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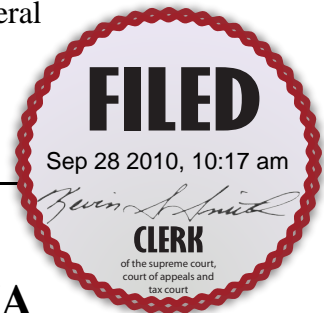
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**IN THE
COURT OF APPEALS OF INDIANA**

ANGELA M. (GREENE) McDONALD,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 88A01-1004-CR-165

APPEAL FROM THE WASHINGTON CIRCUIT COURT
The Honorable Robert L. Bennett, Judge
Cause No. 88C01-0903-FC-45

September 28, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Angela M. (Greene) McDonald (McDonald), appeals her sentence following a plea of guilty to forgery, a Class C felony, Ind. Code § 35-42-5-2.

We affirm.

ISSUES

McDonald raises one issue on appeal, which we restate as the following two issues:

- (1) Whether the trial court abused its discretion by failing to identify all significant aggravating and mitigating circumstances during the sentencing hearing; and
- (2) Whether her sentence is appropriate in light of her character and the nature of the offense.

FACTS AND PROCEDURAL HISTORY

On or about November 4, 2008, McDonald wrote one or more checks signing her grandmother's, Bertha Clifton (Clifton), name without authority to do so and with the intent to defraud Clifton. In total, McDonald stole approximately fifteen thousand dollars. As a result, Clifton, who was eighty-three years old and lived on a fixed income, lost her life savings and suffered financial hardship. Left without any savings, she relied on her family to pay all her bills.

On March 2, 2009, the State filed an Information charging McDonald with Count I, forgery, a Class C felony, I.C. § 35-42-5-2 and Count II, theft, a Class D felony, I.C. § 35-43-4-2. On July 23, 2009, McDonald entered into an agreement with the State to plead guilty to forgery, a Class C felony in exchange for dismissing theft, a Class D felony. The plea

agreement capped the possible sentence at three years of imprisonment. On October 22, 2009, during a plea hearing, McDonald pled guilty to Class C felony forgery and agreed to pay one thousand dollars towards restitution by December 10, 2009 in exchange for her release until the sentencing hearing.

On December 10, 2009, the trial court conducted its sentencing hearing. During the hearing, the trial court determined that McDonald had failed to make the agreed upon first part of the restitution. McDonald's counsel advised the trial court that he had received \$400.00 from McDonald as an initial payment towards the restitution and had placed it in a trust account. Counsel also informed the trial court that McDonald had another \$200.00 with her at the hearing and because of a delay in her unemployment payments she would not have the remainder of the first one thousand dollars of restitution until the following day.

During the hearing, McDonald admitted that she "took advantage of a situation [she] shouldn't have." (Transcript p. 24). In addition to stealing nearly ten thousand dollars, she also borrowed an additional five thousand dollars from Clifton. Other testimony revealed that McDonald had been convicted in the past three and a half years on three fraud-related offenses. In one of these cases, she was ordered to pay restitution in the amount of \$1,538.45 and to do twenty-four hours of community service as part of her probation. However, McDonald failed to make any payment towards this restitution or to complete her community service. The trial court also noted that she was on probation at the time she committed the current offense.

In sentencing McDonald, the trial court referenced her presentence report and mentioned McDonald's recent criminal history of fraud-related offenses. The trial court then acknowledged McDonald's acceptance of responsibility and her intent that she wanted to pay her grandmother back but failed to follow through with the restitution. In addition, the trial court noted McDonald's age as a mitigating factor. At the close of the hearing, the trial court sentenced McDonald to three years at the Department of Correction and the remainder of her probation time in the previous case.

McDonald now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. Standard of Review

McDonald contends that the trial court abused its discretion by sentencing her to a three year sentence for a Class C felony. A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. I.C. §35-50-2-6. Here, McDonald was given three years, the highest sentence possible under the terms of the plea agreement, but lower than the advisory sentence for a Class C felony.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *aff'd on reh'g*, 875 N.E.2d 218 (Ind. 2007). An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* One way in which a trial court may abuse

its discretion is by failing to enter a sentencing statement at all. Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id.* at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id.* at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id.*

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id.* Although a trial court may have acted within its lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id.* It is on this basis alone that a criminal defendant may now challenge her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

Although McDonald characterizes her appeal as an abuse of discretion, we will also address the appropriateness of her sentence pursuant to Appellate Rule 7(B).

