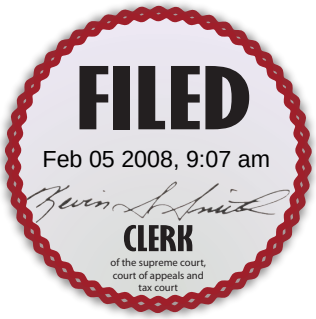

ATTORNEY FOR APPELLANT:

RICHARD WALKER
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

TAMI BRISCOE-BECK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A04-0706-CR-352
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Dennis D. Carroll, Judge
Cause No. 48D01-0510-FC-296

February 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

After being charged with twenty-four counts relating to the theft and perjury of vehicle titles, Tami Briscoe-Beck pled guilty to three counts of Class D felony perjury. Briscoe-Beck now appeals her six-year sentence with two years suspended to probation, contending that the offenses constitute a single episode of criminal conduct, thereby limiting her sentence to four years, and that her sentence is inappropriate. Finding that the offenses do not constitute a single episode of criminal conduct and that her sentence is not inappropriate, we affirm.

Facts and Procedural History

On October 19, 2005, the State charged Briscoe-Beck with one count of Class C felony corrupt business influence, four counts of Class D felony auto theft, and seventeen counts of Class D felony perjury. The State later added a fifth Class D felony auto theft charge and an eighteenth Class D felony perjury charge.[1] On February 20, 2007, Briscoe-Beck pled guilty to three counts of Perjury, a Class D felony[2] (Counts VI, VII, and VIII). In exchange, the State agreed to dismiss the remaining twenty-one charges and that Briscoe-Beck's sentence would be capped at four years executed.

At the guilty plea hearing, the State established the factual basis for Counts VI, VII, and VIII. Specifically, the State showed that on three separate dates—March 22,

[1] Briscoe-Beck's husband, Randy Beck, was also charged and convicted in connection with these incidents. *See Beck v. State*, No. 48A02-0610-CR-850 (Ind. Ct. App. Aug. 31, 2007), *trans. denied*.

[2] Ind. Code § 35-44-2-1(a)(1).

2005, April 5, 2005, and July 26, 2005[3]—Briscoe-Beck filed documents under oath in Madison County Court that included false information about her purchase of vehicles, knowing that the information was false, in order to obtain titles to those vehicles. The trial court accepted the plea agreement, and a sentencing hearing was held on April 9, 2007. Following the sentencing hearing, the trial court issued a Sentencing Order, in which it identified the following aggravators: (1) Briscoe-Beck "has some history of criminal and delinquent activity"; (2) "[t]here were multiple offenses in this case"; and (3) "[t]he facts and circumstances of the crime in the charges." Appellant's App. p. 36. The court found one mitigator: Briscoe-Beck "pled guilty saving the State the time and cost of trial; however, defendant received a real benefit from the plea." *Id.* The trial court sentenced Briscoe-Beck to two years for each of the three counts and ordered the sentences to run consecutively, for an aggregate term of six years.[4] The trial court then suspended two of the six years to probation. Briscoe-Beck now appeals her sentence.

Discussion and Decision

Briscoe-Beck raises two issues on appeal. First, she contends that the three counts of Class D felony perjury constitute a single episode of criminal conduct, thereby limiting her sentence to four years. Second, she contends that her six-year sentence with two years suspended to probation is inappropriate.

[3] Two of these incidents occurred before the legislature amended the sentencing statutes on April 25, 2005. Briscoe-Beck, however, does not raise any issues involving these amendments. Therefore, like Briscoe-Beck, we use the terminology, *i.e.*, advisory sentence, from the amended statutes.

[4] Actually, the trial court's order says "concurrently." Appellant's App. p. 36. The fact that Briscoe-Beck's aggregate sentence is six years leads us to believe that this is a mistake. In addition, during the sentencing hearing, the trial court stated that Briscoe-Beck's sentences "are ordered served consecutively, that is one after the other." Tr. p. 83.

I. Episode of Criminal Conduct

Briscoe-Beck contends that the three counts of Class D felony perjury constitute a single episode of criminal conduct, thereby limiting her sentence to four years. Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal 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). An abuse of discretion occurs if the trial court's decision is clearly against the logic and effect of the facts and circumstances. *Id.* In some cases, the trial court's discretion when imposing consecutive sentences is restricted by statute. Indiana Code § 35-50-1-2(c) provides, in part:

> The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under IC 35-50-2-8 and IC 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Briscoe-Beck argues that because the perjuries constitute a single episode of criminal conduct, her aggregate sentence may not exceed four years, the advisory sentence for a Class C felony. Ind. Code § 35-50-2-6.[5]

"Episode of criminal conduct" means "offenses or a connected series of offenses that are closely related in time, place, and circumstance." I.C. § 35-50-1-2(b). The Indiana Supreme Court recently clarified that although previous Indiana cases have articulated the test as whether "a complete account of one charge cannot be related without referring to details of the other charge,"

[5] Four years was also the presumptive sentence for a Class C felony under our previous sentencing regime. *See* I.C. § 35-50-2-6 (2004).

> [T]his is a bit of an overstatement. We are of the view that although the ability to recount each charge without referring to the other can provide additional guidance on the question of whether a defendant's conduct constitutes an episode of criminal conduct, it is not a critical ingredient in resolving the question. Rather, the statute speaks in less absolute terms: "a connected series of offenses that are closely connected in time, place, and circumstance." I.C. § 35-50-1-2(b).

