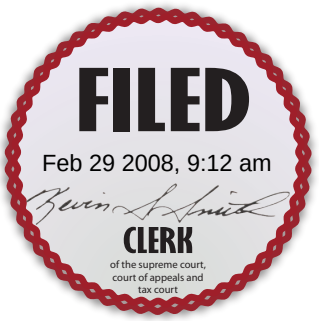

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IN THE
COURT OF APPEALS OF INDIANA

JAMES F. MILLER,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 15A01-0706-CR-263
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE DEARBORN CIRCUIT COURT
The Honorable James D. Humphrey, Judge
Cause No. 15C01-0611-FB-40

February 29, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

James F. Miller appeals his sentence following his conviction for Rape, as a Class B felony. He presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

W.W. was formerly married to Miller's stepson, and, in 2000, W.W. had a baby, D.S. W.W. and Miller's stepson divorced, and Miller and his wife, Sharon Miller, took custody of D.S. W.W. subsequently entered the military.

On May 28, 2006, W.W. was visiting the home of Miller and his wife. W.W. was alone at the residence that afternoon when Miller came home from work. W.W. was sitting in a back room of the house watching television, and Miller joined her. At the time, W.W. was suffering from injuries to her ribs and shoulder. At some point, Miller began asking W.W. whether she wanted him to "f---" her. Transcript at 357. W.W. replied in the negative. But Miller eventually went over to W.W., grabbed her by her shoulders, and forced himself on her. W.W. tried to get away and repeatedly said "no" and "stop," but she was unable to stop him. Miller removed W.W.'s shorts and underwear, and he penetrated her vagina with his penis until he ejaculated.

After the rape, W.W. got up and greeted her son, who had just arrived home. W.W. did not report the rape until approximately one week later. The State charged Miller with rape, as a Class B felony. A jury found him guilty as charged. The trial court

entered judgment and sentenced Miller to twenty years with five years suspended. This appeal ensued.

DISCUSSION AND DECISION

Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)), (alteration original), clarified in part on other grounds, 875 N.E.2d 218 (Ind. 2007). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id. Under Appellate Rule 7(B), we assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Anglemyer, 868 N.E.2d at 494 (quoting Childress, 848 N.E.2d at 1080) (alteration in original).

Miller contends that his sentence is inappropriate in light of the nature of the offense and his character. With regard to the first factor, Miller asserts that the offense was not particularly reprehensible. In particular, he states that "Miller had sex with [W.W.] against her will, but that was it. The jury convicted Miller, but the evidence of rape was weak, at best." Brief of Appellant at 12. Miller points out that W.W. is physically larger than he, and he suggests that she could have successfully resisted his

sexual advances if she had wanted to. But Miller's argument is without merit. The evidence shows that W.W. is not strong and, on the date of the offense, she was weakened further by rib and shoulder injuries. Regardless, Miller was convicted of raping W.W. Our legislature has acknowledged the inherently violent nature of rape, regardless of the level of force used, by including rape in the list of violent crimes in Indiana Code Section 35-50-1-2. Further, the rape occurred in a common area of the residence, and W.W.'s young son could have come home and witnessed the attack on his mother. We cannot say that the nature of the offense supports a lesser sentence.

Miller next contends that his character is good and supports a revised sentence. In particular, he asserts that he is a hard-worker and a good provider for his family. And he maintains that his criminal history is relatively minor. But Miller's criminal history spans approximately twenty-six years and includes four prior felonies.[1] In 1993, for instance, Miller was convicted of performing a lewd act on a child and performing a lewd act in the presence of a child. Obviously, those convictions reflect poorly on Miller's character. We cannot say that Miller's twenty year sentence, with five years suspended, is inappropriate in light of the nature of the offense and his character.

Affirmed.

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

[1] The trial court only found three prior felonies, but our review of the presentence investigation report shows that Miller was previously convicted of the following felonies: theft, sale or delivery of methamphetamine, lewd act on a child, and lewd act in the presence of a child.