



David Kendrick pleaded guilty to five counts of Forgery<sup>1</sup> as class C felonies; one count of Theft<sup>2</sup> as a class D felony; five counts of Fraud<sup>3</sup> as class D felonies; one count of Driving While Suspended,<sup>4</sup> a class A misdemeanor; one count of Unauthorized Entry of a Motor Vehicle,<sup>5</sup> a class B misdemeanor; and one count of Criminal Mischief,<sup>6</sup> a class A misdemeanor. The trial court subsequently sentenced Kendrick to a total aggregate term of seven and one-half years imprisonment. On appeal, Kendrick presents two issues for our review:

1. Did the trial court abuse its discretion in sentencing Kendrick?
2. Is the sentence imposed inappropriate?

We affirm.

On December 19, 2007, Kendrick broke into a car belonging to Cheryl Moore that was parked at the Milner Nursing Home in Clinton County. Kendrick took Moore's purse, which contained several credit cards. Kendrick and a female accomplice, Kalota Dowling, then went to a CVS Pharmacy in Rossville, Indiana, where Dowling used Moore's credit cards to purchase several pre-paid credit cards. Later that same day, the car Kendrick was driving was stopped by police officers from Tippecanoe County and the Rossville Police Department. Officers conducting the stop learned that Kendrick's driving privileges had

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<sup>1</sup> Ind. Code Ann. § 35-43-5-2 (West, PREMISE through 2009 1st Regular Sess.).

<sup>2</sup> I.C. § 35-43-4-2 (West, PREMISE through 2009 1st Regular Sess.).

<sup>3</sup> I.C. § 35-43-5-4 (West, PREMISE through 2009 1st Regular Sess.).

<sup>4</sup> Ind. Code Ann. § 9-24-19-2 (West, PREMISE through 2009 1st Regular Sess.).

<sup>5</sup> I.C. § 35-43-4-2.7 (West, PREMISE through 2009 1st Regular Sess.).

<sup>6</sup> I.C. § 35-43-1-2 (West, PREMISE through 2009 1st Regular Sess.).

been suspended for some time. Also, at the scene and in the vehicle, officers discovered several things that belonged to Cheryl Moore, including her purse, several credit cards, driver's license, and social security card. There were also several unopened Visa and American Express gift cards, as well as several receipts from the Rossville CVS showing the purchase of several gift cards earlier that morning.

On December 21, 2007, the State charged Kendrick with five counts of class C felony forgery, one count of class D felony theft, five counts of class D felony fraud, one count of class A misdemeanor operating a vehicle while intoxicated endangering a person, one count of class A misdemeanor driving while suspended, one count of class B misdemeanor unauthorized entry of a motor vehicle, and one count of class A misdemeanor criminal mischief. On March 4, 2009, the charge of operating a vehicle while intoxicated (Count 12) was dismissed. That same day, Kendrick pleaded guilty to all remaining counts pursuant to a written plea agreement. The plea agreement provided that sentencing was left to the trial court's discretion. On April 2, 2009, the trial court sentenced Kendrick as follows:

Five years on each of Counts 1-5 (class C felony forgery), concurrent with each other;

Two years on each of Counts 7-11 (class D felony fraud), concurrent with each other and concurrent with the sentences for Counts 1-5;<sup>7</sup>

Two years on Count 6 (class D felony theft), consecutive to the sentences for Counts 1-5 and 7-11;

Six months on Count 13 (class A misdemeanor driving while suspended), consecutive to the sentences for Counts 1-5, 7-11, and 6;

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<sup>7</sup>The sentencing order contains a scrivener's error listing these counts as forgery. It is clear from the charging information and the transcript of the sentencing hearing that these sentences are for fraud.

Six months on Count 14 (class B misdemeanor unauthorized entry of a motor vehicle), concurrent with the sentence for Count 6;

Six months on Count 15 (class A misdemeanor criminal mischief), concurrent with the sentences on Count 6 and 14.

Kendrick's total aggregate sentence is seven and one-half years imprisonment. In support of the sentence imposed, the trial court identified Kendrick's extensive criminal history as an aggravating circumstance. The trial court also noted that Kendrick expressed remorse as a mitigating factor. The trial court concluded, however, that Kendrick's criminal history outweighed the mitigating factors Kendrick proffered (including his expressed remorse, his desire to make restitution, his guilty plea, and that his crimes were non-violent in nature).

1.

Kendrick argues that the trial court abused its discretion in weighing the aggravating and mitigating factors, in imposing sentences above the advisory sentences, and in imposing consecutive sentences. Specifically, Kendrick argues that the trial court "neglected to properly weigh the mitigating factors of showing remorse, apologizing, offering to pay restitution, and pleading guilty." *Appellant's Brief* at 4. Kendrick further argues that these mitigating factors "outweighed or at least negated the aggravating factor of the criminal history, making the sentences above the advisory and the consecutive sentences inappropriate and an abuse of discretion." *Id.* at 7.

