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IN THE COURT OF APPEALS OF INDIANA

DAVID L. McQUEEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 12A02-0908-CR-759
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CLINTON SUPERIOR COURT
The Honorable Justin H. Hunter, Judge
Cause No. 12D01-0810-FA-123

March 10, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

David L. McQueen ("McQueen") pleaded guilty in Clinton Superior Court to one count of Class A felony child molesting and twenty-one counts of Class C felony child molesting. The trial court sentenced McQueen to an aggregate term of seventy-two years. McQueen appeals and argues that the trial court abused its discretion in balancing aggravators and mitigators when it sentenced McQueen, and that his seventy-two year sentence is inappropriate in light of the nature of the offenses and the character of the offender.

We affirm.

Facts and Procedural History

On September 28, 2008, the State charged McQueen with one count of Class A felony child molesting and one count of Class C felony child molesting for molesting N.M., his thirteen-year-old niece on or about April 13, 2001, where he penetrated N.M.'s vagina with his finger and touched her breast. The State also charged McQueen with an additional twenty counts of Class C felony child molesting for molesting A.B., his granddaughter, between August 1, 2006 and September 1, 2008. A.B. was between the ages of six and eight during this time period.

McQueen often cared for A.B. and her two younger siblings. At the time of the molestations, McQueen stayed in the bedroom across the hall from the bedroom A.B. shared with her two younger siblings. These two children were present during some of the instances of child molesting. McQueen also threatened A.B. that if she told anyone that he would drown her and throw her in a fire.

On May 19, 2009, after the jury was impaneled and immediately before the trial was to begin, McQueen decided to plead guilty with sentencing left open to the court's discretion. On June 29, 2009, the trial court sentenced McQueen to an aggregate term of seventy-two years. On count one, the Class A felony child molesting count, the trial court sentenced McQueen to the presumptive sentence of thirty years. On count two, the Class C felony child molesting count, McQueen received the presumptive sentence of four years. For each of the twenty remaining Class C felony child molesting counts, the trial court sentenced McQueen to seven years. Counts one and two are to be served concurrent to each other. Counts three through eight are to be served consecutive to each other and to counts one and two. Counts nine through twenty-two are to be served concurrent to the other counts. McQueen appeals.

I. Aggravators and Mitigators

McQueen argues that the trial court abused its discretion when it found and balanced the aggravators and mitigators related to his sentence for counts one and two.[1] Specifically, McQueen contends that the trial court placed too much weight on his criminal history and failed to recognize as a mitigator that his convictions were mainly alcohol-related and did not include any sex offense convictions or charges.

Sentencing decisions are within the discretion of the trial court and will be reversed only for a manifest abuse of that discretion. Sims v. State, 585 N.E.2d 271, 272 (Ind. 1992). When a trial court imposes the presumptive sentence, it has no obligation to

[1] These offenses occurred before the 2005 amendments to the sentencing statutes. McQueen's sentence must be considered under the "presumptive" sentencing statute in effect at the time. Gutermuth v.State, 868 N.E.2d 427, 434-35 (Ind. 2007) (citing Blakely v. Washington, 542 N.E.2d 296 (2004)). McQueen does not challenge the aggravators or mitigators used to sentence him on counts three to twenty-two.

explain its reasons for doing so. Bush v. State, 732 N.E.2d 250, 251 (Ind. Ct. App. 2000).

On counts one and two, the trial court determined that McQueen's criminal history was an aggravator and that his guilty plea and cooperation with law enforcement were mitigators. The trial court concluded that the aggravator and the mitigators balanced as to these two counts. McQueen contends that the trial court placed too much weight on his criminal history specifically that his convictions were mainly alcohol-related and did not include any sex offense convictions or charges and should be given more mitigating weight.

In fact, our review of the record indicates that the trial court did not enhance or reduce the presumptive sentence, but thoughtfully determined that McQueen's extensive criminal history counterbalanced his cooperation with authorities and decision to plead guilty after the jury had been chosen. The trial court was in the best position to determine these factors and the weight to afford to them. We cannot say that the trial court abused its discretion when it found that the aggravators and mitigators balanced.

II. Appropriateness of Sentence

McQueen also argues that his aggregate seventy-two-year sentence is inappropriate under Indiana Appellate Rule 7(B), which provides: "The 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." In Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007), our supreme court explained:

> It is on this basis alone that a criminal defendant may now challenge his or her sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence that is supported by the record, and the reasons are not improper as a matter of law, but has imposed a sentence with which the defendant takes issue.

868 N.E.2d at 494. "[A] defendant must persuade the appellate court that his or her sentence has met the inappropriateness standard of review." Id.

The nature of the offenses certainly supports the trial court's sentence. McQueen violated a position of trust when he molested his thirteen-year-old niece on one occasion and his granddaughter more than twenty times. These molestations occurred over a two year period, in the room the granddaughter shared with her two younger siblings while he was a guest at his daughter's house. In addition to the molestations, McQueen threatened to drown A.B. and throw her in a fire if she told anyone of the molesting. McQueen's violation of his position of trust, his threats to ensure that his crimes were not reported, and the sheer number of times he molested his niece and granddaughter clearly support the trial court's sentence.

McQueen's character also supports the trial court's sentence. McQueen's substantial criminal history consists of four felonies and nine misdemeanors amassed over a period of thirteen years. The felonies include battery with a deadly weapon, resisting law enforcement and two convictions for operating while intoxicated. The misdemeanors include failure to stop vehicle after a property damage accident, two batteries, an operating while intoxicated, four public intoxications, and a conversion. In the case before us, McQueen threatened to drown and burn one of his victims to ensure

that his crimes would not come to light. McQueen's character easily supports the trial court's sentence.

McQueen's seventy-two year sentence was not inappropriate in light of the nature of the offenses and the character of the offender.

Conclusion

The trial court did not abuse its discretion in the finding and weighing of aggravators and mitigators while sentencing McQueen for counts one and two. McQueen's seventy-two-year sentence was not inappropriate in light of the nature of the offenses and the character of the offender.

Affirmed.

BARNES, J., and BROWN, J., concur.