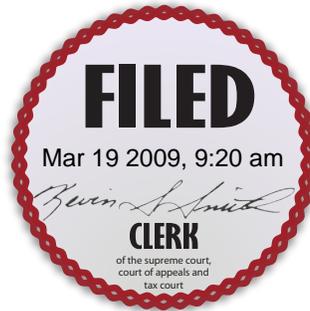


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

MEL A. TROWBRIDGE,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 20A03-0803-CR-136

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause Nos. 20D03-0610-FB-50
20D03-0610-FB-55

March 19, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Following guilty pleas in two separate cases, Melvin Trowbridge was convicted of four counts of sexual misconduct with a minor as Class B felonies and sentenced to a total of forty-five years at the Indiana Department of Correction with ten years suspended to probation. Trowbridge appeals his sentence, contending that it is inappropriate in light of the nature of the offenses and his character. Concluding that his sentence is inappropriate, we reverse.

Facts and Procedural History

In the spring of 2006, Trowbridge, a forty-three-year-old teacher in the Goshen Community School Corporation, engaged in a sexual relationship with fifteen-year-old K.H. Trowbridge knew K.H. because he had been a substitute teacher in her Fifth Grade class. In the summer of 2006, Trowbridge engaged in a sexual relationship with fifteen-year-old E.M. Trowbridge knew E.M. because her older sister was best friends with Trowbridge's niece. Neither girl was Trowbridge's student at the time the contact took place.

When the relationship with K.H. came to light, Trowbridge was arrested and charged with one count of sexual misconduct with a minor as a Class B felony and one count of sexual misconduct with a minor as a Class C felony under cause number 20D03-0610-FB-50 ("Cause 50"). Trowbridge's relationship with E.M. was subsequently discovered, and he was charged with four counts of sexual misconduct with a minor as Class B felonies and one count of sexual misconduct with a minor as a Class C felony under cause number 20D03-0610-FB-55 ("Cause 55").

On September 6, 2007, Trowbridge entered a plea of guilty to Class B felony sexual misconduct with a minor under Cause 50 and three counts of Class B felony sexual misconduct with a minor under Cause 55. The State agreed to dismiss the remaining counts. The trial court accepted the guilty plea and sentenced Trowbridge to fifteen years in Cause 50 and ten years for each count in Cause 55, all to be served consecutive to each other, with the ten-year sentence for Count V in Cause 55 suspended to probation. With respect to Cause 50, the trial court found as aggravating circumstances that Trowbridge “violated the trust reposed in him by the community as a school teacher,” appellant’s appendix, volume II at 12, and that he admitted engaging in multiple uncharged acts of criminal deviate conduct with his victims. With respect to Cause 55, the trial court found the same aggravating circumstances as in Cause 50, and also found that Trowbridge violated the trust of E.M.’s parents who “allowed a relationship to develop . . . because they trusted [Trowbridge] to provide a positive influence in [E.M.’s] life.” *Id.*, Vol. I at 11. The trial court found the following mitigating circumstances for both cases: 1) Trowbridge accepted responsibility through his guilty plea, given minimal weight because of the benefits Trowbridge received from his plea; 2) Trowbridge has no history of criminal conduct, given minimal weight because of the multiple offenses against multiple victims; 3) Dr. Wax, a psychologist who conducted a psychosexual evaluation of Trowbridge, testified that Trowbridge was an excellent candidate for sex offender therapy. In addition, the trial court discussed the following mitigating circumstances offered by Trowbridge, but declined to give them substantial weight: 1) Trowbridge argued that the offenses are unlikely to recur, but

based on past conduct and Dr. Wax’s testimony, the trial court concluded Trowbridge posed a significant risk to re-offend; 2) Trowbridge argued the victims facilitated the offenses, but the trial court noted the societal decision that children are not mature enough to make such a decision; 3) Trowbridge expressed remorse, but it was self-serving; 4) E.M. has forgiven Trowbridge and asked for a lenient sentence, but E.M. is “smitten” with Trowbridge, *id.*, vol. I at 12; 5) Trowbridge has a substantial network of support from friends and family, but such support did not keep him from committing the offenses; 6) Trowbridge’s incarceration would not impose a hardship on his family beyond that visited on the families of any other defendant; and 7) although Trowbridge has much to offer to society, he abused and thus forfeited the privilege of serving as a teacher when he used his position to prey on children.¹ Trowbridge now appeals his sentence.

