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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL WILSON,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 20A03-0704-CR-166
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE ELKHART SUPERIOR COURT
The Honorable George W. Biddlecome, Judge
Cause No. 20D03-0510-FB-00154

April 7, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael Wilson ("Wilson") pleaded guilty in Elkhart Superior Court to Class B felony sexual misconduct with a minor. He was sentenced to fourteen years with ten years executed and four years suspended to probation. Wilson appeals and argues that the trial court abused its discretion when it failed to consider certain mitigating circumstances and that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

Facts and Procedural History

On October 26, 2005, Wilson was charged with Class B felony sexual misconduct with a minor. Specifically, the State alleged that Wilson, who was fifty-three years old, engaged in sexual intercourse with F.K., a child who was fourteen years old. Tr. p. 25. On January 25, 2007, Wilson pleaded guilty to the offense. The plea agreement provided that the executed portion of his sentence would not exceed ten years.

A sentencing hearing was held on February 15, 2007. The trial court found the following aggravating circumstances: Wilson's criminal history and a prior parole violation. The trial court considered Wilson's guilty plea and expression of remorse as mitigating. The court concluded that the aggravating circumstances outweighed the mitigating circumstances and sentenced Wilson to fourteen years, with ten years executed and four years suspended to probation. Wilson now appeals.[1]

Discussion and Decision

Wilson argues that the trial court abused its discretion when it failed to consider certain mitigating circumstances in imposing his sentence. He also argues that his

[1] Wilson filed a belated notice of appeal and filed his appellant's brief on August 28, 2007. The State filed its brief on October 30, 2007. Wilson's appeal was not transmitted to our court until March 6, 2008.

fourteen-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

"[S]entencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion." Anglemyer v. State, 868 N.E.2d 482, 490 (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. (citation omitted). Moreover,

> [t]he finding of mitigating factors is within the discretion of the trial court. A trial court is not obligated to weigh or credit the mitigating factors in the manner a defendant suggests they should be weighed or credited. "The allegation that the trial court failed to find a mitigating circumstance requires [the defendant] to establish that the mitigating evidence is both significant and clearly supported by the record."

McKinney v. State, 873 N.E.2d 630, 645 (Ind. Ct. App. 2007), trans. denied (citations omitted).

Wilson argues that the trial court should have considered the following mitigating circumstances: 1) his "educational accomplishments," 2) "the fact that he has remained free from alcohol and drug use for almost four years," and 3) the fact that Wilson suffers from depression and epilepsy.[2] Br. of Appellant at 7-8. However, Wilson has not established that these proposed mitigating circumstances were significant and clearly supported by the record. Moreover, Wilson only briefly mentioned suffering from

[2] Wilson also contends that the trial court abused its discretion by failing to assign significant mitigating weight to his guilty plea and expression of remorse. However, the weight afforded to mitigating and aggravating circumstances is no longer a claim available on appellate review. Kremptez v. State, 872 N.E.2d 605, 613 (Ind. 2007).

depression and epilepsy. See Tr. p. 39. The trial court did not abuse its discretion when it failed to consider Wilson's proposed mitigating circumstances.

Next, Wilson argues that his fourteen-year sentence with ten years executed and four years suspended is inappropriate in light of the nature of the offense and the character of the offender. Pursuant to Indiana Appellate Rule 7(B), our 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 burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

The trial court imposed a ten-year executed sentence with an additional four years suspended to probation, for an aggregate sentence of fourteen years, which is six years less than the maximum twenty-year sentence for a Class B felony. See Ind. Code 35-50-2-5 (2004 & Supp. 2007). Wilson's plea agreement provided that any executed sentence would be capped at ten years. Wilson received a sentence that he bargained for, and therefore, he bears the considerable burden of persuading our court that his sentence is inappropriate. See Childress, 848 N.E.2d at 1081 (Dickson, J., concurring) ("A defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness.")

Wilson has four prior felony convictions including convictions for robbery, possession of cocaine, and a conviction in Kentucky for indecent and immoral practices. He also "violated the terms of his parole supervision in the past." Appellant's App. p. 2.

Concerning the nature of the offense, fifty-three year old Wilson had sexual intercourse with an allegedly "mildly handicapped" fourteen-year-old girl. See Tr. p. 41. For all of these reasons, we conclude that Wilson's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

MAY, J., and VAIDIK, J., concur.