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**IN THE
COURT OF APPEALS OF INDIANA**

NORMAN DOUGLAS WELLS,)

Appellant-Defendant,)

vs.)

No. 29A02-0603-CR-205

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel J. Pflieger, Judge
Cause No. 29D02-0312-FA-166

September 29, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Norman Douglas Wells pled guilty to child molesting as a Class C felony¹ and was sentenced to eight years. The trial court's denial of Wells' motion to withdraw his guilty plea was well within its discretion. The court found four aggravating circumstances, two of which were valid. As a result, the trial court properly enhanced Wells' sentence.

We affirm.

FACTS AND PROCEDURAL HISTORY

On December 21, 2003, six-year-old M.H. spent the night at her cousin's home. Her cousin and Wells slept in the same bed with M.H. Wells took off M.H.'s underpants and touched her genitals with his mouth. He also rubbed his genitalia on her leg.

Wells was charged with two counts of child molesting as Class A felonies, one count of child molesting as a Class C felony, and being an habitual offender.

On August 18, 2005, Wells entered a plea of guilty to child molesting as a Class C felony. The State agreed to dismiss the two Class A felony charges and the habitual offender enhancement. On October 18, 2005, Wells filed a motion to set aside the plea agreement, which was denied. Wells was sentenced to eight years.

DISCUSSION AND DECISION

1. Denial of Motion to Withdraw Guilty Plea

Wells argues the trial court erred when it denied his motion to withdraw his guilty plea. During the pre-sentence investigation interview, Wells explained "he felt he needed to plead guilty because this was the lesser of the offenses charged, that he did not believe

¹ Ind. Code § 35-42-4-3(b).

the charges had been fully investigated, and implied that he was being prosecuted because of who the victim's parents were." (App. at 18.) During the hearing on his motion to withdraw his guilty plea, Wells denied acting with intent.

The trial court is required to grant a motion to withdraw a guilty plea only when the defendant shows it is necessary to correct a manifest injustice. *Bland v. State*, 708 N.E.2d 880, 881 (Ind. Ct. App. 1999). Rulings on motions to withdraw guilty pleas are presumptively valid, and parties appealing an adverse decision must prove the court has abused its discretion. *Davis v. State*, 770 N.E.2d 319, 326 (Ind. 2002), *reh'g denied*. We will not disturb the ruling where it was based on conflicting evidence. *Weatherford v. State*, 697 N.E.2d 32, 34 (Ind. 1998), *reh'g denied*.

At the guilty plea hearing, Wells admitted he touched M.H.'s genital area with the intent to arouse or satisfy sexual desires. (Tr. at 19.) Wells now claims he felt pressured into pleading guilty, but he testified at the hearing on his motion to withdraw his guilty plea that he was not pressured. Defense counsel asked Wells: "Are you saying that I put pressure on you to plead guilty?" and Wells replied: "No, I wouldn't, I wouldn't call it pressure." (*Id.* at 27.) Wells asked for a recess before the factual basis for his plea was established. During the recess he was advised of the sentence that could be imposed if he was found guilty of the two Class A felonies and the habitual offender enhancement.

The evidence is conflicting. Wells testified at the guilty plea hearing that he touched M.H. with the intent to arouse. He apparently came to regret his plea bargain, even though it provided for the dismissal of two Class A felony charges and an habitual

offender enhancement. The trial court was within its discretion to deny Wells' motion to set aside his guilty plea.

2. Sentencing

Wells was sentenced to the maximum eight-year term for a Class C felony. At sentencing, the trial court stated:

[I am] going to find that there are aggravating circumstances in the cause, that the defendant has a history of criminal or delinquent activity, that the defendant is in need of correctional or rehabilitative treatment that could best be provided by commitment to a penal facility, that the defendant has in the past violated conditions of probation or parole. That Court is not making the determination that was recent but it has occurred in the past and that the defendant was in a position of trust with the victim when the offense was committed. The Court does find that there is a mitigating circumstance in that the imprisonment of the defendant will cause undue hardship to both his mother and his girlfriend and his dependants. The Court having made the determination of the aggravating factors and the mitigating factors does now find that the aggravating factors do outweigh the mitigating factors.

(App. at 37.)

Wells argues the trial court failed to state the specific facts that support each aggravating factor and did not articulate its rationale sufficiently to show it properly weighed the aggravating and mitigating circumstances. He also argues two of the aggravating circumstances should not have been found.

When a sentencing court lists aggravating and mitigating circumstances in its sentencing order it must state its reasons for imposing the sentence it did. *Ray v. State*, 838 N.E.2d 480, 492 (Ind. Ct. App. 2005), *trans. denied*. This requirement is intended to ensure the trial court considered proper matters in determining the sentence and to facilitate meaningful appellate review of the sentence. *Id.*

However, there is no magic language a trial court is obliged to use to explain its weighing of the aggravating and mitigating circumstances, and Wells cites no authority to support that apparent premise. The trial court stated it had weighed the aggravating and mitigating circumstances, it found the aggravators outweighed the mitigators, and it sentenced Wells to eight years. We cannot say the trial court erred in weighing the aggravating and mitigating circumstances.

The trial court did, however, err to the extent it provided no explanation why Wells needed treatment in a penal facility. *Id.* at 494. In addition, the trial court found Wells had in the past violated conditions of probation, but the pre-sentence investigation indicates his probation violation was in 1991. Ind. Code § 35-38-1-7.1 permits consideration of probation violations when the defendant has “recently” done so. We decline to find a violation some fourteen years before Wells’ sentencing to be sufficiently “recent” to be used as an aggravating circumstance.

However, two valid aggravating circumstances remain. Wells has four adult felony convictions, and he was in a position of trust² with the victim. As one proper aggravating circumstance is sufficient to support an enhanced sentence, *Burks v. State*, 838 N.E.2d 510, 525 (Ind. Ct. App. 2005), *trans. denied*, we cannot say with certainty that a different sentence would have been imposed if the court had considered only these

² Wells’ plea agreement included his waiver of his right to have aggravating circumstances proven to a jury, and he does not challenge this aggravator on appeal. The presentence report indicates M.H.’s parents had decided to let her spend the night with Wells and his daughter. Wells agreed “in some sense [M.H.] is like a niece.” (Tr. at 18.)

two aggravating factors rather than the four it found. We accordingly affirm Wells' sentence.

Affirmed.

BAKER, J., and SULLIVAN, J., concur.