long-term ill effects as a result of Martin's crimes.

As for Martin's character, in our view we must balance his almost immediate acceptance of responsibility for his actions with his not-insignificant criminal history. It is to Martin's credit that, after first telling police that he had obtained the card from a friend, he eventually did admit that he had found the card and used it without the owner's consent.

Martin also pled guilty without benefit of a written plea agreement at his initial hearing, thereby sparing the State the expense and trouble of preparing a case and taking him to trial. On the other hand, Martin's criminal history does not reflect well on his character. Martin has prior convictions for Class C misdemeanor reckless driving, Class D felony theft, and Class D felony fraud. Martin's history shows a pattern of property crime that suspended sentences, terms of probation, and alternative placements such as home detention have yet to break. We cannot say that a period of incarceration is inappropriate at this point, given the failure of less harsh measures to reform Martin. Given Martin's past, we conclude that he has failed to establish that a three-year sentence with eighteen months suspended to probation is inappropriate, especially when one considers that he could have received a six-year sentence and may be able to serve much of his sentence on work release.

The judgment of the trial court is affirmed.

BAILEY, J., and VAIDIK, J., concur.