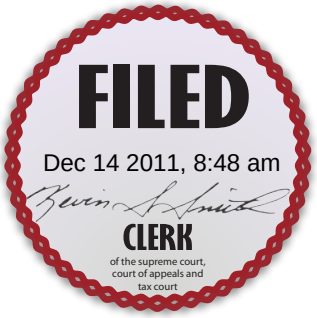

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IN THE
COURT OF APPEALS OF INDIANA

MARIA J. VILLARREAL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 57A05-1104-CR-209
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE NOBLE CIRCUIT COURT
The Honorable G. David Laur, Judge
Cause No. 57C01-1007-FC-051

DECEMBER 14, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant Maria Villarreal appeals the sentence she received for her conviction of forgery, a Class C felony. Ind. Code § 35-43-5-2 (2006).

We affirm.

ISSUES

Villarreal presents one issue for our review, which we restate as two:

I. Whether the trial court abused its discretion in sentencing Villarreal.

II. Whether Villarreal's sentence is inappropriate.

FACTS AND PROCEDURAL HISTORY

In 2008, Villarreal was working as an elementary school secretary. At that time, she asked her boss, Bryan Shepherd, if he would co-sign on student loans for her two sons. Shepherd agreed to do so but never signed any loan documents on behalf of Villarreal's children. Several months later in the process of refinancing his mortgage, Shepherd discovered five loans on his credit report in the names of Villarreal and her two sons. Villarreal admitted to signing Shepherd's name to the loan applications without his permission or knowledge. In doing so, Villarreal and her sons obtained student loans totaling $36,160. Based upon these facts, Villarreal was charged with forgery, a Class C felony. Ind. Code § 35-43-5-2. Villarreal subsequently pleaded guilty to the charge without a plea agreement, and the court sentenced her to four years, the advisory sentence, with two years suspended.

DISCUSSION AND DECISION

I. ABUSE OF DISCRETION

Villarreal first contends that the trial court abused its discretion in sentencing her. Specifically, Villarreal argues that the trial court's finding that she was in a position of trust was not supported by the record. In addition, she claims that the trial court failed to find that her incarceration would create an undue hardship on her dependent daughter even though it was supported by the record.

As long as a defendant's sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). A trial court abuses its discretion when it: 1) fails to issue a sentencing statement; 2) enters a sentencing statement that includes reasons not supported by the record; 3) enters a sentencing statement that omits reasons clearly supported by the record and advanced for consideration; or 4) enters a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91.

In its written sentencing statement, the trial court listed its reasons for imposing this particular sentence as: "[p]osition of trust was violated," "[Villarreal] has no prior felonies," and "[Villarreal] admitted guilt." Appellant's App. p. 9. Thus, the trial court found that by committing this offense, Villarreal violated a position of trust. We disagree. Engaging in the type of employment relationship and/or friendship that existed here between Villarreal and Shepherd, without more, does not constitute a position of trust warranting its consideration as an aggravating circumstance for purposes of

sentencing in a criminal proceeding. Our review of cases in which this circumstance is properly used as an aggravating factor at sentencing reveals that most of the cases involved an adult or person in a position of authority and a child or teenage victim rather than a peer. *See, e.g.*, *Franklin v. State*, 715 N.E.2d 1237 (Ind. 1999) (where defendant was victim's father); *Van Martin v. State*, 535 N.E.2d 493 (Ind. 1989) (where defendant lived with victim's family and was babysitting for victim); *Marshall v. State*, 643 N.E.2d 957 (Ind. Ct. App. 1994) (where defendant was police officer who was counseling fourteen-year-old victim), *trans. denied*. Yet, even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate. *Mendoza v. State*, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), *trans. denied*.

Villarreal also asserts that the trial court failed to find as a mitigating circumstance the hardship to her daughter that will be caused by her imprisonment. At the sentencing hearing, Villarreal's counsel stated that Villarreal's daughter is seventeen years old and pregnant. Villarreal testified that she is the sole provider for her family because her children's father left when her daughter was one and a half years old.

The finding of mitigating circumstances is within the discretion of the trial court. *Page v. State*, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007), *trans. denied*. In addition, the court is not required to give the same weight to a proffered mitigating circumstance as does the defendant. *Rogers v. State*, 878 N.E.2d 269, 272 (Ind. Ct. App. 2007), *trans. denied*. Absent special circumstances, a trial court is not required to find that a

defendant's incarceration would result in undue hardship on his or her dependents. *Roney v. State*, 872 N.E.2d 192, 204 (Ind. Ct. App. 2007), *trans. denied*.

Even assuming that the trial court abused its discretion by failing to identify hardship to Villarreal's dependent daughter as a mitigating circumstance, the error is harmless because, as set forth below, the sentence imposed is not inappropriate under Indiana Appellate Rule 7(B). *See Mendoza*, 869 N.E.2d at 556.

II. INAPPROPRIATE SENTENCE

Villarreal further argues that her sentence is inappropriate. We may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). However, "we must and should exercise deference to a trial court's sentencing decision, both because [Indiana Appellate] Rule 7(B) requires us to give 'due consideration' to that decision and because we understand and recognize the unique perspective a trial court brings to its sentencing decisions." *Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer*, 868 N.E.2d at 494.

To assess the appropriateness of the sentence, we look first to the statutory range established for the class of the offense. Here the offense is a Class C felony, for which the advisory sentence is four years, with a minimum sentence of two years and a maximum sentence of eight years. Ind. Code § 35-50-2-6 (2005).

Next, we look to the nature of the offense and the character of the offender. The nature of the current offense is that Villarreal forged Shepherd's signature on loan applications to obtain more than $36,000 in student loans. Although it does not appear from the materials on appeal that Shepherd was harmed monetarily by this act, he now has the arduous task of clearing these loans from his credit report.

With regard to the character of the offender, we note that Villarreal is a single mother supporting three children. She has no criminal history. Under these facts and circumstances, we cannot conclude that Villarreal's sentence of four years, with two years suspended, is inappropriate.

CONCLUSION

For the reasons stated above, we affirm the sentence imposed by the trial court.

Affirmed.

BAKER, J., and VAIDIK, J., concur.