Discussion and Decision

I. Standard of Review

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence if, after due consideration of the trial court’s decision, we find that the sentence “is inappropriate in light of the nature of the offense and the character of the offender.” Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh’g, 875 N.E.2d 218. We may “revise sentences when certain broad conditions are satisfied,” Neale v. State, 826 N.E.2d 635,

¹ Trowbridge briefly claims the trial court abused its discretion in failing to acknowledge his proffered mitigating circumstance that he was likely to respond well to short-term imprisonment or probation. Given that the trial court found Trowbridge at significant risk to re-offend, the trial court may not have considered this to be a significant mitigating circumstance and was under no obligation to mention it. See Roush v. State, 875 N.E.2d 801, 811 (Ind. Ct. App. 2007) (“[T]he court is obligated neither to credit mitigating circumstances in the same manner as would the defendant, nor to explain why it has chosen not to find mitigating circumstances.”).

639 (Ind. 2005), and recognize that the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed,” Weiss v. State, 848 N.E.2d 1070, 1072 (Ind. 2006). In determining whether a sentence is inappropriate, we may look to any factors appearing in the record. Roney v. State, 872 N.E.2d 192, 196 (Ind. Ct. App. 2007), trans. denied; cf. McMahon v. State, 856 N.E.2d 743, 750 (Ind. Ct. App. 2006) (“[I]nappropriateness review should not be limited . . . to a simple rundown of the aggravating and mitigating circumstances found the by the trial court.”). However, the defendant bears the burden to “persuade the appellate court that his . . . sentence has met this inappropriate standard of review.” Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

II. Appropriateness of Trowbridge’s Sentence

Trowbridge was convicted of four Class B felony counts of sexual misconduct with a minor. Class B felonies are punishable by “a fixed term of between six (6) and twenty (20) years, with the advisory sentence being ten (10) years.” Ind. Code § 35-50-2-5. The trial court sentenced Trowbridge to the advisory sentence of ten years for three counts and to an enhanced sentence of fifteen years for one count. Trowbridge was ordered to serve the sentences consecutively, for an aggregate sentence of forty-five years with ten years suspended to probation. See Ind. Code § 35-50-1-2(c) (“[T]he court shall determine whether terms of imprisonment shall be served concurrently or consecutively.”). Trowbridge contends the trial court’s sentence was “overly harsh . . . given [his] extraordinary suitability for treatment.” Appellant’s Brief at 4.

As to the nature of Trowbridge's offenses, he engaged in protracted sexual relationships with two teenage girls, one of whom he met while he was a substitute teacher in her classroom and the other of whom he knew through his niece. Although we as a society have made the decision that fifteen-year-olds cannot consent to a sexual relationship with an adult, we do note that neither girl was coerced or forced into a relationship with Trowbridge. The facts that Trowbridge held a position of trust in the community and in particular with E.M.'s parents when he engaged in the relationships; that after he was arrested, he asked K.H. to "play dumb or act confused" so the authorities would think she was lying, transcript at 98; and that by indirect contact since his arrest, Trowbridge communicated with E.M. and she believes she and Trowbridge have a future together makes these offenses slightly more egregious than a typical sexual misconduct with a minor offense.

