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IN THE COURT OF APPEALS OF INDIANA

STEPHEN LYNN PENTECOST,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 29A05-0807-CR-400
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HAMILTON SUPERIOR COURT
The Honorable Daniel Pfleging, Judge
Cause No. 29D02-0504-FB-082
Cause No. 29D02-0509-FC-0212

October 6, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Stephen Lynn Pentecost appeals the sentence imposed following his conviction, pursuant to a guilty plea, for one count of Sexual Deviate Conduct,[1] as a class B felony, and two counts of Child Molesting,[2] as class C felonies.

We affirm.[3]

On April 28, 2005, Pentecost's then fifteen-year-old daughter, H.P., reported to a forensic interviewer that her father had been sexually abusing her for the last four years. She stated that Pentecost would often come into her room at night and kiss and rub her breasts. H.P. further reported that on a weekly basis during her freshman year of high school he would have her remove her clothes and lay on the bed while he kissed and touched her breasts and fondled her vaginal area. On several occasions, he placed his finger inside her vagina and masturbated her. H.P. also reported that he would have her undress and pose in different positions while he masturbated himself. On one occasion, Pentecost reportedly attempted to persuade H.P. to perform oral sex on him. Finally, H.P. reported that her father made her masturbate him at least ten different times over the last several years.

Pentecost was interviewed later that day at the Fishers Police Department. He admitted that he had been sexually abusing H.P. for about two and a half years. Pentecost indicated that it began by watching her shower and soon progressed to him touching her. He admitted touching and kissing her breasts and masturbating her. He said that he became

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[1] Ind. Code Ann. § 35-42-4-9(a)(1) (West, PREMISE through 2007 1st Regular Sess.).

[2] I.C. § 35-42-4-3(b) (West, PREMISE through 2007 1st Regular Sess.).

[3] We note that Pentecost included in his appendix a copy of the presentence investigation report on white paper. We remind Pentecost that Ind. Appellate Rule 9(J) requires that documents and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1), which includes presentence investigation reports, must be filed in accordance with Ind. Trial Rule 5(G). That rule provides that such documents must

more aggressive when she turned fifteen years old, admitting that on a nearly weekly basis he made her pose naked while he masturbated. Further, he indicated that sometimes he masturbated her and other times he would watch while she masturbated herself. He also stated that he had pleaded with her on one occasion to perform oral sex on him, but she refused. When asked how he kept her from telling anyone of the abuse for such a long period of time, Pentecost told the investigator that he had warned H.P. he would get in trouble and it would destroy the family.

On April 29, 2005, the State charged Pentecost with ten counts involving the sexual abuse of his daughter over a three-year period. The charges included attempted criminal deviate conduct, a class B felony (Count 1), sexual misconduct with a minor, a class B felony (Count 2), two counts of child molesting, as class C felonies (Counts 3 and 4), four counts of sexual misconduct with a minor, class D felonies (Counts 5-8), performance before a minor that is harmful to minors, a class D felony (Count 9), and voyeurism, a class B misdemeanor (Count 10). Thereafter, on September 26, 2005, the State charged Pentecost under a separate charging information with two counts of child molesting, as class C felonies, based upon alleged abuse of one of his sons.

Pentecost entered into a plea agreement with the State on July 27, 2007. Pursuant to the agreement, he pleaded guilty to Count 2 (inserting his finger into H.P.'s vagina when she was fifteen), Count 3 (touching thirteen-year-old H.P.'s breasts), and Count 4 (fondling thirteen year-old H.P.'s vagina). In exchange, the State agreed to dismiss the remaining

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be tendered on light green paper or have a light green coversheet and be marked "Not for Public Access" or "Confidential". Ind. Trial Rule 5(G)(1).

counts, including the charges in the cause related to his son. The agreement left sentencing to the trial court's discretion with the exception that the executed sentence could not exceed thirty-two years or be less than fifteen. On October 26, 2007, the trial court sentenced Pentecost to twenty years in prison on Count 2 with four of those years suspended and eight years in prison for both Counts 3 and 4. The three sentences were ordered to be served consecutively, for an aggregate sentence of thirty-six years with thirty-two of those years being executed. Pentecost now appeals his sentence.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal for an abuse of discretion. *Anglemyer v.* State, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Even if we find no abuse of discretion, however, we still have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Indiana Appellate Rule 7(B); *Anglemyer v.* State, 868 N.E.2d 482. Although we are not required under App. R. 7(B) to be "extremely" deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Thus, "we exercise with great restraint our responsibility to review and revise sentences." *Scott v. State*, 840 N.E.2d 376, 381 (Ind. Ct. App. 2006), *trans. denied*. Moreover, we observe that the appellant bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

Pentecost appeals his sentence on several grounds. First, he argues the sentence is illegal because, pursuant to Ind. Code Ann. § 35-50-1-2 (West, PREMISE through 2007 1st

Regular Sess.), the total length of the consecutive terms of imprisonment should have been limited to thirty years. Second, he claims the trial court erred in using a single aggravating factor to both enhance his sentences and to justify the imposition of consecutive sentences. Pentecost contends, finally, that his sentence is inappropriate. We will address each argument in turn.

