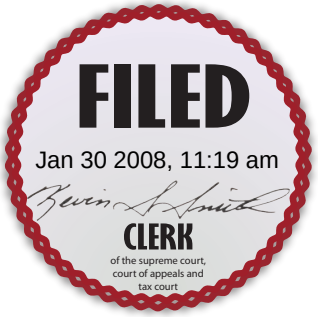

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IN THE COURT OF APPEALS OF INDIANA

STEVEN LAWVER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0706-CR-448
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Carol Orbison, Judge
Cause Nos. 49G22-0701-FA-7807 and 49G22-0702-FD-29065

January 30, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Steven Lawver ("Lawver") pleaded guilty in Marion Superior Court to Class A felony child molesting and Class D felony child solicitation and was ordered to serve an aggregate sentence of thirty years with five years suspended to probation. Lawver appeals and argues that the trial court abused its discretion in failing to consider Lawver's guilty plea and alleged remorse as mitigating factors and that the sentence for child molestation was inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

Facts and Procedural History

On January 17, 2007, the State charged Lawver with six counts of child molesting and two counts of incest. On February 22, 2007, the State charged Lawver with two counts of child solicitation.

On May 2, 2007, Lawver pleaded guilty to Class A felony child molesting and Class D felony child solicitation each under a different cause number. As part of the plea agreement, the State dismissed the remaining charges, which consisted of five counts of Class A felony child molesting, two counts of Class B felony incest, and one count of Class D felony child solicitation. Pursuant to the plea agreement, the parties agreed to a cap of thirty years on the Class A felony and a cap of 545 days on the Class D felony, but with argument left open whether the sentence was to be consecutive or concurrent.

At the guilty plea hearing, Lawver admitted to molesting M.L., his nine-year old daughter on January 13, 2007 and soliciting A.L., his eight year old son, between July of 2001 and July of 2002. Additionally, Lawver admitted to molesting M.L. more than ten

times during the past three years and soliciting A.L. two times during the period of July of 2001 and July of 2002. Br. of Appellant at 3.

At sentencing, the trial court ordered Lawver to serve the maximum sentences allowed under the plea agreement of thirty years with five years suspended to probation for the Class A felony child molesting, and 545 days all suspended to probation on the Class D felony child solicitation. The trial court found that Lawver's lack of criminal history was a mitigating factor but that the victim's age, the fact that the victim was his daughter, that more than one child was involved, and the multiple incidents of molestation were aggravating factors. Lawver now appeals.

Discussion and Decision

A trial court's sentencing decision lies within its sound discretion and will only be reviewed for an abuse of that discretion. Anglemyer v. State, 868 N.E.2d 482, 491 (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. at 492 (citations omitted). "The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Id. at 491. "The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion," however the relative weight given to those reasons is not subject to appellate review. Id.

First, Lawver argues that the trial court abused its discretion when it failed to find his guilty plea to be a mitigating circumstance. "An allegation that the trial court failed

to identify or find a mitigating factor requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record." Id. at 493 (citations omitted). Defendants who plead guilty generally deserve some mitigating weight given in return for that plea, however the plea is not necessarily a significant mitigating factor. See e.g. Cotto v. State, 829 N.E.2d 520, 526 (Ind. 2004). Also, a guilty plea may be seen as a pragmatic decision where the defendant receives a benefit as a result of the plea, and considerable evidence exists of his guilt. See Hines v. State, 856 N.E.2d 1275, 1282 (Ind. Ct. App. 2006), trans. denied.; Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied.

In this case, Lawver pleaded to a Class A felony and a Class D felony with a thirty-year cap on the sentence and in return the State dismissed eight felony counts which could have resulted in more than three hundred years in prison. Additionally, there was substantial evidence of Lawver's guilt, i.e. the testimony of M.L. and A.L. in addition to the testimony of the doctor who examined M.L. and found physical trauma to M.L. consistent with molestation. We also note that Lawver agreed to the plea agreement after the trial court determined that A.L. was competent to testify and that two of her out-of-court statements would be admissible. Appellant's App. at 60. Although the trial court did err when it failed to take Lawver's guilty plea into account as required by Cotto, 829 N.E.2d at 526, we cannot say that the guilty plea should be accorded significant weight considering the significant benefit Lawver received and the substantial evidence of his guilt. Therefore, we cannot conclude that the trial court abused its discretion when it did not consider Lawver's guilty plea to be a mitigating circumstance.

Second, Lawver argues that the trial court abused its discretion when it failed to acknowledge his remorse as a mitigating factor. As noted, remorse is a mitigating factor. Cotto, 829 N.E.2d at 526. In the pre-sentence investigation report, Lawver stated:

> I'm very sorry for what I did and said to my children and I want to help so I can be a better person and help the mothers support the children, I also hope they forgive me, I love my children with all my heart and really want to be a part of their lives. I pray that you please give least time in prison so I can help the moms with support and I will go through therapy whatever it takes God bless us all.

Pre-Sentence Investigation Report p. 11

The determination by the trial court of a defendant's remorse is similar to a determination of credibility. Pickens v. State, 767 N.E.2d 530, 534-535 (Ind. 2002). We will accept the trial court's determination unless there is evidence of some impermissible consideration by the court. Id. Even though Lawver did appear to show remorse in his statement for the pre-sentence investigation report, the trial court was in the best position to determine the sincerity and significance of his remorse. See Stout v. State, 834 N.E.2d 707, 711 (Ind. Ct. App. 2005), trans. denied. We cannot say that his remorse is significant, sincere, or clearly supported by the record. Therefore, the trial court did not abuse its discretion by not finding Lawver's alleged remorse to be mitigating.

Finally, Lawver argues that his sentence is inappropriate in light of his character and the nature of the offense. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate Rule 7(B) (2007); Marshall v. State, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), trans. denied. "[A] defendant must persuade the appellate court that his

or her sentence has met the inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494.

Concerning the character of the offender, Lawver had no prior criminal history and pleaded guilty which does somewhat speak in favor his character. However, the nature of the offense weighs heavily against Lawver. Lawver admitted molesting his own daughter more than ten times over the course of three years and soliciting his own son twice in a one-year period. Br. of Appellant at 3. Lawver took advantage of his position as father and repeatedly molested his daughter starting when she was six years old. The molestation ended only when his daughter came forward, not because he decided to stop. Under the facts and circumstances of this case, we cannot say that Lawver's thirty-year sentence is inappropriate in light of the nature of his offenses and his character.

Affirmed.

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