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IN THE
COURT OF APPEALS OF INDIANA

MYRON RICKMAN,	)	
Appellant-Defendant,	)	
vs.	)	No. 27A04-1002-CR-80
STATE OF INDIANA,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Randall L. Johnson, Judge
Cause No. 27D02-9909-CF-65

August 5, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Myron Rickman appeals his sentence resulting from a guilty plea for eight counts of child molesting,[1] each as a Class A felony, one count of child molesting as a Class C felony, and one count of criminal confinement[2] as a Class C felony, raising the following restated issues:

I. Whether the trial court's sentencing statement adequately identified and explained its reasons for imposing the sentence given; and

II. Whether Rickman's sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

While Rickman was on bond in a separate child solicitation case in the summer of 1999, he befriended his ten-year-old next door neighbor J.D. Rickman knew that J.D. had been sexually abused, had emotional problems, and was a special education student at school. Rickman babysat J.D., took him places, and bought him gifts. When J.D.'s stepfather went to jail, J.D. drew even closer to Rickman. Soon thereafter, Rickman began fondling J.D.

On August 6, 1999, police interviewed J.D. as a result of charges filed against Rickman in a separate child solicitation case, but J.D. denied that Rickman was molesting him. Later that same month, Rickman repeatedly forced J.D. to perform oral sex upon him, performed oral sex upon J.D., placed his penis into and/or against J.D.'s anus until he ejaculated, and forced J.D. to place his penis against Rickman's anus. *Sent. Tr.* at 9-14,

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[1] *See* Ind. Code § 35-42-4-3.

[2] *See* Ind. Code § 35-42-3-3.

16.

On August 27, 1999, Rickman went to J.D.'s school, represented himself as J.D.'s stepfather, and took J.D. from the school without his mother's permission. *Id.* at 13-14. Subsequently, upon questioning by his parents and a doctor, J.D. admitted that Rickman had been sexually molesting him, and a police investigation began.

On September 17, 1999, Rickman was charged with eight counts of child molesting, each as a Class A felony, child molesting as a Class C felony, and criminal confinement as a Class C felony. Rickman pled guilty to all ten charges. Pursuant to a written plea agreement, all sentences for the ten charges were to be served concurrently, but sentencing was left to the trial court's discretion. At sentencing, the trial court enhanced Rickman's sentence for each Class A felony beyond the thirty-year presumptive term to fifty years, and enhanced his sentence for each Class C felony beyond the four-year presumptive term to eight years. The trial court ordered all ten sentences to be served concurrently for an aggregate sentence of fifty years. Rickman now brings this belated appeal.

DISCUSSION AND DECISION

I. Adequacy of the Sentencing Statement

Rickman argues that the trial court's oral and written sentencing statements failed to demonstrate an adequate consideration of aggravating and mitigating factors necessary for the imposition of an enhanced sentence, thus impeding meaningful appellate review. *Appellant's Br.* at 7. Specifically, Rickman claims that the trial court failed to develop a clear rationale for the characterization of factors as aggravating and that it failed to

explain how those aggravators were balanced or offset by mitigating factors such as Rickman's guilty plea. Rickman asks that the matter be remanded to the trial court for resentencing and clarification of the aggravating and mitigating factors.

The present case was decided under the presumptive sentencing structure because the crimes occurred prior to revision of Indiana's sentencing scheme in April 2005. *See Weaver v. State*, 845 N.E.2d 1066, 1072 (Ind. Ct. App. 2006). The sentencing statute in effect at the time a crime is committed governs the sentence for that crime. *Harris v. State*, 897 N.E.2d 927, 928-29 (Ind. 2008). Under this prior scheme, for Class A felony child molesting, the standard or "presumptive" sentence prescribed by the legislature was thirty years, with not more than twenty years added for aggravating circumstances or not more than ten years subtracted for mitigating circumstances. We review sentencing decisions for an abuse of discretion. *McElroy v. State*, 865 N.E.2d 584, 588 (Ind. 2007). Under the presumptive sentencing structure:

> Trial courts have the discretion to deviate from the presumptive sentence upon finding and weighing any aggravating or mitigating circumstances. *Bacher v. State,* 722 N.E.2d 799, 801 (Ind. 2000). However, "[w]hen a trial court enhances a presumptive sentence, it must state its reasons for doing so, identifying all significant aggravating and mitigating factors; stating the facts and reasons that lead the court to find the existence of each such circumstance; and demonstrating that the court has evaluated and balanced the aggravating and mitigating factors in determining the sentence." *Id.* This serves to guard against arbitrary sentences and to provide an adequate basis for appellate review.

