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# IN THE
# COURT OF APPEALS OF INDIANA

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| THOMAS DODDS, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 15A04-0604-CR-190 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable G. Michael Witte, Judge
Cause No. 15D01-0502-FC-004

**OCTOBER 26, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**HOFFMAN, Senior Judge**

Defendant-Appellant Thomas Dodds appeals the sentence imposed after he pleaded guilty to forgery as a class C felony. We affirm.

Dodds raises two issues, which we restate as:

1. Whether the trial court erred in failing to consider his guilty plea and remorse as mitigating factors; and

2. Whether his sentence is appropriate.

We affirm.

In February 2005, the State charged Dodds with two counts of forgery as class C felonies and one count of attempted forgery as a class C felony after he forged checks at the Argosy Casino Riverboat in January 2005. The State later amended the charging information to include an habitual offender count. In November 2005, Dodds pleaded guilty to one count of forgery. Two months later, in January 2006, he withdrew his plea. In March 2006, Dodds again pleaded guilty to one count of forgery, and the State dismissed the remaining counts. The plea agreement did not include a sentencing recommendation.

The trial court held a sentencing hearing in March 2006. Evidence presented at the hearing revealed that Dodds has an extensive criminal history with 23 prior criminal convictions, including 11 felony convictions. Dodds told the court that he was "sorry [for] the incident [that] happened with the boat," but complained that a police officer "charged him with a crime that [he] did not commit and . . . gave false information to the prosecutor's office." Tr. at 28, 29. The trial court found Dodd's criminal history, which included multiple theft and forgery convictions, to be an aggravating factor. The court

also pointed out that Dodds was permitted to withdraw his first guilty plea, and then, when the State was ready for trial, Dodds decided to plead guilty again. Lastly, the court observed that the State dismissed two felony counts and an habitual offender count in exchange for Dodd's plea. Thereafter, the court sentenced Dodds to eight years, with two years suspended and two years on probation.

Dodds first contends that the trial court erred in failing to consider his guilty plea and remorse to be mitigating factors. Sentencing decisions are within the trial court's discretion and will be reversed only for an abuse of discretion. *Gornick v. State*, 832 N.E.2d 1031, 1034 (Ind. Ct. App. 2005), *trans. denied.* Further, the trial court is responsible for determining which aggravating and mitigating circumstances to consider. *Id.* This court has previously explained that a trial court does not abuse its discretion by not finding a guilty plea to be a mitigating factor when the defendant receives benefits for pleading guilty. *Id.* at 1035.

Here, Dodds was initially charged with three felonies and with being an habitual offender. He received a significant benefit by pleading guilty to just one of the felonies. Further, Dodds pleaded guilty once, withdrew the plea, and then did not decide to plead guilty again until he saw that the State was ready to go to trial. Lastly, although Dodds told the court that he was sorry for what happened on the boat, at the sentencing hearing, he complained that a police officer had charged him with a crime he did not commit. Under these circumstances, the trial court did not err in failing to find Dodds' guilty plea and remorse to be mitigating factors. *See id.*

Dodds also contends that his sentence is inappropriate because he is not one of the worst offenders and his is not one of the worst offenses. This court has the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude that the sentence is inappropriate in light of the nature of the offense and character of the offender. *Id.* (citing Ind. Appellate Rule 7(B)). We have previously explained as follows regarding the worst offense and worst offender principle:

> There is a danger in applying [this principle because] [i]f we were to take this language literally, we would reserve the maximum punishment for only the single most heinous offense. In order to determine whether an offense fits that description, we would be required to compare the facts of the case before us with either those of other cases that have been previously decided, - or more problematically – with hypothetical facts calculated to provide a "worst-case scenario" template against which the instant facts can be measured. If the latter were done, one could always envision a way in which the instant facts could be worse. In such case, the worst manifestation of any offense would be hypothetical and not real, and the maximum sentence would never be justified.
>
> This leads us to conclude the following with respect to deciding whether a case is among the very worst offenses and a defendant among the very worst offenders, thus justifying the maximum sentence: We should concentrate less on comparing the facts of this case to others, whether real or hypothetical, and more an focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character.

*Brown v. State*, 760 N.E.2d 243, 247 (Ind. Ct. App. 2002), *trans. denied.*

Here, with regard to the character of the offender, Dodds has a criminal history that spans thirty-four years in two states and includes twenty-three criminal convictions, eleven of which are felonies. The prior convictions include three for passing checks with insufficient funds, six for theft, six for forgery, and one for robbery. Further, it appears that Dodds was incarcerated from 1996 to 2004, and then immediately resumed his

criminal lifestyle with a December 2004 conviction for receiving stolen property in Ohio, and a 2005 conviction for the instant offense in Indiana. Dodds' frequent contacts with the law have not caused him to reform himself.

With regard to the nature of the offense, this is Dodd's seventh conviction for forgery. He also has prior convictions for passing checks with insufficient funds, theft and robbery, showing a pattern of crimes of dishonesty. *See Ruiz v. State*, 818 N.E.2d 927, 929 (Ind. 2004) (holding that the significance of prior criminal history varies based on the gravity, nature and number of prior offenses as they relate to the current offense).

Based upon our review of the evidence, we see nothing in the character of this offender or the nature of this offense that would suggest that Dodds' eight-year sentence for one count of class C felony forgery is inappropriate.

Affirmed.

KIRSCH, C.J., and FRIEDLANDER, J., concur.