II. *Abuse of Discretion*

McDonald first argues that the trial court abused its discretion by failing to “state any specific findings of facts or identify all significant mitigating and aggravating factors and failed to explain why each circumstance has been determined to be mitigating or aggravating in its order.” (Appellant’s br. p. 9). In *Anglemyer*, our supreme court analyzed the role of the trial court’s sentencing statement and “discern[ed] no legislative intent [] to alter fundamentally the trial procedure for sentencing criminal defendants.” *Anglemyer*, 868 N.E.2d at 490. The court concluded that

Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court’s reasons for imposing a particular sentence.

Id. Its primary purpose is to guard against arbitrary and capricious sentencing, and provide a basis for appellate review. *Id.* at 489.

Our review of the sentencing transcript reveals that the trial court provided an oral sentencing statement, elaborating on its reasons for imposing a three year sentence. In its statement, the trial court clearly identified McDonald’s recent criminal history of fraud-related offenses as an aggravating factor. The trial court acknowledged McDonald’s acceptance of responsibility and her intent that she wanted to pay her grandmother back but failed to follow through with the restitution. In addition, the trial court explicitly noted McDonald’s age as a mitigating factor. As such, we conclude that the sentence is not arbitrary or capricious and provides a basis for appellate review.

Next, McDonald argues that the trial court ignored significant mitigating factors. Specifically, McDonald asserts that the trial court failed to recognize her plea agreement and her intention to make restitution as significant mitigating circumstances. With respect to the guilty plea, we note that the trial court mentioned the guilty plea but did not appear to attach significant weight to it. A guilty plea does not automatically amount to a significant mitigating factor. For example, a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one. *Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), *trans. denied*. Here, under the terms of the plea agreement, the State dismissed one Class D felony. In light of this benefit to McDonald, the trial court did not abuse its discretion in failing to find McDonald's guilty plea to be a significant mitigating factor.

Turning to the restitution, McDonald asserts that despite McDonald's good intentions and insistence on wanting to pay back Clifton, the trial court did not assign it significant weight. During the sentencing hearing, McDonald reiterated her good intentions and her willingness to make full restitution to her grandmother. However, the trial court also heard evidence that between the plea hearing and the sentencing hearing, McDonald had agreed to make a restitution payment of one thousand dollars and had failed to do so in full by the agreed date. Clifton testified that McDonald had asked her for money numerous times in the past but had never paid her back. Based on McDonald's past behavior, Clifton did not believe that she would ever see her money again. Moreover, McDonald's probation officer

notified the trial court that she did not make any payments towards the restitution which was part of her probation in a previous cause. During its recitation, the trial court clearly considered McDonald's intention as a mitigation factor by mentioning it during the sentencing hearing; however, the court did not give it much weight. Based on the evidence before us, the trial court did not abuse its discretion in refusing to award it significant weight.

III. Appropriateness of the Sentence

Next, we consider whether McDonald's sentence is inappropriate in light of her character and nature of the crime. First, we note that McDonald received a three year sentence pursuant to the terms of the plea agreement, which is one year less than the advisory sentence for a Class C felony.

With respect to the nature of the crime, McDonald stole nearly ten thousand dollars from her grandmother with whom she lived and who she described as "the only person that's ever offered to help [her] with anything, ever." (Tr. p. 23). Furthermore, prior to stealing Clifton's life savings, McDonald already had borrowed close to five thousand dollars from her. As a result of McDonald's actions, Clifton was unable to pay any bills, instead relying on her family to pay "her bills, her gas, her electric, her groceries, her water, her phone, her meds." (Tr. p. 43).

Turning to McDonald's character, we notice that this is not McDonald's first forgery offense. During a span of three and a half years, she was convicted on three fraud-related offenses. In one of these cases, she was ordered to pay restitution and perform community service as part of her probation, neither of which she had done at the time of the instant

charge. Her probation officer testified that he didn't "believe that she will make good on any restitution she is ordered to pay in this case." (Tr. p. 47). In light of the evidence before us, we conclude that a three year sentence is appropriate with respect to her character and nature of the offense.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced McDonald.

Affirmed.

KIRSCH, J., and BAILEY, J., concur.