McElroy, 865 N.E.2d. at 588. When the trial court imposes a sentence other than the presumptive sentence, we will examine the record to ensure that the court explained its reasons for selecting the sentence it imposed. *Lander v. State*, 762 N.E.2d 1208, 1215

(Ind. 2002). We look at the entire record to discern the trial court's findings and determine whether the trial court engaged in the evaluation process. *McElroy*, 865 N.E.2d at 589.

In the present case, we find the trial court's sentencing statement was sufficient. The trial court identified the following aggravating circumstances during the sentencing hearing: 1) Rickman participated in the same or similar schemes or planned conduct with other children; 2) the victim was weak and vulnerable to abuse; 3) the impact of the crimes on the victim had caused his condition to deteriorate; 4) "the defendant admits his ideation…for sexual conduct with young males"; and 5) Rickman committed these crimes while released on bond awaiting trial in another case. *Sent. Tr.* at 65. Each of these circumstances was supported by the record was specific to the present case. The trial court also acknowledged that "there are mitigating circumstances which, uh, you've listed in this matter, um, for the record and, uh, he sought help. He's himself a victim…." *Id.* 64. Although the trial court certainly could have been more detailed in its consideration of mitigating factors, it was not required to list what it considered to be insignificant or non-mitigating factors. *Taylor v. State*, 681 N.E.2d 1105, 1112 (Ind. 1997). We find the trial court's sentencing statement to be adequate. Therefore, no remand for clarification of the trial court's sentencing statement is necessary.

II. Inappropriate Sentence

Rickman requests that the Court of Appeals exercise its authority to revise his sentence to thirty years, with five years suspended. At the time that Rickman was sentenced, the presumptive sentence for a Class A felony was thirty years, with the

addition of twenty years for aggravating circumstances. Ind. Code § 35-50-2-4 (2004). Here, the trial court enhanced Rickman's sentence for each Class A felony beyond the thirty-year presumptive term to fifty years, and enhanced his sentence for each Class C felony beyond the four-year presumptive term to eight years. The trial court ordered all ten sentences to be served concurrently for an aggregate sentence of fifty years.

We may revise a sentence authorized by statute if we find it to be inappropriate in light of the nature of the offense and the character of the offender, though we are required to give "due consideration" to the trial court's decision. Ind. Appellate Rule 7(B).[3] The defendant bears the burden of persuading the appellate court that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007).

We are not persuaded that Rickman's sentence was inappropriate. Regarding the nature of the offenses, Rickman repeatedly sexually molested a child that he knew to be vulnerable. Rickman also abused his position of trust with J.D. to illegally remove the child from school. Regarding the character of the offender, we note that Rickman did plead guilty, sparing J.D. the ordeal of a trial. However, we are not persuaded that Rickman's sentence is inappropriate given the nature of the offenses and the character of the offender. Affirmed.

FRIEDLANDER, J., and ROBB., J., concur.

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[3] At the time of Rickman's sentencing in 2000, Indiana Appellate Rule 7(B) provided that a sentence could be revised upon appellate review if the sentence was "manifestly unreasonable in light of the nature of the offense and the character of the offender." Effective January 1, 2003, Rule 7(B) was amended to provide that a sentence could be revised if the reviewing court finds the sentence to be "inappropriate in light of the nature of the offense and the character of the offender." Because Rule 7(B) is directed to the reviewing court, the amendment is applicable to review after January 1, 2003, even though the sentence was imposed prior to that date. *Kien v. State*, 782 N.E.2d 398, 416 (Ind. Ct. App. 2003), *trans. denied*.