# MEMORANDUM DECISION



IN THE

# Court of Appeals of Indiana



Michael Ledford,
*Appellant-Defendant*

v.

State of Indiana,
*Appellee-Plaintiff*

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May 8, 2024

Court of Appeals Case No.
23A-CR-2120

Appeal from the Marion Superior Court

The Honorable Carol Orbison, Senior Judge

Trial Court Cause No.
49D32-2101-F1-2028

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**Memorandum Decision by Judge Vaidik**
Judges May and Kenworthy concur.

**Vaidik, Judge.**

## Case Summary

[1] Michael Ledford appeals his convictions and sentence for Class A felony child molesting and Level 1 felony child molesting. We affirm.

## Facts and Procedural History

[2] In 2010, Ledford moved in with his girlfriend and her children, including O.G., who was five or six years old at the time. At least in the beginning, O.G. thought Ledford was "very nice" and "a really good person" who was helpful to her mom and the family. Tr. Vol. III pp. 188-89. Ledford would sometimes take care of O.G. and was closer with her than the other, older children.

[3] Ledford was still living with the family in November 2020, when O.G. was fifteen. That month, after watching a video of a girl "talking about her stepdad touching her as she was a little kid," O.G. told a friend that Ledford had "fingered" her. *Id.* at 203; Tr. Vol. IV p. 9. Then, with the friend's support, O.G. told her mother, "Michael has been touching me down in my pants since I was five to six years old." Tr. Vol. IV p. 27. O.G.'s mother called 911 and reported her disclosure.

[4] The State charged Ledford with Class A felony child molesting ("between June 1, 2010 and May 31, 2013") and Level 1 felony child molesting ("between June

1, 2017 and May 31, 2019").[1] Appellant's App. Vol. III p. 6. A jury trial was held in August 2023. O.G. indicated that Ledford molested her often over the years but gave detailed descriptions of only two specific incidents. When she was between five and seven, and again when she was twelve or thirteen, Ledford called her into a bedroom, masturbated in front of her, and put his fingers into her vagina. O.G. said that Ledford would give her money in exchange for sexual activity. She also said that she put off telling her mother about the abuse because Ledford convinced her that her mother wouldn't believe her. O.G.'s mother testified that after disclosing the abuse O.G. became withdrawn and depressed, had nightmares, and began therapy.

[5] The jury found Ledford guilty on both counts. In sentencing Ledford, the trial court found as a mitigating circumstance the "positive relationship" he has with his family and friends. Tr. Vol. IV p. 199. The court then turned to aggravating circumstances:

> The Court does find a number of aggravating circumstances. The most important being, the injury inflicted on the young woman who is the victim in this case.
>
> Physical injury, I don't know. Penetrating the sexual organ of a young child. Who knows whether she was injured at the time that this began and continued. Who knows. She didn't reveal what was going on to her family or to anyone else for a number of years. So we can't say whether there wasn't physical injury

[1] Indiana switched from felony "classes" to felony "levels" on July 1, 2014. *See* P.L. 158-2013.

because she spoke of it to no one until down the road, not too long ago she decided to confide in a young friend. And it is that young friend, thankfully, who convinced her to talk to her mother about what had happened.

I don't think we can even measure the psychological impact on this young woman. What was happening to her psychologically as she grew older when she was barely starting school when apparently this began. Who knows what she was feeling, what she was saying to herself, how she was handling it. Who knows? The only thing that -- only time that we can evaluate basically is when she finally came forward and spoke to her young friend and was then questioned and confided in her mother.

From that point on we can evaluate. But not really because what has gone on in this child's psyche over the years? What harm has it done to her by concealing it in her heart and her mind and her soul? We don't know. We only know that hopefully having spoken to mother and to her counselors she can dig down and talk about it and that that will help her heal. That's the Court's hope and I think the hope of all of us.

So that's the major aggravating circumstance. There's a criminal history, yes. But it's nothing of great note. And the report that I got, I don't even know what the disposition is in a number of those cases. The probation department did not or was not able to find out what the disposition was. But there is a criminal history. It's not a clean record. So that's an aggravator, but not of great note in this Court's opinion.

