



Billy D. Taylor pleaded guilty to sexual misconduct with a minor<sup>1</sup> as a Class C felony. Taylor appeals, raising the following restated issue: whether his sentence was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Taylor was twenty-five years old when, on the evening of May 27, 2007, he invited a fourteen-year-old girl (“victim”) and two of her female friends to watch a movie with him in his truck. Taylor provided alcohol to the girls, and at some point during the evening, the victim’s two friends exited the truck leaving her alone with Taylor. Subsequently, Taylor drove the victim to a more secluded place. There, knowing that the victim was under the age of sixteen, Taylor kissed the victim with the intent to arouse his sexual desires. *Tr.* at 13-14.

On May 30, 2007, the State filed a five count Information charging Taylor with the following crimes: sexual misconduct with a minor, as a Class B felony; criminal confinement, as a Class C felony; and two counts of contributing to the delinquency of a minor, both as Class A misdemeanors. As part of a plea agreement, Taylor pleaded guilty to sexual misconduct with a minor as a Class C felony. In exchange, the State dismissed the other charges against Taylor and agreed to cap the executed portion of his sentence at four years. Subsequently, the trial court imposed a sentence of seven years with three years executed in the Department of Correction and four years suspended to probation. Taylor now appeals.

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<sup>1</sup> See Ind. Code § 35-42-4-9(b).

## DISCUSSION AND DECISION

Taylor argues that his sentence was inappropriate in light of the nature of his offense and his character. 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). In our review of the appropriateness of a sentence, our decision rests on a “sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). The burden is on the defendant to persuade us that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007).

Taylor first claims that the nature of his offense was not egregious. According to Taylor, his only act of sexual misconduct was kissing the victim with intent to arouse or to satisfy his sexual desires. Conceding that such activity violated the statute, Taylor argues that his crime “is probably the least nefarious act that would constitute sexual misconduct with a minor.” *Appellant’s Br.* at 5. Sexual misconduct with a minor defined as follows:

(b) A person at least eighteen (18) years of age who, with a child at least fourteen (14) years of age but less than sixteen (16) years of age, performs or submits to any fondling or touching, of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person, commits sexual misconduct with a minor, a Class D felony. However, the offense is: (1) a Class C felony if it is committed by a person at least twenty-one (21) years of age.

Ind. Code § 35-42-4-9(b).

While we acknowledge that, standing alone, the act of kissing the victim is not the most heinous act of sexual misconduct, there are a number of other facts here that bear upon the nature of Taylor's crime: First, Taylor took advantage of an intoxicated fourteen-year-old girl. While Taylor denied furnishing the alcohol to her, he acknowledged at the sentencing hearing that she had consumed alcohol and was intoxicated when he committed the crime. *Tr.* at 47. Second, he admitted using illegal drugs in the course of committing the crime. Taylor acknowledged at the sentencing hearing that he smoked marijuana in the victim's presence. *Id.* at 45. Finally, the impact of Taylor's crime on the victim was substantial. The report of the pre-sentence investigation and the testimony at the sentencing hearing both disclose the traumatic effect of Taylor's crime upon the victim. *Id.* at 66; *Appellant's App.* at 425.

Regarding Taylor's character, we note that this conviction was Taylor's eighth arrest and his sixth conviction. He had three misdemeanor convictions prior to this offense and was convicted of committing two others while he was out on bond in the present case. He also violated his probation on two occasions. We do not find Taylor's sentence to be inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

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