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ATTORNEY FOR APPELLANT:

**JANINE S. HOOLEY**  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**  
Attorney General of Indiana

**NICOLE M. SCHUSTER**  
Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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JAMIE SIDES, )

Appellant-Defendant, )

vs. )

No. 48A04-0603-CR-137

STATE OF INDIANA, )

Appellee-Plaintiff. )

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APPEAL FROM THE MADISON SUPERIOR COURT  
The Honorable Dennis D. Carroll, Judge  
Cause Nos. 48D01-9412-CF-205, 48D01-9510-CF-307,  
48D01-0509-FB-282, 48D01-0510-FC-304

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**November 30, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**MAY, Judge**

Jamie Sides appeals his fifteen-year sentence for multiple counts of theft and forgery he committed while on probation. The trial court did not abuse its discretion in sentencing Sides. We affirm.

### **FACTS AND PROCEDURAL HISTORY**

In 1996, Sides pled guilty to burglary as a Class C felony<sup>1</sup> under cause number 48D01-9412-CF-205 (“CF-205”) and to attempted escape as a Class C felony<sup>2</sup> under cause number 48D01-9510-CF-307 (“CF-307”). In 2006, Sides pled guilty to theft as a Class D felony<sup>3</sup> under cause number 48D01-0509-FB-282 (“FB-282”), and to five counts of forgery as Class C felonies<sup>4</sup> and two counts of theft as Class D felonies<sup>5</sup> under cause number 48D01-0510-FC-304 (“FC-304”). Because Sides was on probation under CF-205 and CF-307 at the time of the new offenses, his probation was revoked.

The sentencing order provided:

The Court finds aggravation: 1) Defendant has a significant history of criminal or delinquency activity; 2) Recently violated conditions of probation and community corrections; 3) Violated position of trust. The Court finds mitigation: 1) Defendant has accepted responsibility for his

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<sup>1</sup> Ind. Code § 35-43-2-1.

<sup>2</sup> Ind. Code §§ 35-44-3-5, 35-41-5-1.

<sup>3</sup> Ind. Code § 35-43-4-2(b). Sides was charged with Count I, burglary as a Class B felony, and Count II, theft as a Class D felony under Ind. Code § 35-43-4-2(a). The State dismissed Count I and Sides pled guilty to Count II. In establishing a factual basis, counsel for Sides stated the plea was for theft as receiving stolen property. Ind. Code § 35-43-4-2(b). Counsel acknowledged Count II had been charged under subsection (a) but stated he thought subsection (b) was “an included offense.” (Tr. at 47.)

<sup>4</sup> Ind. Code § 35-43-5-2(b)(1).

<sup>5</sup> Ind. Code § 35-43-4-2(a).

actions by pleading guilty; 2) Cooperation with law enforcement. The Court finds that aggravation far outweighs mitigation[.]

(App. of Appellee at 13.)<sup>6</sup>

The trial court sentenced Sides to three years for theft under FB-282. Under FC-304, the trial court sentenced Sides to concurrent terms of seven years for each count of forgery and three years for each count of theft. For the probation violations under CF-205 and CF-307, the trial court ordered Sides to serve five years of his previously suspended sentence. Sides' sentences under FB-282, FC-304 and CF-205/CF-307 were to be served consecutively, for a total of fifteen years. Sides was also ordered to pay restitution.

### **DISCUSSION AND DECISION<sup>7</sup>**

Sentencing lies within the discretion of the trial court. *Bocko v. State*, 769 N.E.2d 658, 667 (Ind. Ct. App. 2002), *reh'g denied, trans. denied* 783 N.E.2d 702 (Ind. 2002). The trial court is not required to find mitigating circumstances. *Id.* When a defendant offers evidence of mitigators, the trial court has the discretion to determine whether the factors are mitigating, and it is not required to explain why it does not find the proffered factors to be mitigating. *Id.* The trial court's assessment of the proper weight of

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<sup>6</sup> Sides consented to judicial fact-finding. The trial court found Sides had violated a position of trust because he stole and forged four checks from his grandparents.

