

Case Summary

Karl Griffin appeals his sentence for attempted child molesting as a Class A felony. We affirm.

Issues

Griffin raises two issues, which we restate as:

- I. whether the trial court sentenced him in accordance with the plea agreement; and
- II. whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

In December 2008, the State filed seventeen charges against Griffin for Class A felony child molesting, Class B felony incest, Class D felony vicarious sexual gratification, and Class D felony dissemination of matter harmful to minors. In August 2009, the State amended the charges against Griffin to include twelve counts of Class A felony child molesting, five counts of Class B felony incest, two counts of Class D felony vicarious sexual gratification, and three counts of Class D felony dissemination of matter harmful to minors.

In December 2009, Griffin entered into a plea agreement. Griffin agreed to plead guilty to attempted child molesting as a Class A felony and the remaining charges would be dismissed. The plea agreement provided: “The court will impose such sentence as it deems appropriate. The defendant shall serve an executed sentence of no less than thirty (30) years but not more than thirty-five (35) years.” App. p. 47. During the guilty plea hearing, the trial court read the plea agreement to Griffin, informed Griffin of the general

sentencing range for a Class A felony, and informed Griffin of the change in the minimum sentence due to the plea agreement.

At the sentencing hearing, the trial court found Griffin's position of trust and the repetitive nature of the charged crimes as aggravators. The trial court found Griffin's guilty plea, remorse, willingness to address the issues, and hardship to his dependents as mitigators. However, the court noted that Griffin had received a significant benefit under the plea agreement. The trial court found that the aggravators outweighed the mitigators and sentenced Griffin to forty-five years with thirty-five years executed in the Department of Correction and ten years suspended to probation.

Analysis

I. Plea Agreement

Griffin argues that his sentence exceeded the sentence allowed by the plea agreement. We review the sentence for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). 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.

Indiana Code Section 35-35-3-3(e) provides that "[i]f the court accepts a plea agreement, it shall be bound by its terms." A plea agreement is contractual in nature, binding the defendant, the state, and the trial court, once the judge accepts it. St. Clair v. State, 901 N.E.2d 490, 492 (Ind. 2009). "[O]nce a sentencing court accepts a plea

agreement, it possesses only that degree of sentencing discretion provided in the agreement.” Id. at 493.

The plea agreement here provided: “The court will impose such sentence as it deems appropriate. The defendant shall serve an executed sentence of no less than thirty (30) years but not more than thirty-five (35) years.” App. p. 47. The trial court imposed a sentence of forty-five years with thirty-five years executed in the Department of Correction. The plea agreement specified only the executed sentence, and the sentence imposed by the trial court complied with the plea agreement. The trial court did not abuse its discretion in sentencing Griffin.¹

II. Inappropriate Sentence

Griffin argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. When considering whether a sentence is inappropriate, we need not be “extremely” deferential to a trial court’s sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. Under this rule, the burden is on the

¹ To the extent Griffin argues he did not understand that he could receive a sentence of forty-five years with thirty-five years executed under the plea agreement, we note that argument is more properly presented by way of a petition for post-conviction relief. See Jensen v. State, 905 N.E.2d 384, 395 (Ind. 2009).

defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The principal role of Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” Cardwell v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). We “should focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.” Id.

Our review of the nature of the offense reveals that twenty-seven-year-old Griffin admitted that he watched a pornographic video with his five-year-old daughter and that he asked her to put his penis in her mouth. Griffin said that she refused and, if she had not refused, “there was a high probability that [he] would have performed this act.” Tr. p. 12. Griffin contends that his attempted child molesting conviction is “less egregious” than a child molesting conviction, that there was no evidence presented that the offense against his daughter was repetitive, and that child molesting is often committed by a person in a position of trust. Appellant’s Br. p. 16.

Although child molesting is often committed by a person in a position of trust, a position of trust is not an element of the offense, and the trial court properly weighed Griffin’s position of trust heavily against him. Further, attempted child molesting is the same class of felony as child molesting, and despite Griffin’s assertion, we find the facts here quite egregious. As for the lack of evidence regarding the repetitive nature of Griffin’s offense, we note that the State charged Griffin with twelve counts of Class A

felony child molesting, five counts of Class B felony incest, two counts of Class D felony vicarious sexual gratification, and three counts of Class D felony dissemination of matter harmful to minors, and Griffin pled guilty to attempted child molesting as a Class A felony. Detective Nathan Brown testified at the sentencing hearing that Griffin confessed and that he found physical evidence at the residence that corroborated Griffin's daughter's claims. At the sentencing hearing, his defense attorney noted: "So he confessed . . . right from the start. There may be some specific discrepancies on exactly how many times and when and where. But for the most part, as Detective Brown indicated, he admitted to a number of times and what he did." Tr. p. 29. Thus, there was an admission at the sentencing hearing regarding the repetitive nature of Griffin's offense. See Trusley v. State, 829 N.E.2d 923, 926 (Ind. 2005) (holding that a "statement by counsel [at the sentencing hearing was] sufficient to constitute an admission by Trusley that [the victim] was under twelve at the time of his death").

As for Griffin's character, he argues that he is a "man of extraordinary character." Appellant's Br. p. 18. Griffin emphasizes that he turned himself into police, confessed, sought mental health and sex offender treatment, and has a minimal criminal history. Although these facts are admirable and were taken into consideration by the trial court, they do not outweigh his actions before he turned himself in to the authorities. Given these circumstances, we conclude that the sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

The trial court properly sentenced Griffin according to the plea agreement, and Griffin's sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Affirmed.

FRIEDLANDER, J., and CRONE, J., concur.