We note that sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g* by 875 N.E.2d 218. With the exception of our authority to review sentences under Indiana Appellate Rule 7(B), as long

as a defendant's sentence is within the statutory range, it is reviewed only for an abuse of discretion. *Id.* An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances and the reasonable inferences to be drawn therefrom. *Id.* Circumstances under which a trial court may be found to have abused its discretion include: (1) failing to enter a sentencing statement, (2) entering a sentencing statement that includes reasons not supported by the record, (3) entering a sentencing statement that omits reasons clearly supported by the record, or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* Where a trial court has identified proper aggravating and mitigating circumstances, however, "[t]he relative weight or value assignable to reasons properly found or those which should have been found is not subject to review for abuse." *Id.* at 491.

To the extent Kendrick is arguing that the trial court failed to consider certain mitigating factors, we find that Kendrick misreads the record. A review of the trial court's oral and written sentencing statements leads us to conclude that the trial court did not overlook the mitigating factors proffered by Kendrick. The trial court noted that "the most glaring part" about the pre-sentence investigation report was Kendrick's criminal history. *Transcript* at 44. The court then expressly noted that Kendrick had apologized to the victim, but ultimately concluded that his criminal history outweighed "the other mitigating factors" cited on his behalf. *Id.* at 45. We note that the trial court's statement in this regard immediately followed the statement of Kendrick's attorney in which Kendrick's attorney set forth the mitigating circumstances Kendrick asked the court to consider. Confirming that the

trial court did indeed consider the mitigating circumstances proffered by Kendrick, the trial court, in its written sentencing statement, found as mitigating circumstances that Kendrick had accepted responsibility by pleading guilty and that Kendrick had expressed remorse for his actions. The court further explained that it refused to find the non-violent nature of the offense or the fact that Kendrick was not the principal actor in the crimes of forgery and fraud as mitigating factors. We cannot say that the trial court overlooked the mitigating factors proffered by Kendrick.

Further, to the extent Kendrick is arguing that the trial court abused its discretion in assigning weight to the aggravating and mitigating factors, such is no longer subject to review. *See Anglemyer v. State*, 868 N.E.2d 482. This encompasses Kendrick's argument that the trial court abused its discretion in imposing sentences above the advisory sentence.

Kendrick also argues that the trial court abused its discretion in imposing consecutive sentences. The decision to impose consecutive or concurrent sentences is also within the trial court's discretion. *Williams v. State*, 891 N.E.2d 621 (Ind. Ct. App. 2008). Here, the trial court explained that it found the multiple counts of forgery and multiple counts of fraud to constitute a single episode of criminal conduct. The court therefore explained that it would run the sentences imposed on those convictions concurrent to each other. With regard to Kendrick's theft and driving while suspended convictions, the court explained that the sentences imposed thereon would be served consecutive to the other sentences because they constituted separate acts. The trial court did not abuse its discretion in imposing consecutive sentences.

Kendrick argues that his sentence is inappropriate in light of the nature of the offense and his character. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* App. R. 7(B); *Anglemyer v. State*, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that the defendant bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to the nature of the offense, Kendrick simply argues that his breaking into an unattended car, stealing a purse and credit cards, and then using those credit cards to purchase gift cards does not qualify as the "worst" offenses justifying a sentence near the maximum. *Citing Roney v. State*, 872 N.E.2d 192, 207 (Ind. Ct. App. 2007). We first address Kendrick's assertion that the sentence imposed is near the maximum of eight years that the trial court could have imposed. Eight years is not the appropriate measure for the maximum sentence that could have been imposed. In support of his assertion, Kendrick points out that had the trial court ordered all of the sentences to be served concurrently, the maximum he could have faced would have been eight years. Kendrick's assertion, however, does not take into consideration the discretion to impose consecutive sentences, which could certainly result in a sentence greater than eight years. Kendrick's seven and one-half year

sentence is not nearly as close to the maximum sentence as he claims. Considering the nature of the offense, it is true that no physical harm was inflicted on an individual. As the trial court noted, however, the impact on the victim resulting from Kendrick breaking into her car and taking her credit cards, should not be discounted.

With regard to the character of the offender, Kendrick's criminal history is quite telling. Kendrick's criminal history consists of multiple felony convictions from 1983 (Kendrick was waived to adult court for a crime he committed when he was sixteen years old), the most serious of which being a class A felony for which Kendrick was sentenced to twenty-five years imprisonment. Kendrick remained incarcerated for the 1983 offenses for twelve and one-half years. In 1996, shortly after his release from imprisonment, Kendrick was arrested for carjacking that was ultimately mitigated down to a theft, for which he was convicted. When he was arrested on the current offenses, Kendrick was on bond out of Howard County for the offense of theft and had an outstanding charge out of Hamilton County for driving while suspended. In addition to his convictions, Kendrick has amassed numerous arrests. Kendrick's criminal history, including his extensive record of arrests, clearly demonstrates that Kendrick's criminal behavior has not been deterred.

In light of Kendrick's character and the nature of the offense, we conclude that the seven and one-half year sentence is not inappropriate.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.