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FILED
Nov 17 2010, 9:44 am
CLERK
of the supreme court, court of appeals and tax court

IN THE
COURT OF APPEALS OF INDIANA

JARED BEELER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 02A05-1002-CR-153
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable Frances C. Gull, Judge
Cause No. 02D04-0903-FA-23

November 17, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Jared Beeler ("Beeler") appeals from the trial court's sentencing order after Beeler pleaded guilty to child molesting[1] as a Class C felony, vicarious sexual gratification[2] as a Class C felony, and attempted child molesting[3] as a Class A felony. Beeler presents the following issue for our review: Whether Beeler's fifty-two year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

On the morning of his jury trial, Beeler, without the benefit of a plea agreement, pleaded guilty to child molesting as a Class C felony, vicarious sexual gratification as a Class C felony, and attempted child molesting as a Class A felony. The State dismissed four additional counts of child molesting, consisting of three Class A felonies and one Class C felony.

The facts supporting Beeler's guilty plea were included in the probable cause affidavit filed along with the charges against him. In relevant part, they stated that sometime between October 5, 2007 and March 24, 2009, Beeler performed or submitted to fondling or touching of B.E., his stepdaughter, who was six to eight years old during that time frame. Beeler also admitted that during the same period of time, he was over eighteen years of age, when he knowingly or intentionally directed, aided, induced, or caused, B.E., his stepdaughter, to touch or fondle herself with the intent to arouse or satisfy sexual desires. Beeler further

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[1] *See* Ind. Code § 35-42-4-3.

[2] *See* Ind. Code § 35-42-4-5.

[3] *See* Ind. Code § 35-42-4-3.

admitted that during the relevant time period he was over the age of twenty-one when he attempted to place his penis inside the sex organ of B.E.

The trial court accepted Beeler's guilty plea and sentenced him to consecutive terms of six years each for the Class C felony convictions, and forty years on the Class A felony conviction for an aggregate sentence of fifty-two years executed. Beeler now appeals his sentence. Additional facts will be supplied where necessary.

DISCUSSION AND DECISION

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id*. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Id.* 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*.

Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then "impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana." Ind. Code § 35-38-1-7.1(d). If the sentence imposed is lawful, this court will not reverse

unless the sentence is inappropriate based on the character of the offender and the nature of the offense. Ind. Appellate Rule 7(B); *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003). The burden is on the defendant to persuade this court that his sentence is inappropriate. *Patterson v. State*, 909 N.E.2d 1058, 1063 (Ind. Ct. App. 2009).

Beeler argues that his sentence is inappropriate because he received enhanced sentences instead of advisory sentences when he has no criminal history. He does not challenge the imposition of consecutive sentences, but argues that he should have received a thirty-eight year sentence instead.

The sentencing range for a Class A felony is a fixed term of between twenty and fifty years with the advisory sentence being thirty years. Ind. Code § 35-50-2-4. The sentencing range for a Class C felony is between two and eight years with the advisory sentence being four years. Ind. Code § 35-50-2-6.

In the present case, the trial court identified three mitigating circumstances, namely Beeler's lack of a criminal record, his remorse, and his guilty plea. The trial court found that the violation of his position of trust with the victim, his stepdaughter, was an aggravating circumstance. Although Beeler frames his argument in terms of an abuse of discretion in the weight given to these aggravating and mitigating circumstances, we reiterate that the trial court no longer has an obligation to weigh aggravating and mitigating circumstances. *Anglemyer*, 868 N.E.2d at 491. Since none of those circumstances, aggravating or mitigating, are challenged for a lack of support in the record, or as being improper as a matter of law, we will review Beeler's sentence under Indiana Appellate Rule 7(B).

In regard to the nature of the offense, our Supreme Court has observed that crimes

against children are particularly contemptible. *Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001). Here, Beeler, who served as a father to B.E., violated his position of trust with his stepdaughter, who was six to eight years old when the molestations were occurring. The molestations were repeated and occurred over an extended period of time.

As for the character of the offender, we note that Beeler did plead guilty, was remorseful for his crimes, and lacks a criminal history. However, Beeler's guilty plea came on the morning of trial, and several counts against him, including three Class A felonies and one Class C felony, were dismissed, albeit not through a formal plea agreement. Thus, the State and the victim received very slight benefit from Beeler's plea, while he benefitted significantly. Although the lack of a criminal history is a significant mitigating factor, *McElroy v. State*, 865 N.E.2d 584, 592 (Ind. 2007), Beeler continued to molest B.E. repeatedly over a period of years. Each molestation was a new criminal act that had not yet been reduced to a conviction. A trial court may consider uncharged crimes as a part of a defendant's criminal history. *Willoughby v. State*, 552 N.E.2d 462, 470 (Ind. 1990). The significance of the impact of a lack of a criminal history is lessened by Beeler's criminal acts, which are a reflection of his character.

We conclude that Beeler's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

RILEY, J., and BAILEY, J., concur.