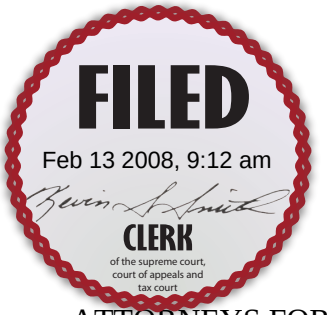

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IN THE
COURT OF APPEALS OF INDIANA

CARL E. COOPER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0708-CR-708
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0602-FA-57

February 13, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Carl E. Cooper appeals his sentence following his convictions for Sexual Misconduct with a Minor, as a Class B felony; Dealing in a Controlled Substance, as a Class A felony; and Possession of a Controlled Substance with Intent to Deal, as a Class A felony, pursuant to a guilty plea. Cooper raises two issues for our review, but we address only the following dispositive issue: whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

On April 11, 2006, the State filed an amended information charging Cooper with: three counts of Child Molesting, as a Class A felony; four counts of sexual misconduct with a minor, as a Class B felony; four counts of dealing in a schedule II controlled substance, as a Class A felony; one count of possession with intent to deal a schedule II controlled substance, as a Class A felony; four counts of dealing in a schedule IV controlled substance, as a Class B felony; and one count of possession with intent to deliver a schedule IV controlled substance, as a Class C felony.

On March 26, 2007, Cooper pleaded guilty to one count of sexual misconduct with a minor, as a Class B felony; one count of dealing in a schedule II controlled substance, as a Class A felony; and one count of possession with intent to deal a schedule II controlled substance, as a Class A felony. In doing so, Cooper acknowledged that he was over twenty-one years of age[1] and had committed an act of sexual misconduct with B.S.,

[1] At the time he committed his crimes, Cooper was about sixty-four years old.

who was fifteen years old at the time. Cooper also admitted that between July 1, 2005, and February 6, 2006, he knowingly delivered hydrocodone, a schedule II controlled substance, to B.S., and that on February 7, 2006, he knowingly possessed hydrocodone with the intent to deliver it to B.S. In exchange for Cooper's plea, the State dismissed the remaining fourteen counts and an additional offense pending against Cooper under another cause number. In addition, the plea agreement stipulated that "[t]he sentence shall be open to the Court with all counts to run concurrently." Appellant's App. at 43.

On April 30, 2007, the court held the sentencing hearing. During the hearing, the court stated the following with respect to Cooper's proposed mitigators:

> THE COURT: . . . The mitigators[,] as [defense counsel] so eloquently articulated[,] . . . would be as follows[:] defendant pled guilty to various charges pursuant to an agreement with the State and by that, [h]as saved the [S]tate the cost of an[d] expense of having to place this matter before a jury trial and also alleviate[d] the victim . . . [from having] to testify. The defendant has made restitution in this matter, which is . . . forfeiture [of his vehicle] to the Drug Task Force. The defendant has cooperated with the authorities to [a] certain degree with regards to certain admissions that he made once being arrested. The defendant today indicates remorse and has articulated his remorse in the record. [Defense counsel] pointed out that the defendant has minimal education, but despite that fact it seems as though he's been very successful and often times minimal education doesn't really describe the value and character and productivity of a man and I can look to many people who have accomplished wonderful things and have never committed crimes and have had minimal education. The record also shows that Mr. Cooper has been charitable to his community down through the years. . . . There may be some truth to the alleged mitigation that prison would be detrimental to him because of his age, but . . . it might be a mitigating factor. I think that . . . covers all the mitigating factors that have been articulated. Did I miss any?
>
> DEFENSE COUNSEL[:] No.

Transcript at 98-100. And in aggravation, the court found as follows:

> [T]he defendant does have some prior exposure to the criminal justice system, although it would be minimal. But . . . the court finds aggravating circumstances to be the defendant violated conditions of bond. And the evidence would be that he approached a separate female under the same method of operation as he did with the charges to which he's pled guilty here today. And those—the second overture was made after he was released on bond, some several months after . . . he was released on bond from the original charge. So aggravating circumstances right there to me in some way overcomes the mitigating circumstances of remorse. And also his propensity to be rehabilitated because it would appear that being charged once, a few months later he engaged in the same activity which could possibly [have] resulted in the same or similar charge or attempted thereof. The court also finds as an aggravating circumstance the fact that . . . the number of counts here and then the length of time that the offenses occurred. The court finds that the aggravating circumstances outweigh the mitigating circumstances . . . .

Id. at 101. The court sentenced Cooper to thirty years on each of his Class A felony convictions and twenty years on the Class B felony conviction. The court then ordered those sentences to run concurrent with each other for an aggregate term of thirty years. This appeal ensued.

DISCUSSION AND DECISION

Cooper first argues that the trial court abused its discretion when it found certain aggravators and weighed his guilty plea as a mitigator. However, "even if the trial court is found to have abused its discretion in the process it used to sentence the defendant, the error is harmless if the sentence imposed was not inappropriate." Mendoza v. State, 869 N.E.2d 546, 556 (Ind. Ct. App. 2007), trans. denied; see also Windhorst v. State, 868 N.E.2d 504, 507 (Ind. 2007) (holding that in the absence of a proper sentencing order, we may either remand for resentencing or exercise our authority to review the sentence pursuant to Indiana Appellate Rule 7(B)). Accordingly, we need not discuss Cooper's

contentions that the trial court abused its discretion in sentencing him if we determine that Cooper's sentence is not inappropriate.

Cooper also argues that his sentence is inappropriate in light of the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that this court "may review 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." Although Rule 7(B) does not require us to be "very deferential" to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

We cannot say that Cooper's thirty-year sentence,[2] the advisory sentence for Class A felonies, is inappropriate. See Ind. Code § 35-50-2-4 (2005). Although Cooper does not challenge the nature of his offenses, we note that he possessed hydrocodone, a controlled substance, and then provided that hydrocodone to a fifteen-year-old in return for sexual favors. At the time, Cooper was approximately sixty-four years old. Hence, the nature of the offense of possession goes beyond Cooper merely having hydrocodone—he possessed that drug with the intent to exploit a minor for his own sexual gratification.

[2] Cooper does not dispute that his sentence of twenty years on the Class B felony conviction is appropriate. And to the extent that Cooper suggests that this court should suspend his sentence, we decline to do so.

Regarding Cooper's character, the record reveals that he expressed remorse, he had a "minimal" criminal history, he had been charitable and respected in his community, and he made some restitution by forfeiting his vehicle to the local drug task force. Further, Cooper cooperated with the local police and pleaded guilty. Each of those factors is in Cooper's favor to an extent. However, we are not persuaded that his guilty plea is significant. In exchange for his plea, the State dismissed the remaining fourteen counts pending against Cooper and an additional offense pending under another cause number. And the plea agreement stipulated that "[t]he sentence shall be open to the Court with all counts to run concurrently." Appellant's App. at 43. Thus, Cooper's guilty plea dramatically reduced the amount of time he could have been sentenced for his offenses if convicted of those offenses. In light of those facts, we must conclude that Cooper's guilty plea was "more likely the result of pragmatism than acceptance of responsibility and remorse." See Davies v. State, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), trans. denied.

In sum, the nature of Cooper's offenses, specifically the exploitation of a minor for his own sexual gratification, justifies, at least, the advisory sentence for the Class A felonies. And Cooper's character is not so exemplary as to counteract the nature of those offenses. Accordingly, we cannot say that Cooper's thirty-year sentence is inappropriate.

Affirmed.

BAILEY, J., and CRONE, J., concur.