The aggravator, the major aggravator is what happened to this child. And how she's addressing it now with intelligence and with help, it's now in the open. And being on the open she can deal with it. She can get help in dealing with it. That's this Court's great hope.

*Id.* at 200-01. Based on these circumstances, the court sentenced Ledford to fifty years for the Class A felony, with forty-five years to serve and five years suspended to probation, and a concurrent sentence of forty years for the Level 1 felony.

[6] Ledford now appeals.

# Discussion and Decision

## I. There is sufficient evidence to support Ledford's convictions

[7] Ledford contends the evidence is insufficient to support his convictions. He doesn't dispute that O.G.'s testimony, if believed, would prove the charges. Rather, he argues that her testimony shouldn't be believed, for a variety of reasons. But appellate courts don't judge witness credibility; that job belongs to the trier of fact (here, the jury). *See Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). The only exception to this rule is the incredible-dubiosity doctrine, which Ledford doesn't invoke. *See Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015) (explaining that the incredible-dubiosity doctrine "requires that there be: 1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence"). Because Ledford hasn't satisfied—or even tried to satisfy—this narrow exception, we affirm his convictions.

## II. Ledford has not shown that the trial court abused its discretion in sentencing him

[8] Ledford challenges the trial court's finding that "the injury inflicted on the young woman" and "what happened to this child" is an aggravating circumstance. The finding of aggravators and mitigators rests within the sound discretion of the trial court, and we review such decisions only for an abuse of that discretion. *Wert v. State*, 121 N.E.3d 1079, 1084 (Ind. Ct. App. 2019), *trans. denied*.

[9] Ledford argues that "[a] significant level of harm is already figured into or presumed for the crimes of which Ledford was convicted" and that "[t]he trial court failed to provide any clear explanation of what about this case made the harm to the victim of such an exceeding degree as to justify fifty and forty-year sentences." Appellant's Br. p. 11. It is true that the harm to the victim can be an aggravator only if it was "significant" and "greater than the elements necessary to prove the commission of the offense." Ind. Code § 35-38-1-7.1(a)(1); *see also Thompson v. State*, 793 N.E.2d 1046, 1053 (Ind. Ct. App. 2003). Here, the trial court said that the psychological impact on O.G. couldn't be measured, but it is apparent the court reached that conclusion because it believed the harm to O.G. was so substantial. The court cited three specific facts: (1) the abuse began when O.G. "was barely starting school," (2) it spanned many years, and (3) O.G. "conceal[ed] it in her heart and her mind and her soul" for all those years. These facts and the court's explanation amply support the aggravator, so we find no abuse of discretion.

## III. Ledford's sentence is not inappropriate

[10] Finally, Ledford asks us to reduce his sentence under Indiana Appellate Rule 7(B), which provides that an appellate 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." The court's role under Rule 7(B) is to "leaven the outliers," and "we reserve our 7(B) authority for exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). "Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case." *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[11] The sentencing range for a Class A felony is twenty to fifty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4(a). The same sentencing range applies to Level 1 felony child molesting when committed by a person over twenty-one. *Id.* at (c). Therefore, Ledford faced up to 100 years in prison. The trial court imposed an executed sentence of forty-five years: fifty years with five suspended for the Class A felony and a concurrent term of forty years for the Level 1 felony. Our 7(B) review focuses 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." *Cardwell*, 895 N.E.2d at 1225.

[12] We do not find Ledford's sentence to be inappropriate. It's true that there are positive aspects of Ledford's character. His criminal history is minimal (a Class C misdemeanor conviction in 2003 and some arrests in Kentucky), and he has significant support from family and friends. But the nature of the offenses is a different story. O.G. was between five and seven when the molestation began, whereas the child-molesting statute applies to victims as old as thirteen. *See* I.C. § 35-42-4-3. A victim's age "suggests a sliding scale in sentencing, as younger ages of victims tend to support harsher sentences." *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011). In addition, Ledford was in a position of trust with O.G., at least in the beginning, which also supports a longer sentence. *Edrington v. State*, 909 N.E.2d 1093, 1097 (Ind. Ct. App. 2009), *trans. denied*. Ledford has not persuaded us that his sentence—consisting of above-advisory but concurrent terms—is an outlier in need of revision.

[13] Affirmed.

May, J., and Kenworthy, J., concur.

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