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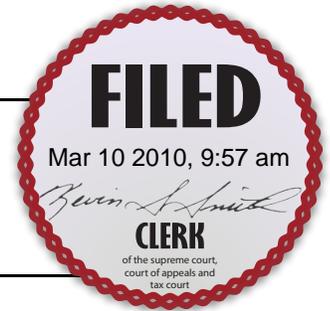
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**IN THE
COURT OF APPEALS OF INDIANA**



TIMOTHY ALLEN ROBBINS,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 07A04-0909-CR-551

APPEAL FROM THE BROWN CIRCUIT COURT
The Honorable Judith A. Stewart, Judge
Cause No. 07C01-0612-FD-511

March 10, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Timothy Allen Robbins appeals the sentence imposed by the trial court after Robbins pleaded guilty to two counts of Forgery,¹ a class C felony, and two counts of Theft,² a class D felony. Robbins argues that the trial court abused its discretion by failing to find a mitigator and that the sentence is inappropriate in light of the nature of the offenses and his character. Finding no error and finding that the sentence is not inappropriate, we affirm.

FACTS

In the fall of 2006, Carl Biszantz and his wife, an elderly couple who live in Brown County, hired Robbins to do some construction or landscaping work on their home. On September 27, 2006, Robbins had access to the residence, and shortly thereafter, Biszantz discovered that some personal checks and a Home Depot credit card were missing from his home. On September 28, 2006, Robbins used the Home Depot credit card in Johnson County, signing Biszantz's name. On December 19, 2006, Biszantz learned that Robbins had tried to cash one of his checks at a bank in Johnson County. The check was purported to be signed by Biszantz, but he had not written, signed, or authorized it.

On December 27, 2006, the State charged Robbins with three counts of class D felony theft. On January 18, 2008, the State amended the information, adding seven counts of class C felony forgery and two counts of class C felony attempted forgery. On April 20, 2009, Robbins pleaded guilty to two counts of class D felony theft and two

¹ Ind. Code § 35-43-5-2(b)(1).

² Ind. Code § 35-43-4-2.

counts of class C felony forgery in exchange for the dismissal of the remaining charges. The plea agreement provided that Robbins's sentence would be served consecutively to sentences he was serving in two other, unrelated causes in Johnson County, and that his executed time would be capped at four years imprisonment.

On July 20, 2009, the trial court held a sentencing hearing. It found Robbins's lengthy criminal history as an aggravator. As mitigators, the trial court found Robbins's guilty plea and agreement to pay restitution to the victims. The trial court explicitly declined to find hardship to Robbins's three minor children as a mitigator, stating that there was no evidence that they would experience more hardship than any other children whose parent was facing incarceration. The trial court imposed six-year sentences on each of the forgery convictions, with four years executed and two suspended, and two years on each of the theft convictions. It ordered the sentences to run concurrently, for an aggregate sentence of six years, with two years suspended to probation. Robbins now appeals.

DISCUSSION AND DECISION

Robbins first argues that the trial court erred by refusing to find undue hardship to his dependents as a mitigating circumstance. We review sentencing decisions for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on rehearing, 875 N.E.2d 218 (2007). A trial court may abuse its discretion by entering a sentencing statement that includes reasons for imposing a sentence not supported by the record, omits reasons clearly supported by the record, or includes reasons that are improper as a matter of law. Id. at 490-91.

Our Supreme Court has explained that “[m]any persons convicted of serious 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). Here, Robbins’s three children will be living with their maternal grandmother during his incarceration.³ He argues that they will experience undue hardship, inasmuch as they will not have either parent in their lives while he is imprisoned. While it is undoubtedly true that Robbins’s children will suffer hardship during his absence, the fact that they have a relative who is willing and able to care for them so that they need not enter the foster care system leads us to conclude that their hardship is not so severe that the trial court erred by refusing to consider it as a mitigating circumstance. Therefore, we decline to find that the trial court abused its discretion in this regard.

Robbins next argues that the aggregate six-year sentence, with two years suspended to probation, is inappropriate in light of the nature of the offenses and his character pursuant to Indiana Appellate Rule 7(B). 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).

For Robbins’s two class C felony convictions, the trial court imposed sentences of six years, with two of those years suspended to probation. This term is slightly elevated

³ Robbins states that the children’s mother is a drug addict and, consequently, unable to care for the children. There is no evidence in the record related to that contention. Regardless of the reason, however, it appears that the children’s mother will not be their caregiver during Robbins’s incarceration.

over the advisory term of four years, but less than the maximum eight-year term for a class C felony conviction. Ind. Code § 35-50-2-6. For his two class D felony convictions, Robbins received two years, which is slightly elevated over the advisory term of one and one-half years, but less than the maximum three-year term for a class D felony conviction. I.C. § 35-50-2-7.

As for the nature of the offenses, Robbins took advantage of an elderly couple who had hired him to do construction or landscaping work on their home. They gave him their trust and provided him access to their home. He abused that trust, stealing some personal checks and a credit card, and later attempting to cash those checks and using the credit card, signing Biszantz's name in each case.

As for Robbins's character, he has an eighteen-year criminal history that includes felony convictions for battery, forgery on two occasions, and theft, and misdemeanor convictions for criminal recklessness on two occasions, battery, check deception on five occasions, resisting law enforcement, and invasion of privacy. Additionally, he is an admitted decades-long drug addict.

We acknowledge that Robbins pleaded guilty, though we afford little significance to his plea given that he waited nearly two and one-half years to do so and received significant benefits as a result—the dismissal of multiple charges and a cap of four years on his executed sentence. We also acknowledge that Robbins has represented that he no longer uses drugs and is in a drug treatment program. Given the nature of the offenses and Robbins's lengthy and substantial criminal history, however, we do not find the aggregate six-year sentence, with two years suspended to probation, to be inappropriate.

The judgment of the trial court is affirmed.

BAILEY, J., and ROBB, J., concur.