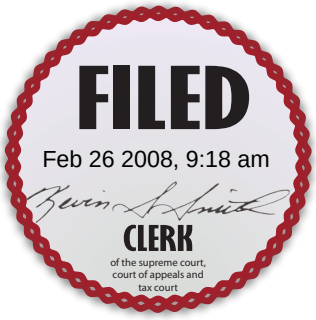

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IN THE
COURT OF APPEALS OF INDIANA

SUSAN R. MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 91A02-0711-CR-943
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WHITE SUPERIOR COURT
The Honorable Robert B. Mrzlack, Judge
Cause No. 91D01-0512-FC-175

February 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Susan Morris appeals her sentence and restitution order following her plea of guilty to three counts of Class C felony forgery. We affirm.

Issues

Morris raises five issues, which we combine and restate as the following:

I. whether the trial court properly ordered that the five-year executed portion of Morris's eight-year sentence be served in the Department of Correction ("DOC"), rather than in a community corrections program; and

II. whether the trial court properly calculated the amount of restitution Morris owes the victim.

Facts

In 2005, Morris was employed in the accounts receivable department of Amos Agri Products in Brookston. During her employment, she forged signatures on three company checks totaling $8,650.00.[1]

On December 5, 2005, the State charged Morris with three counts of Class C felony forgery. On May 29, 2007, Morris agreed to plead guilty to the three charges. The plea agreement specifically set Morris's sentence at eight years for each conviction, to be served concurrently, and with three years suspended. The agreement also stated,

[1] The evidence is not entirely clear as to what precisely transpired with the three checks. The change of plea hearing and factual basis were not transcribed, and we are attempting to determine what happened by referencing the probable cause affidavit and testimony at the sentencing hearing. It may be that Morris first deposited all three checks into her own account, then wrote checks or money orders against those deposits to third persons including her boyfriend, whom she later married in 2006. It is unclear whether Morris is still married, as she is now using her maiden name.

"The State does not oppose the Defendant serving the executed portion on Community Corrections through Tippecanoe County Community Corrections." App. p. 26.

The trial court conducted a sentencing hearing on July 16, 2007. Morris presented testimony and argument that she be allowed to serve the five-year executed portion of her sentence through community corrections. The trial court, however, rejected this argument and ordered that Morris be committed to the DOC for the executed portion of her sentence. It also ordered Morris to pay $8,650.00 in restitution. Morris now appeals.

Analysis

I. Sentence

Morris challenges the trial court's decision to order her placement in the DOC for five years, rather than in a community corrections program. Because the total length of her sentence was fixed by the plea agreement, she has no viable argument in that regard. See Bennett v. State, 802 N.E.2d 919, 921-22 (Ind. 2004). Our supreme court, however, has expressly directed that a trial court's decision as to placement, or where a sentence is to be served, is reviewable on appeal under Indiana Appellate Rule 7(B). See Biddinger v. State, 868 N.E.2d 407, 414 (Ind. 2007) (citing Hole v. State, 851 N.E.2d 302, 304 n.4 (Ind. 2006)). What is less clear is whether a placement decision also is subject to review under an abuse of discretion standard. We assume for purposes of this case that it is.

We engage in a four-step process when evaluating a sentence under the current "advisory" sentencing scheme. Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, the trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or

omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id. Even if a trial court abuses its discretion by not issuing a reasonably detailed sentencing statement or in its findings or non-findings of aggravators and mitigators, we may choose to review the appropriateness of a sentence under Rule 7(B) instead of remanding to the trial court. See Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007).

Morris asserts that the trial court abused its discretion in identifying aggravating circumstances and failing to identify certain claimed mitigating circumstances. However, the trial court did not issue a sentencing statement, either written or oral, that delineated aggravating and mitigating circumstances. The trial court did discuss several matters when it pronounced sentence, but did not specifically identify various factors as mitigators or aggravators. It likely believed it was unnecessary to do so, with the total length of Morris's sentence being fixed by the plea agreement.

