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IN THE
COURT OF APPEALS OF INDIANA

MICHAEL TATLOCK,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 09A02-0705-CR-401
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE CASS SUPERIOR COURT NO. 1
The Honorable Thomas Perrone, Judge
Cause No. 09D01-0502-FA-1

October 15, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

MATHIAS, Judge

Michael Tatlock ("Tatlock") pleaded guilty in Cass Superior Court to Class A felony child molesting and was sentenced to twenty-five years in the Department of Correction. He appeals, arguing his sentence in inappropriate. We affirm.

Facts and Procedural History

On February 16, 2005, the State charged Tatlock with four counts of Class A felony child molesting, Class C felony vicarious sexual gratification, Class D felony child solicitation, and Class D felony sexual battery based upon a series of incidents involving his stepdaughters. The State later amended one Class A felony count to a Class C felony count. Tatlock entered into a plea agreement whereby he agreed to plead guilty to one count of Class A child molesting; in exchange, the State agreed to dismiss the remaining charges. Sentencing was left to the trial court's discretion.

Following a sentencing hearing, the trial court sentenced Tatlock to twenty-five years in the Department of Correction. In doing so, the trial court observed that Tatlock's position of trust with his stepdaughter was an aggravating circumstance and that his minimal criminal history and expression of remorse were mitigating circumstances. The trial court then noted, "In attempting to balance those, …to look at specifically a couple of other[ ] things that we look at and might consider as mitigating factors I'm going to decline to do that….I'm not moved to cite those things as mitigating factors in this particular case." Tr. pp. 115-16. Matlock now appeals.

Discussion and Decision

Tatlock argues that the trial court abused its discretion when it failed to find certain mitigating circumstances, namely his "low-risk to re-offend, his consistent

twenty-five year work history, and the fact that he plead[ed] guilty pursuant to an open plea agreement[.]" Br. of Appellant at 10.

As an initial matter, we note that Tatlock's crime was committed before our General Assembly amended Indiana's sentencing statutes to provide for "advisory" rather than "presumptive" sentences. See Pub. L. No. 71-2005, §5 (codified at Ind. Code § 35-50-2-1.3). Therefore, the "presumptive" scheme applies. See Gutermuth v. State, 868 N.E.2d 427, 431 n.4 (Ind. 2007). We also note here that Tatlock challenges a sentence reduced five years below the presumptive term of thirty years for a Class A felony.

The trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. Dylak v. State, 850 N.E.2d 401, 410 (Ind. Ct. App. 2006), trans. denied. Nor is the trial court obligated to explain why it did not find a factor to be significantly mitigating. Id. To establish an abuse of discretion, Tatlock must show that the mitigating evidence is both significant and clearly supported by the record. Id.

Tatlock points to the conclusion by the psychologist who prepared a "Reception Diagnostic Report" for the Department of Correction that his "subjective impression is that this individual is at low risk for re-offense" as significant mitigating evidence. Appellant's App. p. 107. However, this conclusion appears to be at odds with other information contained in Tatlock's pre-sentence investigation report, including Tatlock's admission that he needs sex offender treatment and "does not understand why he 'crossed the line'" with the victim. Appellant's App. p. 115. It was well within the trial court's

discretion to reject this proposed mitigator. See Banks v. State, 841 N.E.2d 654, 659 (Ind. Ct. App. 2006), trans. denied.

Nor was the trial court obligated to consider Tatlock's consistent work history a significant mitigating factor. See Bennett v. State, 787 N.E.2d 938, 948 (Ind. Ct. App. 2003), trans. denied (holding that the trial court properly did not find that defendant's employment was a significant mitigating circumstance where defendant did not present a specific work history, performance reviews, or attendance records).

Finally, as to Tatlock's guilty plea, our supreme court has noted that "'a defendant who willingly enters a plea of guilty has extended a substantial benefit to the state and deserves to have a substantial benefit extended to him in return.'" Francis v. State, 817 N.E.2d 235, 237 (Ind. 2004) (quoting Scheckel v. State, 655 N.E.2d 506, 511 (Ind. 1995)). However, "the significance of this mitigating factor will vary from case to case." Id. at 238, 238 n.3. A guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea. Wells v. State, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005), trans. denied (citing Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999)). Here, in exchange for his plea, Tatlock avoided prosecution on six additional felonies. As such, we cannot conclude that Tatlock's guilty plea would be entitled to significant mitigating weight. In sum, the trial court was well within its discretion in declining to find these factors significant.

Tatlock also contends that his sentence is inappropriate. 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.

As for the nature of the offense, when Tatlock's twelve-year-old stepdaughter asked permission to stay over at a friend's house, Tatlock responded that she might if she put his penis in her mouth. Tr. p. 57. And considering the character of the offender, while Tatlock does not have a prior criminal history and did plead guilty, he also violated his position of trust with his stepdaughter. Under these facts and circumstances, we could easily conclude that the presumptive or an enhanced sentence is appropriate. As such, we cannot conclude his twenty-five year sentence for Class A felony child molesting is inappropriate.

Affirmed.

NAJAM, J., and BRADFORD, J., concur