As to Trowbridge's character, we note Dr. Wax's testimony that Trowbridge is an "excellent candidate" for treatment, tr. at 11, and we further note he has strong support from his friends and family. We acknowledge, as the trial court did, that Trowbridge has no prior criminal history. However, we also note the testimony at the sentencing hearing about inappropriate contact between Trowbridge and teenage girls at a different school several years before these incidents² and about Trowbridge's pursuit of E.M.'s older sister while she was still a teenager. Thus, Trowbridge may not have been charged with and convicted of any criminal offenses prior to the instant offenses, but he has perhaps

² Trowbridge contends the trial court abused its discretion in referencing these incidents. However, Trowbridge self-reported these incidents to Dr. Wax, called Dr. Wax as a witness on his behalf at the sentencing hearing, and introduced Dr. Wax's report into evidence. Any error was invited by Trowbridge. See Wright v. State, 828 N.E.2d 904, 907 (Ind. 2005) ("Under the doctrine of invited error, a party may not take advantage of an error [he] commits, invites, or which is the natural consequence of [his] own neglect or misconduct."). Invited errors are not subject to appellate review. Oldham v. State, 779 N.E.2d 1162, 1171-72 (Ind. Ct. App. 2002), trans. denied.

not been living a completely law-abiding life, either. Further, as a consequence of his actions at the prior school system, Trowbridge was forced to resign as a teacher there. His counsel stated at the sentencing hearing that “the biggest punishment that he has is not being able to do what he would like to do with his life and that’s teach kids” Tr. at 110. However, losing a teaching position he allegedly loved because of his behavior did not deter Trowbridge from then engaging in even more serious misconduct. Dr. Wax testified that although Trowbridge “was in a very minimal state of factual denial . . . [t]here was a definite level of cognitive denial in terms of Mr. Trowbridge understanding the extent and seriousness of his attraction to teenagers.” Tr. at 10. Finally, we note, as we did above, that Trowbridge attempted to influence K.H. to lie in order to escape punishment for his crimes, which does not reflect favorably upon his character.

After giving due consideration to Trowbridge’s offenses and his character, we conclude that Trowbridge’s forty-five year sentence for four counts of sexual misconduct with two minors is inappropriate. Trowbridge has no criminal history, strong support from his family and friends, and is considered an excellent candidate for sex offender treatment. His forty-five year sentence exceeds sentences imposed in similar situations. See Hayden v. State, 830 N.E.2d 923, 930 (Ind. Ct. App. 2005) (thirty-eight year sentence with ten years suspended not inappropriate for defendant in position of trust convicted of three counts of sexual misconduct with a minor as Class B felonies and two counts as Class C felonies due to misconduct with two victims over whom he had control), trans. denied; Ware v. State, 816 N.E.2d 1167, 1179 (twenty year sentence with five years suspended not inappropriate for defendant convicted of two counts of sexual

misconduct with a minor as Class B felonies and two counts as Class C felonies due to months-long relationship with one victim with whom he had a position of trust where defendant was respected by co-workers and friends and had no criminal history); Fitzgerald v. State, 805 N.E.2d 857, 864 (Ind. Ct. App. 2004) (presumptive ten year sentence with three years suspended not inappropriate for defendant convicted of one Class B felony count of sexual misconduct with a minor for a prolonged “romantic relationship” with friend’s daughter where defendant had no criminal history). However, because Trowbridge tried to get K.H. to lie, his sentence with respect to the crime committed against her does warrant some enhancement, and because there were two victims, consecutive sentences are also appropriate.

We therefore exercise our authority to revise Trowbridge’s sentence to twenty-five years – fifteen years for Cause 50, concurrent ten year terms for each count of Cause 55, with the terms for Causes 50 and 55 to be served consecutively. We reverse and remand to the trial court with instructions to take all necessary steps to revise Trowbridge’s sentence accordingly.

Conclusion

Trowbridge’s forty-five year sentence is revised to a twenty-five year sentence.

Reversed and remanded.

CRONE, J., concurs.

BROWN, J., concurs in part, dissents in part with opinion.

**IN THE
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MEL A. TROWBRIDGE,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 20A03-0803-CR-136
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

BROWN, Judge concurring in part and dissenting in part

I concur in the majority's sentence reduction to twenty-five years, but in light of Dr. Wax's testimony would suspend five years of the twenty-five year sentence to probation, and would impose as a condition of probation that Trowbridge complete an appropriate sex-offender treatment program.