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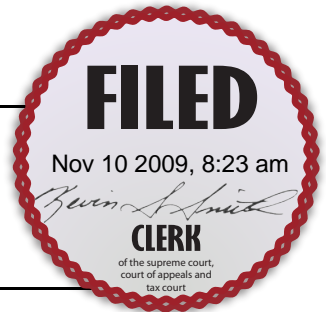
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**IN THE
COURT OF APPEALS OF INDIANA**



REYNALDO FORELO PINLAC,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 45A03-0905-CR-224

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Salvador Vasquez, Judge
Cause No. 45G01-0710-FD-80

November 10, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Reynaldo Forelo Pinlac (“Pinlac”) appeals his sentence for Theft, as a Class D felony, and the trial court’s restitution order. We affirm.

Issues

Pinlac raises the following issues:

- I. Whether his sentence is inappropriate; and
- II. Whether the trial court abused its discretion in ordering Pinlac to pay \$55,340.94 in restitution.

Facts and Procedural History

As president of the Phillipine Professionals Association (“PPA”), Pinlac signed a bank signatory card for a PPA account on January 24, 2006. The next day, he wrote an unauthorized check to himself. Over the course of approximately a year and a half, Pinlac took \$55,340.94.

The State charged Pinlac with Theft, as a Class D felony.¹ It later amended its information to charge him with Forgery, as a Class C felony, Identity Deception, as a Class D felony, Fraud on a Financial Institution, as a Class C felony, and Check Fraud, as a Class D felony. Pursuant to a plea agreement, Pinlac pled guilty to Theft, as a Class D felony; the State dismissed the other four counts.

The trial court accepted the plea agreement and entered judgment of conviction on the offense of theft. A sentencing hearing was conducted over the course of two days. The

¹ Ind. Code § 35-43-4-2.

State's witness, Marita Stuppy ("Stuppy"), a member of the PPA's board of advisors, was sworn in both days. Transcript at 9, 56, 68.

The trial court found two mitigating circumstances: the defendant's lack of prior criminal conduct and his pleading guilty. It placed "minimal weight" on the latter as Pinlac benefitted from the State's dismissal of other charges. Appendix at 48. The trial court found three aggravating circumstances: the fact that Pinlac's character was "highly manipulative," his violation of a position of trust, and the fact that the defendant's criminal conduct began just one day after being authorized to sign checks on behalf of his organization. Id. Finally, the trial court found that each aggravating circumstance "outweigh[ed] any mitigating factor." Id.

The trial court sentenced Pinlac to a term of thirty months, with twelve months executed and eighteen months suspended to probation. As a condition of probation, the trial court ordered Pinlac to make restitution of \$55,340.94 – to be paid no less than \$1000 per month.

Pinlac moved to correct error, for change of judge, and for an appeal bond. All three motions were denied.

Pinlac now appeals his sentence and the restitution order.

Discussion and Decision

I. Appropriateness of Sentence

Pinlac argues that his sentence is inappropriate. Under Indiana Appellate Rule 7(B), this "Court may revise a sentence authorized by statute if, after due consideration of the trial

court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B); see IND. CONST. art. 7, § 6. In performing our review, we assess "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). This "introduces into appellate review an exercise of judgment that is unlike the usual appellate process, and is very similar to the trial court's function." Id. at 1223. A defendant "must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007).

As to the nature of the offense, the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." Childress, 848 N.E.2d at 1081. For a Class D felony, the advisory sentence is eighteen months; the sentence can range from six to thirty-six months. Ind. Code § 35-50-2-7. Pinlac was sentenced to thirty months, with twelve months executed and the remaining eighteen months suspended to probation.

Pinlac became president of a not-for-profit organization and immediately began exploiting his position of trust by taking the organization's money. Ultimately, he took more than \$55,000. For purposes of comparison, the offense of Theft is a Class C felony where the fair market value of the property is at least \$100,000. Ind. Code § 35-43-4-2(a)(1).

In addition to assisting a number of Indiana charities, the PPA has helped people in

the Philippines to receive medical services, hurricane relief, and the installation of artesian wells. Stuppy testified that Pinlac's actions compromised the organization's reputation for trust in the community and caused the PPA to have difficulty securing the continued support of past contributors. She stated,

It was staggering to us, as we looked back as to what he was trying to do to deceive us and we trusted him. Because he presented himself to the organization as a graduate of a prestigious university, University of the Philippines, and he presented himself as a CPA, which is what he put down on his membership form, when [in] actuality he never graduated from the University of the Philippines and he is not a CPA.

Tr. at 24-25. According to Stuppy, Pinlac took over the treasurer's duties, which allowed him to siphon funds from the organization while attempting to avoid detection. "Mr. Pinlac would inflate expenses and decrease income to try to hide some of the money that was taken. For example, Ms. Lina Carlos collected \$14,620 because of the inaugural benefit ball that we had in 2006, but in the report Mr. Pinlac only reported \$12,470." Id. at 24. During Pinlac's term, the PPA did not make a required payment to the U.S. Internal Revenue Service.

As to Pinlac's character, there was no record of any prior criminal conduct. After pleading guilty to Theft, Pinlac told the trial court, "I'm very sorry. I apologize that this case has gotten this far. I know I have a clean record, so I want to move on." Id. at 80. In summary, Pinlac acted immediately, routinely, and with great premeditation and planning to deceive his colleagues so that he could seize, for his own use, funds that were intended to be used for humanitarian efforts. Pinlac's sentence is not inappropriate.

II. Restitution Order

Pinlac also argues that there was insufficient evidence to support the trial court's order that he pay \$55,340.94 in restitution. As a condition of probation, the trial court may order the person to make restitution to the victim of the crime. Ind. Code § 35-50-5-3. We review a restitution order for an abuse of discretion. Crawford v. State, 770 N.E.2d 775, 781 (Ind. 2002). "A restitution order must be supported by sufficient evidence of actual loss sustained by the victim or victims of a crime." Rich v. State, 890 N.E.2d 44, 49 (Ind. Ct. App. 2008), trans. denied.

In sworn testimony, Stuppy referred to extensive financial records that she had prepared. Her testimony and written submissions supported the following data:

\$27,750.00	unauthorized checks
\$1587.97	unauthorized cashiers check to friend of Pinlac
\$12,300.00	unauthorized cash withdrawals from checking account
\$13,102.97	unauthorized withdrawals from scholarship fund
\$600.00	unauthorized payments to cell phone service providers
\$55,340.94	TOTAL

Thus, the State presented sufficient evidence that the PPA's actual losses amounted to \$55,340.94.

Finally, Pinlac argues that the trial court failed to consider his ability to pay when considering its restitution order. When restitution is ordered as a condition of probation, "the trial court must inquire into the defendant's ability to pay in order to prevent indigent

defendants from being imprisoned because of their inability to pay.” Pearson v. State, 883 N.E.2d 770, 773 (Ind. 2008), reh’g denied. To the contrary, the trial court commented as follows in considering the restitution order:

Given your income that I find in the presentence investigation report, income that you reported, a \$1000 amount is not unreasonable, and I think you have more than the ability to pay back a thousand dollars every month while on probation. . . . I see no reason whatsoever why you should not be able to make this amount, and I see no reason whatsoever why this amount should not be ordered.

Tr. at 86. Based upon this record, we conclude that the trial court did not abuse its discretion in entering its restitution order.

Conclusion

Pinlac’s sentence is not inappropriate. The trial court did not abuse its discretion in ordering Pinlac to pay \$55,340.94 in restitution.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.