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**IN THE  
COURT OF APPEALS OF INDIANA**

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RICHARD WINN,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0601-CR-31

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable William Robinette, Master Commissioner  
Cause No. 49G03-0509-FC-158057

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**December 6, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAILEY, Judge**

## **Case Summary**

Appellant-Defendant Richard Winn (“Winn”) appeals his conviction for forgery, a Class C felony.<sup>1</sup> We affirm.

### **Issues**

Winn raises two issues which we restate as follows:

- 1) Whether his sentence was authorized by statute, and
- 2) Whether his sentence was inappropriate in light of the nature of the crime and his character.

### **Facts and Procedural History**

Winn sold pallets to Pallet Holdings, and received a check for \$10.00. On July 13, 2005, Winn altered the check to reflect a \$1000.00 payment and deposited it into his bank account. On September 15, 2005, the State charged Winn with forgery, a Class C felony and theft, a Class D felony.<sup>2</sup> Winn and the State entered into a plea agreement, in which Winn agreed to plead guilty to forgery. The State agreed to forego prosecution of the theft count, forego recommendation as to placement, and recommend that the executed portion of Winn’s sentence be no more than four years.

On December 16, 2005, the trial court accepted the plea agreement, entered a judgment of conviction on the forgery count, and conducted a sentencing hearing. The trial court found Winn’s eleven prior convictions since 1989, including five felonies, to be an aggravating circumstance. Winn asked the trial court to take into consideration his alcohol

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

addiction. The trial court sentenced Winn to eight years imprisonment, suspending five years and ordering execution of three years. The trial court ordered Winn to serve two years of probation after his imprisonment, with probation to terminate upon full restitution. Winn now appeals.

## **Discussion and Decision**

### **I. Advisory Sentencing**

Winn argues that the trial court abused its discretion by failing “to find and consider Winn’s guilty plea to be a significant mitigating circumstance before enhancing his sentence.” Appellant’s Brief at 4. Winn pled guilty to a Class C felony, punishable by imprisonment “between two (2) and eight (8) years, with the advisory sentence being four (4) years.” Ind. Code § 35-50-2-6(a). During the sentencing hearing, Winn did not argue that his plea should be considered as a mitigating circumstance. Nevertheless, the trial court was well aware of his plea, having considered and accepted the plea agreement moments earlier. The trial court, finding Winn’s prior convictions to be an aggravating circumstance, sentenced him to the maximum eight-year sentence, but suspended five years, consistent with the plea agreement.

Under Indiana’s advisory sentencing scheme, a trial court may impose any sentence that is Constitutional and authorized by statute, “regardless of the presence or absence of aggravating circumstances or mitigating circumstances.” I.C. § 35-38-1-7.1(d). Here, Winn’s sentence was within the statutory range. We find no error. See Fuller v. State, 852

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<sup>2</sup> I.C. § 35-43-4-2.

N.E.2d 22 (Ind. Ct. App. 2006), trans. denied.

## II. Appellate Rule 7(B)

Winn further argues that his sentence was inappropriate in light of the nature of the offense and his character. “The 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). As to the nature of the offense, Winn argues that the maximum sentence was not justified by a single act of financial deception. The trial court, however, suspended five years of the sentence, in accordance with the plea agreement. Meanwhile, Winn, convicted previously of multiple felonies, makes no argument whatsoever that the sentence was inappropriate in light of his character. We find that Winn’s sentence was not inappropriate.

### **Conclusion**

Winn’s sentence was consistent with the advisory sentencing scheme and not inappropriate.

Affirmed.

RILEY, J., concurs.

MAY, J., concurs in result.