Reed v. State, 856 N.E.2d 1189, 1200 (Ind. 2006). In considering whether a series of offenses constitutes a single episode of criminal conduct, timing of the offenses is important. *Harris v. State*, 861 N.E.2d 1182, 1188 (Ind. 2007); *Smith v. State*, 770 N.E.2d 290, 294 (Ind. 2002).

Here, Briscoe-Beck argues, "The charges under Counts VI, VII, and VIII, fit exactly the necessary requirements to constitute an episode of criminal conduct. All three events occurred within approximately four months in Anderson, Madison County, Indiana, and involved the same circumstance, that being Briscoe-Beck applying for a lost vehicle title with untruthful information." Appellant's Br. p. 12 (footnote omitted). Briscoe-Beck applied for a lost vehicle title for *three* different vehicles over the course of *four months*. Although this may have been a common scheme on Briscoe-Beck's part, it involved multiple episodes involving different vehicles that were not closely connected in time. For this reason, this case is readily distinguishable from *Reed*, upon which Briscoe-Beck relies on appeal. *See Reed*, 856 N.E.2d at 1201 (finding a single episode of criminal conduct where the defendant fired gunshots—separated by a mere five seconds—in the direction of two police officers who were chasing him in separate police cars). Because the three perjuries were not closely connected in time and involved different vehicles, they do not constitute a single episode of criminal conduct. The trial

court did not abuse its discretion in sentencing Briscoe-Beck to consecutive terms totaling six years.

II. Inappropriate Sentence

Briscoe-Beck contends that her six-year sentence with two years suspended to probation is inappropriate because "[t]he crimes were non-violent property crimes and [she] had only one or two prior misdemeanor convictions." Appellant's Br. p. 6. Although a trial court may have acted within its lawful discretion in imposing a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that a 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." *Reid v. State*, 876 N.E.2d 1114, 1116 (Ind. 2007) (citing *Anglemyer*, 868 N.E.2d at 491). The burden is on the defendant to persuade us that his sentence is inappropriate. *Id.* (citing *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

Here, Briscoe-Beck's convictions are for Class D felonies, for which the sentencing range is one-half year to three years, with the advisory sentence being one and one-half years. Ind. Code § 35-50-2-7.[6] Thus, the maximum sentence Briscoe-Beck faced was nine years. The trial court sentenced Briscoe-Beck to two years for each of the counts and ordered the sentences to be served consecutively, for an aggregate term of six years. However, the trial court suspended two years to probation. As for the nature of

[6] The presumptive sentence for a Class D felony was also one and one-half years under our previous sentencing regime. *See* I.C. § 35-50-2-7 (2004).

the offenses, Briscoe-Beck, on three separate occasions in 2005, filed documents under oath in Madison County Court that included false information about her purchase of vehicles, knowing that the information was false, in order to obtain titles to those vehicles. As noted by the trial court, "[t]his was not perjury by fudging a verified employment application. This was perjury in connection with a series of official Court proceedings."[7] Tr. p. 82.

As for Briscoe-Beck's character, she argues on appeal that both the PSI and the trial court's sentencing statement contain misstatements and/or inaccuracies about her criminal record. These concerns aside, it is clear that in 1988 Briscoe-Beck was convicted of driving while intoxicated and resisting arrest. Appellant's App. p. 47. Although the PSI also shows a 2006 conviction for disorderly conduct as a Class B misdemeanor for a 2005 incident, *see id.* at 49, Briscoe-Beck testified at the sentencing hearing that it was her understanding that this conviction would be removed from her record after successful completion of probation. Notably, Briscoe-Beck does not contend that the offense never occurred. In any event, the PSI also shows that Briscoe-Beck has approximately twenty traffic citations, ten license suspensions, and one failure to appear. It is apparent that Briscoe-Beck has not led a law-abiding life and is unable to conform her conduct to the expectations of society and the law.

On appeal, Briscoe-Beck claims that in the 1980s she was diagnosed with schizophrenia and bipolar disorder and was treated with medication. She also claims that at the time of sentencing in this case, she was on prescriptions to alleviate racing

[7] "A person who . . . makes a false, material statement under oath or affirmation, knowing the statement to be false or not believing it to be true" commits perjury. I.C. § 35-44-2-1(a)(1).

thoughts, mood instability, and anxiety. However, she includes no citations to the record. The PSI, however, contains the following statement: "The defendant informed in the 1980's, she was diagnosed with Schizophrenia and Bi-Polar Disorder at Ball Memorial Hospital, and was prescribed Thorazine to treat those conditions." *Id.* at 52. The PSI also states that Briscoe-Beck was on medications to alleviate racing thoughts, mood instability, and anxiety, but it gives no dates. *Id.* At the sentencing hearing, Briscoe-Beck did not present any evidence of her alleged mental illnesses and did not argue that her mental illnesses should be mitigating. In fact, at the guilty plea hearing, when the trial court asked Briscoe-Beck if she had "ever been treated for any mental illness or to your knowledge do you suffer from any mental or emotional disability," Briscoe-Beck responded, "No." Tr. p. 48. Finally, we note that the PSI reflects that Briscoe-Beck has consistently maintained employment and has an Associate's Degree. In light of the nature of the offenses and Briscoe-Beck's character, she has failed to persuade us that her six-year sentence with two years suspended to probation for three counts of Class D felony perjury is inappropriate.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.