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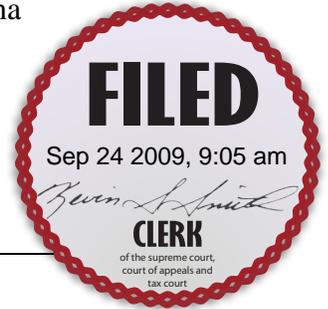
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**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN HALL,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 02A03-0901-CR-28

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0503-FC-65

September 24, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Steven Hall (“Hall”) was convicted in Allen Superior Court of Class C felony forgery and found to be a habitual offender. Following a petition for post-conviction relief, the State and Hall agreed to vacate Hall’s habitual offender finding and the court re-sentenced Hall to eight years on the Class C felony forgery conviction. Hall appeals and argues that the trial court abused its discretion when it increased his Class C felony forgery sentence upon remand and that his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On March 24, 2005, Hall attempted to cash a \$300 check, made out to himself from the bank account of Tiffany Kendrick (“Kendrick”). This check had been reported as stolen by Kendrick on February 28, 2005. Hall claimed that Kendrick had given him the check earlier that day; however, Kendrick stated that it had been stolen.

On March 31, 2005, the State charged Hall with Class C felony forgery and Class D felony receiving stolen property. On May 3, 2005, the State amended the charging information to include a habitual offender charge.

Following a bifurcated trial on July 19, 2005, the jury found Hall guilty of Class C felony forgery and found that Hall was a habitual offender. Hall was acquitted of Class D felony receiving stolen property. The trial court sentenced Hall to four years on the Class C felony forgery conviction and enhanced the sentence by twelve years for being a habitual offender. Hall’s conviction was affirmed on appeal.¹

¹ Hall v. State, 02A03-0512-CR-601 (Ind. Ct. App. July 26, 2006).

On August 15, 2006, Hall filed a pro se petition for post-conviction relief. On October 24, 2008, Hall and the State agreed to vacate the habitual offender enhancement. On November 20, 2008, the trial court re-sentenced Hall to eight years for the Class C felony forgery conviction. Hall appeals.

Discussion and Decision

Hall argues that the post-conviction court abused its discretion when it increased his sentence after his habitual offender enhancement was vacated. Sentencing decisions rest within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). “An abuse of discretion occurs if the decision is ‘clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.’” Id. at 491 (citations omitted).

Originally, Hall was convicted of Class C felony forgery and found to be a habitual offender. The trial court sentenced Hall to four years for the Class C felony forgery and enhanced that sentence by twelve years for being a habitual offender. Hall’s argument rests entirely on the proposition that the habitual offender finding was a separate conviction unconnected with the Class C felony forgery conviction; therefore the trial court abused its discretion when it increased Hall’s sentence on the Class C felony forgery conviction.

A habitual offender finding does not constitute a separate crime nor result in a separate sentence, but rather results in a sentence enhancement imposed upon the conviction of a subsequent felony. Pinkston v. State, 436 N.E.2d 306, 307-08 (Ind.

1982). Because the habitual offender enhancement is not a separate charge but is an enhancement of Hall's conviction for Class C felony forgery, the trial court may impose any sentence allowed by statute for the underlying conviction. See Coble v. State, 523 N.E.2d 228, 229 (Ind. 1988).

The trial court sentenced Hall to eight years which is within the range allowed by statute for a Class C felony conviction. Indiana Code § 35-50-2-6 (2004). The trial court did not abuse its discretion when it increased Hall's sentence following the vacating of the habitual offender enhancement.

Hall next argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We may revise a sentence if it is "inappropriate in light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). The defendant bears the burden of persuading us his sentence is inappropriate. Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

While the nature of the offense is not particularly egregious, Hall's character certainly is.

As an adult, he has twenty-one (21) misdemeanor convictions and four (4) prior felony convictions. He has been convicted of Battery seven (7) times. He has had his felony probation revoked once and has had three (3) misdemeanor suspended sentences revoked. He has been unsatisfactorily discharged from probation three (3) times. He has had three (3) felony convictions reduced to misdemeanor convictions at sentencing. He was on felony probation when he committed the present offense and is currently pending revocation. His Indiana driver's license is suspended for life.

Pre-Sentence Investigation Report pp. 4-5.

Under these facts and circumstances, we cannot conclude that Hall's eight-year sentence for Class C felony forgery is inappropriate in light of the nature of the offense and the character of the offender.

Lastly, we note that Hall's sentence does not violate Post-Conviction Rule 1(10)(b), which states: "If a sentence has been set aside pursuant to this rule and the successful petitioner is to be resentenced, then the sentencing court shall not impose a more severe penalty than that originally imposed" The phrase "'more severe penalty' as used in [Post-Conviction Rule 1(10)(b)] refers to the aggregate sentence, not its component parts." Gary v. State, 871 N.E.2d 408, 415, (Ind. Ct. App. 2007). Hall was originally sentenced to an aggregate sentence of sixteen years. After the habitual offender enhancement was set aside, the trial court resentenced Hall to an aggregate sentence of eight years, which is half of his original sentence. Thus, the trial court did not improperly resentence Hall.

The trial court did not abuse its discretion when it increased Hall's sentence after vacating his habitual offender enhancement. Hall's sentence was not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

DARDEN, J., and ROBB, J., concur.