<sup>7</sup> The State argues Sides has waived his allegations of error by failing to properly present his argument on appeal. See Ind. Appellate Rule 46(A)(8) (requiring appellant to support each contention with argument, including citations to legal authorities, statutes, and the record for support). We agree Sides' argument is somewhat lacking. However, we prefer to address issues on their merits if possible. *Welch v. State*, 828 N.E.2d 433, 436 (Ind. Ct. App. 2005).

We also note the Appendix of the Appellant does not include the table of contents required by App. R. 50(C).

mitigating and aggravating circumstances and the appropriateness of the sentence as a whole is entitled to great deference and will be set aside only upon a showing of a manifest abuse of discretion. *Id.*

Sides offered a number of mitigating circumstances: his remorse, his acceptance of responsibility, his guilty plea, his status as a trustee in the jail, his drug addiction, his offer of restitution, the undue hardship his imprisonment would cause his three daughters, he is not among “the worst of the worst,” (Tr. at 74), and “the crime neither caused nor threatened serious harm to persons or property, [or Sides] did not contemplate that it would do so.” (*Id.* at 73.) Sides asserts “it is not clear from the record that the trial court even considered any of the defendant’s proffered mitigators.” (Br. of the Appellant at 4.) We disagree.

The trial court found as mitigating Sides’ acceptance of responsibility to the extent he pled guilty and cooperated with law enforcement. At one point during sentencing, the trial court referred to the red jumpsuit Sides was wearing, acknowledging Sides’ status as a jail trustee.<sup>8</sup> Although it did not find Sides’ drug addiction a mitigating factor, the trial court considered it and authorized Sides to spend the last 90 days of his incarceration in an intensive drug treatment program. In explaining the restitution order to one of the victims, the trial court noted Sides was “going to do a long sentence,” (Tr. at 81), and his incarceration would hinder the victim’s ability to collect the judgment. This suggests the trial court did not consider Sides’ offer of restitution a significant mitigator under the

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<sup>8</sup> Inmates typically wear orange jumpsuits. Jail trustees wear red jumpsuits. (Tr. at 72.)

circumstances. Sides testified his incarceration would cause undue hardship on his three daughters. However, he apparently does not support them financially, his oldest daughter is unable to trust him because of his repeated incarcerations, and he had a relationship with his five-and-a-half year old twins “for less than six months.” (*Id.* at 64.) The trial court appropriately declined to consider hardship as a significant mitigator. The trial court explicitly stated it did not believe Sides was “the worst of the worst,” (*id.* at 76), and it declined to impose the maximum sentence sought by the State.

In order to make a clear record for appeal, the trial court repeated the aggravating factors it had found and, at Sides’ counsel’s request, repeated the mitigators as well. Counsel then asked whether the “Court specifically did not find that the crime neither caused nor threatened serious harm to person or property, or the person did not contemplate he would do so.” (*Id.* at 85.) The trial court responded: “I guess the way I would like to say it is I specifically found the mitigators I mentioned, is the way I’d like to say it.” (*Id.*) This suggests the trial court did not find the proffered mitigator significant.

The record reflects the trial court considered the mitigators Sides offered; however, it did not agree with Sides regarding their existence or weight. The trial court did not abuse its discretion in rejecting various mitigators Sides offered.<sup>9</sup> Accordingly, we affirm.

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<sup>9</sup> Any error in rejecting mitigators Sides offered was harmless. The trial court found “aggravation far outweighs mitigation,” (App. of Appellee at 13), and Sides’ lengthy criminal history alone supports this determination. Even a single aggravating circumstance may support the imposition of an enhanced sentence. *Bocko*, 769 N.E.2d at 667.

Affirmed.

RILEY, J., and BAILEY, J., concur.