Even if the trial court should have issued a traditional sentencing statement identifying mitigating and aggravating circumstances, we elect to review the propriety of Morris's sentence ourselves under Appellate Rule 7(B), in light of her character and the nature of the offenses, rather than remanding to the trial court.[2] See Windhorst, 868 N.E.2d at 507. Although Rule 7(B) does not require us to be "extremely" deferential to a

[2] This also means that we will not review Morris's claim that the trial court improperly considered a victim impact statement in sentencing her.

trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

The nature of the offense here is neither especially egregious nor clearly excusable. We, therefore, will focus our review primarily upon Morris's character. On that point, her criminal history is highly troubling. In 1996, she was placed on pre-trial diversion after being charged with Class A misdemeanor check deception. From 1998 to 2005, she accumulated five convictions for Class A misdemeanor check deception. In 2002, she was convicted of Class D felony theft, which appears to have been a case in which she defrauded an employer by periodically giving herself unauthorized raises. The significance of a criminal history varies based on the gravity, nature, and number of prior offenses as related to the current offense. Bryant v. State, 841 N.E.2d 1154, 1156-57 (Ind. 2006). Morris's relatively recent criminal history of numerous financial crimes clearly is very significant in relation to the present forgery offenses.

We also note that Morris apparently did not divulge any of these convictions to Amos Agri Products before being placed in a position of financial responsibility there, which provided her with the opportunity to commit the current crimes. Furthermore, as revealed by the pre-sentence report, previous trial courts have employed various methods short of incarceration in an effort to reform Morris. These efforts have included pre-trial diversion, payment of fines and restitution, supervised probation, community corrections,

and home detention. None of those efforts dissuaded Morris from committing the present offenses. Certainly, Morris's protestations after being convicted of these offenses that she had finally learned her lesson and now was becoming more financially responsible can be taken with a large grain of salt. She has been committing and been punished for financially-related crimes of dishonesty for several years and has failed to reform her behavior.

Morris also contends that her incarceration will result in hardship to her son, who was six years old at the time of sentencing. Although hardship to dependents can be considered a mitigating factor in sentencing, it is not a mandatory mitigator. See Comer v. State, 839 N.E.2d 721, 730 (Ind. Ct. App. 2005), trans. denied. It is highly unfortunate that Morris has a young child who will be deprived of his mother for several years. However, Morris is not the first parent of a young child who will be separated from his or her child by incarceration, nor will she be the last. The fact of having a dependent child cannot by itself serve as an excuse to completely avoid incarceration. Because of Morris's lengthy history of committing crimes very similar to the present ones and her failure to reform in response to lesser punitive measures, we cannot say it is inappropriate to require her to serve five years in the DOC rather than in a community corrections program.

II. Restitution

Morris also claims the trial court incorrectly computed the amount of restitution she owes. Our restitution statute, Indiana Code Section 35-50-5-3, requires that the amount of restitution ordered must reflect the actual loss incurred by the victim. Myers

v. State, 848 N.E.2d 1108, 1109 (Ind. Ct. App. 2006). The amount of restitution ordered is within the trial court's discretion, and it will be reversed only upon a finding of an abuse of that discretion. Id.

Morris acknowledges that the total amount of the three checks she forged was $8,650.00, which is the amount of restitution ordered by the trial court. However, she contends she is entitled to a reduction in the restitution she owes in the amount of $2,150.00. This is based upon evidence presented that $2,150.00 was withdrawn from Morris's boyfriend's bank account by his bank because of a returned check. Thus, Morris essentially claims, Amos Agri Products must have already been reimbursed $2,150.00 for this returned check, which Morris seems to concede was fraudulent.

However, the evidence is unclear as to what exactly transpired with this deposit and subsequent withdrawal. We observe that at the sentencing hearing, Morris represented that this $2,150.00 withdrawal was from her account; on appeal, she states that it was her boyfriend's account. Additionally, the bank statement only lists her boyfriend's name. Morris also presented no definitive evidence that Amos Agri Products was reimbursed the $2,150.00. There also exists the distinct possibility that the $2,150.00 was for a forged check for which Morris was not charged or convicted; the probable cause affidavit lists the forged checks as being in the amounts of $3,000.00, $1,150.00, and $4,500.00, for a total of $8,650.00. As such, we cannot say the trial court abused its discretion in refusing to reduce the restitution Morris owes by $2,150.00.

Conclusion

Requiring Morris to serve the five-year executed portion of her sentence in the DOC rather than in a community corrections program is not inappropriate. Additionally, the trial court did not abuse its discretion in calculating the amount of restitution Morris owes. We affirm.

Affirmed.

SHARPNACK, J., and VAIDIK, J., concur.