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IN THE COURT OF APPEALS OF INDIANA

ERIC KUYKENDALL,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-0712-CR-579
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0506-FA-28

June 19, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Eric Kuykendall appeals his sentence following his conviction for Child Molesting, as a Class B felony, pursuant to a guilty plea. He raises a single issue for our review, namely, whether his ten-year sentence is inappropriate in light of the nature of his offense and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

A.R. first met Kuykendall when she was eleven or twelve years old. A.R. and Kuykendall's daughter were good friends and played together on the same softball team. In September of 2003, when A.R. was thirteen, Kuykendall began serving as their softball coach.

Around that same time, A.R.'s stepfather, "the only father figure in [A.R.'s] life," was murdered. Transcript at 34. A.R. saw Kuykendall "every single day" and "trusted him." Id. at 35. Kuykendall began making physical advances toward A.R., first kissing, then touching her. Kuykendall then engaged A.R. in sexual intercourse, and, between September of 2003 and May of 2005, the two had sex "a lot." Id. at 37. A.R. believed that Kuykendall was her "everything." Id. Their relationship ended when A.R.'s mother discovered the two engaged in sexual intercourse and called the police.

On June 2, 2004, the State filed a four-count information against Kuykendall. Almost three years later, Kuykendall pleaded guilty to child molesting, as a Class B felony, with sentencing left to the court's discretion. On October 25, 2007, the court held the sentencing hearing, at which A.R. testified. A.R. stated that, after her relationship

with Kuykendall ended, she "tr[ied] to hurt herself," and "had to switch schools." Id. at 39-40.

At the conclusion of the sentencing hearing, the court found and ordered as follows:

> In mitigation, the Court finds that the defendant has no history of delinquency or criminal activity and has lead [sic] a law-abiding life for a substantial period of time before the commission of the crime . . . . The Court further finds in mitigation[] that the defendant is likely to respond affirmatively to short[-]term imprisonment . . . . Imprisonment . . . will result in undue hardship to his wife and children . . . .
>
> In further mitigation, the Court finds that the defendant pled guilty and accepted responsibility although the defendant pled guilty just a little under two years into the case, four jury trial[] setting[s] into the case, the defendant pled guilty to a class B felony, reduced from a class A felony, with over twenty court hearings taking place and again, four jury trials being set.
>
> Furthermore, as it relates to pleading guilty and accepting responsibility, in this Court's view, based on the fact that the defendant was caught with his penis exposed and [A.R.'s] pants down a short distance away, with [A.R.] bent over a hutch and the defendant also leaving an incriminating message that is recorded and played in court here today, the likelihood of conviction was great. The Court places very little weight on this aggravator [sic].
>
> [T]he Court does accept the defendant's remorse. The Court is unable to tell if it is remorse for the pain he has caused . . . or it was specifically for his actions . . . . Therefore . . . the Court is also specifically rejecting the mitigator that the crime was a result of circumstances unlikely to reoccur [sic].
>
> In aggravation, the Court finds that the defendant engaged in a relationship at a time when he was married, thirty-three years old, gainfully employed, with [A.R.] who was thirteen years old at the time. This was an ongoing sexual relationship that occurred between September 1, 2003[,] and May 14, 2005, that the defendant was a family friend and the softball instructor of the defendant, therefore violated a position of trust.
>
> [T]he Court further finds in aggravation that this activity only stopped because the defendant was caught. . . .

> In further aggravation, the Court finds the harm, injury and loss or damage suffered by [A.R.] was significant and greater than the elements to prove the commission of the offense, in that [A.R.] attempted suicide [and] needed to be hospitalized . . . . The Court has had the opportunity to witness her throughout this entire proceeding and can see the pain that she is going through as we speak.
>
> After considering the above factors, the Court finds that the aggravating factors and mitigating factors are equal . . . .

Id. at 127-30. The court then sentenced Kuykendall to ten years, the presumptive[1] sentence for a Class B felony. This appeal ensued.

DISCUSSION AND DECISION

Kuykendall argues on appeal that his ten-year sentence is inappropriate in light of the nature of the offense and his character. 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." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). 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

[1] See Ind. Code § 35-50-2-5 (2004). Although the State refers to the ten-year term as the "advisory" sentence, see Appellee's Brief at 4, the State does not dispute Kuykendall's position that the presumptive-sentencing scheme, not the advisory-sentencing scheme, applies to his case. We agree with Kuykendall that, because it is not clear from the facts stipulated pursuant to his guilty plea when exactly his crime occurred, the prior sentencing scheme applies to his case. See, e.g., Weaver v. State, 845 N.E.2d 1066, 1072 (Ind. Ct. App. 2006), trans. denied.

sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration in original).

Kuykendall's ten-year sentence is not inappropriate in light of the nature of the offense. Indeed, Kuykendall concedes that he "cannot quarrel with the trial court's assessment of the nature of the offense, or the facts underlying that assessment." Appellant's Brief at 4. Instead, Kuykendall asks that this court, in our Rule 7(B) review, accord more weight to the trial court's identified mitigators than the trial court assigned to them. We decline to do so. While we recognize those mitigators, we also recognize the fact that Kuykendall's offenses were not rash or random acts. Rather, they took place over the course of two years and were perpetrated against a victim that he held multiple positions of trust over as coach, family friend, and father figure. And as a result of his acts, A.R. was emotionally scarred, attempted suicide, and had to change school systems to avoid confrontations.

Nor is the ten-year term inappropriate in light of Kuykendall's character. While it is true that he has no prior criminal history, Kuykendall took advantage of a thirteen-year-old girl by abusing multiple positions of trust to gratify his own sexual desires over a nearly two-year period of time. Further, Kuykendall only stopped his criminal conduct because he was caught by A.R.'s mother. Accordingly, we are not persuaded that the presumptive sentence in this case is inappropriate.

Affirmed.

DARDEN, J., and BROWN, J., concur.