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**IN THE  
COURT OF APPEALS OF INDIANA**

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TERRY ALLEN WAGSTER,  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
Appellee-Plaintiff.

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No. 45A03-1011-CR-590

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APPEAL FROM THE LAKE SUPERIOR COURT  
The Honorable Thomas P. Stefaniak, Jr., Judge  
The Honorable Bruce D. Parent, Judge Pro Tempore  
Cause No. 45G04-0907-FC-81

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June 24, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**CRONE, Judge**

## **Case Summary**

Terry Wagster appeals the three-year sentence imposed following his guilty plea to two counts of exploitation of an endangered adult, as class D felonies. His sole contention on appeal is that his sentence is inappropriate in light of the nature of the offenses and his character. Finding that Wagster has failed to meet his burden to show that his sentence is inappropriate, we affirm.

## **Facts and Procedural History**

S.B. and C.B. were both adults over the age of sixty years old who, due to mental incapacity, had enlisted Golden Care Home Health Care (“Golden Care”) to provide health care and financial management. Wagster was an employee of Golden Care from May 28, 2009, to June 8, 2009. During that period, Wagster wrote five unauthorized checks to himself from S.B. and C.B.’s bank account. The amounts totaled \$2600.

The State charged Wagster with two counts of fraud on a financial institution, as class C felonies, and two counts of exploitation of an endangered adult, as class D felonies. On August 25, 2010, Wagster pled guilty to the two class D felony counts pursuant to a written plea agreement. In addition to providing for dismissal of the C felony counts, the plea agreement provided for open, but concurrent, sentencing on the two D felonies. Following a sentencing hearing, the trial court sentenced Wagster to three years on both counts, to be served concurrently. This appeal ensued.

## Discussion and Decision

Wagster's contends that his three-year sentence is inappropriate in light of the nature of his offenses and his character. Accordingly, we invites us to revise his sentence. We decline his invitation.

The sentencing range for a class D felony is between six months and three years, with the advisory sentence being eighteen months. Ind. Code § 35-50-2-7. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence "is inappropriate in light of the nature of the offense and the character of the offender." The defendant bears the burden to persuade this Court that his or her sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). "[W]hether we regard a sentence as appropriate at the end of the day turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

Regarding the nature of the offenses, the advisory sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. The circumstances here, however, suggest that something more than the advisory sentence is warranted. Wagster took advantage of two extremely ill elderly people who were both suffering from dementia. As described by the trial court, Wagster conduct of preying on "very helpless victims" was "horrific." Tr. at 87. Wagster's crimes caused his victims so

much anxiety that they both started refusing food and medication. Appellant's App. at 27. The victims' daughter explained that Wagster's crimes caused her irreparable emotional wounds as he ruined her parents' wish to be able to stay in their home until they died. *Id.* Because of their loss of money, the victims were forced to move to a nursing home, where they died a week later. *Id.* Under the circumstances, we are not persuaded that a three-year-sentence is too severe.

Regarding Wagster's character, his criminal history includes five misdemeanor convictions. He has been given the benefit of probation in the past, yet his criminal behavior has not been deterred. Wagster admitted that he committed his current crimes to feed his drug addiction. Despite numerous efforts at drug rehabilitation, Wagster continues to relapse. During sentencing, Wagster made excuses for his crimes and failed to take personal responsibility for his actions. Wagster has not met his burden to show that his three-year-sentence is inappropriate in light of his character. Therefore, we affirm.

Affirmed.

NAJAM, J., and ROBB, C.J., concur.