Pentecost's argument with respect to I.C. § 35-50-1-2 is wholly without merit. I.C. § 35-50-1-2(c) provides in relevant part:

> *except for crimes of violence*, the total of the consecutive terms of imprisonment…to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Id. (emphasis supplied). Child molesting is specifically listed in the statute as a crime of violence. *See* I.C. § 35-50-1-2(a)(10). Thus, even assuming Pentecost's three offenses (two for child molesting and one for sexual misconduct with a minor) constitute a single episode of criminal conduct, which they do not,[4] I.C. § 35-50-1-2 did not limit the trial court's sentencing discretion as suggested by Pentecost. *See Ellis v. State*, 736 N.E.2d 731, 737 (Ind. 2000) (the statute exempts from the sentencing limitation "(1) consecutive sentencing among crimes of violence, and (2) consecutive sentencing between a crime of violence and those that are not crimes of violence"). Pentecost was not sentenced in violation of the statute.

Pentecost next asserts that the trial court improperly used a sole aggravating

[4] I.C. § 35-50-1-2(b) defines an "episode of criminal conduct" as "offenses or a connected series of offenses that are closely related in time, place, and circumstance." In the instant case, the two counts of child molesting for which Pentecost was convicted occurred when H.P. was thirteen years old, and the sexual misconduct offense did not occur until more than a year later, when H.P. was fifteen years old.

circumstance (violation of a position of trust) to both enhance his sentences and impose consecutive sentences. His entire argument in this regard follows:

> Although there appears to be some disagreement between districts of the Indiana Court of Appeals on this point, the most recent case found, *Duncan v. State*, 862 N.E.2d 322 (Ind. Ct. App. 2007)[, *trans. denied*], held that "it is true that a single aggravating factor may justify an enhanced sentence. However, as a general proposition, a single aggravator should not be used to both enhance a sentence and impose consecutive sentences."

Appellant's Brief at 6.

The State responds that the trial court found more than one aggravating factor (violation of position of trust, years of ongoing abuse, and violation of no-contact order). In any case, however, we observe that a single aggravating factor may be used to both enhance a sentence and to impose consecutive sentences. *See Davidson v. State*, 558 N.E.2d 1077 (Ind. 1990); *Payton v. State*, 818 N.E.2d 493 (Ind. Ct. App. 2004), *trans. denied*. Pentecost has provided no argument as to why using a single aggravator to both enhance and impose consecutive sentences was improper under the facts of this particular case. *See Payne v. State*, 687 N.E.2d 252, 255 (Ind. Ct. App. 1997) (single aggravator may be used if it is "particularly egregious"). Therefore, we find no error in this regard.

Finally, we turn to Pentecost's argument that his sentence is inappropriate. He acknowledges that his offenses were particularly disturbing because they involved his own child. On the other hand, he notes that he had no prior criminal history and that he is willing to participate in counseling, which will be delayed by his extended imprisonment.

In imposing the maximum sentence of thirty-six years, with four of those years suspended, the trial court explained at the sentencing hearing:

> Mr. Pentecost, as you were making your statement, and the reason I'm bring [sic] this to your attention is something that [the prosecutor] said, and I wrote underneath, I wrote "Mr. Pentecost" and then I wrote "it's not all about you."… Well, I think you think it is. I think that that's how you created your victims. I think that's how you're making your argument for justifying a shorter sentence. And it's not all about you so now I guess it's got to stop because I get to do the stopping.
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> But Mr. Pentecost, you're a parent. Not only are you a parent but you're a parent who's received education that has made him a minister. There's no greater violation in the world than a parent doing something wrong to their child. That's probably the ultimate aggravating circumstance and I am finding that Mr. Pentecost is [H.P.]'s father and that by being his [sic] father he violated a position of trust. I believe we have a mitigating argument and I'm going to accept that he has no prior criminal convictions. But I think it is tempered. I think it is tempered severely because he has three years of committing crimes behind the protective closed doors of the family's abode. The family's house should be a child's haven so, yes, you may not have any criminal record but you have three years by your own statement when you have committed crimes. So I'll find it as a mitigator but I sure do temper it.
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> Then we come to a situation that [defense counsel] indicated that maybe a shorter period of time and a probationary period so that we can monitor your rehabilitation. Mr. Pentecost, I can't monitor you while you're in jail so how am I going to monitor you on probation? There's evidence before the Court that you were in violation of prior court orders. I'm not going to make a determination that you violated the protective order because I don't believe there's enough evidence before me but there is evidence that you violated condition of your bail or bond by having contact with these people. So if you can't obey that order, why would I ever trust you to probation? I'm limited by the plea but I will acknowledge I have two excellent attorneys who have negotiated this plea and it was probably a fit and proper plea, but, sir, I don't have enough years to give you for what you've done.
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> I hope some of the things that you said turn out to be true … but obviously I wasn't convinced today.

Sentencing Transcript at 37-39.

We agree with the trial court's thoughtful assessment of the nature of the offenses and character of the offender in this case. Pentecost has failed in his burden of persuading us that the sentence imposed by the trial court is inappropriate.

Judgment affirmed.

DARDEN, J., and BARNES, J., concur