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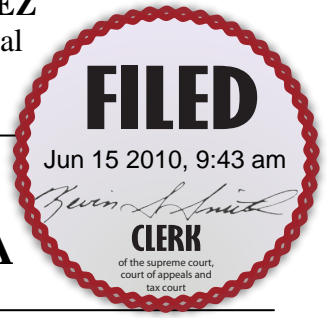
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**IN THE
COURT OF APPEALS OF INDIANA**

PERCY L. LIPSCOMB, JR.,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 29A05-1002-CR-54

APPEAL FROM THE HAMILTON CIRCUIT COURT
The Honorable Paul A. Felix, Judge
Cause No. 29C01-0901-FC-11

June 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Percy Lipscomb, Jr., appeals his sentence for forgery as a class C felony.¹ Lipscomb raises one issue, which we revise and restate as whether Lipscomb's sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On July 17, 2008, Leander Grimes and Lipscomb drove into the parking lot of a fitness club in Carmel, Indiana, broke the driver's window of a vehicle, and stole a purse from inside the vehicle. At that time, Carmel police officers were conducting surveillance due to prior thefts in the parking lot. Grimes and Lipscomb exited the parking lot but were stopped by police. Lipscomb initially identified himself as Ivory L. Sims, who was Lipscomb's cousin. Lipscomb was later interviewed at the Carmel Police Department and again identified himself as Sims and provided a date of birth and social security number that belonged to Sims. Lipscomb signed four forms using the name Ivory Sims.

On August 28, 2008, a warrant was issued for Ivory L. Sims for failure to appear related to the charges arising from the incident. On December 17, 2008, the actual Ivory L. Sims was arrested and transported to the Hamilton County Jail. On December 18, 2008, Lipscomb's father contacted police and informed them that Lipscomb had provided them with a false name. The police confirmed Lipscomb's identity through fingerprints and photographs.

¹ Ind. Code § 35-43-5-2 (Supp. 2006).

On January 30, 2009, the State charged Lipscomb with Count I, forgery as a class C felony; Count II, conspiracy to commit theft as a class D felony; and Count III, false informing as a class B misdemeanor. The State also alleged that Lipscomb was an habitual offender. On October 29, 2009, Lipscomb pled guilty to Count I, forgery as a class C felony, and the State dismissed the remaining charges pursuant to a plea agreement. The plea agreement provided that “[t]he State will not make a specific sentencing recommendation, but will retain the opportunity to present victim testimony and other sentencing evidence.” Appellant’s Appendix at 52. On January 20, 2010, the trial court sentenced Lipscomb to seven years with six years to be served in the Department of Correction followed by one year in the Hamilton County Community Corrections Work Release Program.

The issue is whether Lipscomb’s sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that 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.” Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Lipscomb argues that his executed sentence should be minimized because the offense was “non-violent, non-drug related, and is without a victim,” and because his father, sister, nephew, and fiancé depend on him. Appellant’s Brief at 4.

Our review of the nature of the offense reveals that Lipscomb gave the police the name, date of birth, and social security number of his cousin. On August 28, 2008, a re-arrest warrant was issued for Ivory L. Sims for failure to appear related to the charges arising from the incident. On December 17, 2008, the actual Ivory L. Sims was arrested and transported to the Hamilton County Jail. After Lipscomb's father contacted police, the police confirmed Lipscomb's identity through fingerprints and photographs.

Our review of the character of the offender reveals that Lipscomb, who was born on July 17, 1978, pled guilty to the present offense and in return the State dismissed two counts and the allegation that Lipscomb was an habitual offender. At the sentencing hearing, Lipscomb introduced a letter from his sister, which stated that Lipscomb is the babysitter for her nine-year-old son. Lipscomb also introduced a letter from his fiancé, which stated that Lipscomb's father is "very sick" and "needs his son at his side," and that his fiancé is a diabetic and needs Lipscomb's "help to make it through." Defendant's Exhibit C. We observe that the trial court stated:

You knew that your family counted on you to babysit your nephew. You knew that you needed to be around for your dad. But that did not prevent you from committing these crimes. The way I see it, if you don't consider your family members, I shouldn't either. . . . These are all things that you were aware of that should have been things that should of [sic] prevented you from committing these crimes, and you didn't do it.

Transcript at 19-20

As a juvenile, Lipscomb was charged with two counts of theft as class D felonies and received a warning for each offense. Lipscomb was also charged with theft as a class

D felony and received probation, which he successfully completed. As an adult, Lipscomb has convictions for criminal conversion as a class A misdemeanor in 1998, two counts of criminal mischief as class B misdemeanors in 1999, resisting law enforcement as a class A misdemeanor in 1999, receiving stolen property as a class D felony in 2003, theft as a class D felony in 2002, criminal conversion as a class A misdemeanor in 2003, two counts of forgery as class C felonies and identity deception as a class D felony in 2004, and theft as a class D felony in 2005. In November 2008, after Lipscomb committed the present offense, he committed theft as a class D felony and forgery as a class C felony and later pled guilty to these offenses. Lipscomb violated probation for various offenses on multiple occasions. Lipscomb was on probation when he committed the present offense.

After due consideration of the trial court's decision and in light of Lipscomb's extensive criminal history, we cannot say that Lipscomb's sentence is inappropriate in light of the nature of the offense and the character of the offender. See Farris v. State, 787 N.E.2d 979, 985 (Ind. Ct. App. 2003) (holding that the defendant's eight-year sentence for forgery was not inappropriate).

For the foregoing reasons, we affirm Lipscomb's sentence for forgery as a class C felony.

Affirmed.

NAJAM, J., and VAIDIK, J., concur.