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IN THE
COURT OF APPEALS OF INDIANA

JOHAN DOEDEN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0803-CR-274
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON COUNTY SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0708-FA-203

October 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Johan Doeden appeals his sentence for two counts of child molesting as class A felonies,[1] child molesting as a class C felony,[2] and child exploitation as a class C felony.[3] Doeden raises two issues, which we revise and restate as:

I. Whether the trial court abused its discretion in sentencing him; and

II. Whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

We remand with instructions.

The relevant facts follow. On August 1, 2007, Amy Lyons contacted the Chesterfield Police Department claiming that Doeden, then her boyfriend, had been molesting her ten-year-old daughter, R.L. When Chesterfield police officers met with Lyons, she stated that R.L. had informed her that Doeden had been molesting her for the previous two and one-half years or so. An officer then interviewed R.L., who told him that Doeden had touched her with his hand and mouth in various parts of her body, including her breasts and genitals.

Detective David Callehan took Lyons and R.L. to the Sheriff's Department for a recorded interview, during which R.L. described various incidents where Doeden placed his hand on her vagina and touched her vagina with his penis and mouth. R.L. told Detective Callehan that "white stuff comes out when [Doeden] gets excited" and that "he puts the white stuff in a Kleenex." Transcript at 8. R.L. also said that Doeden had taken

[1] Ind. Code § 35-42-4-3 (Supp. 2007).

[2] Ind. Code § 35-42-4-3 (Supp. 2007).

[3] Ind. Code § 35-42-4-4 (Supp. 2007).

pictures of her during some of these incidents and that there may have been 100 incidents altogether. When Detective Callehan and Chesterfield police officers went to Doeden's home to speak with him, Doeden admitted that he had molested R.L. and showed the officers pictures from his computer of R.L. "in various stages of undress and some that showed [Doeden's] penis touching her in her vaginal area." Id. at 9.

The State charged Doeden with two counts of child molesting as class A felonies, one count of child molesting as a class C felony, and one count of child exploitation as a class C felony. On December 17, 2007, Doeden pled guilty to all charges. At sentencing, the trial court found Doeden's guilty plea and acceptance of responsibility to be mitigating factors and found the circumstances and duration of the molestation and the fact that Doeden has previous convictions for two counts of child molesting as class B felonies to be aggravating factors. Finding that the aggravating factors outweighed the mitigating factors, the trial court sentenced Doeden to fifty years for both counts of child molesting as class A felonies, eight years for child molesting as a class C felony, and eight years for child exploitation as a class C felony. The trial court ordered that the sentences be served consecutively, thus sentencing Doeden to a total sentence of 116 years in the Indiana Department of Correction.

I.

The first issue is whether the trial court abused its discretion in sentencing Doeden. We note that Doeden's offenses were committed after the April 25, 2005

revisions of the sentencing scheme.[4] In clarifying these revisions, the Indiana Supreme Court has held that "the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence." Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). We review the sentence for an abuse of discretion. Id. An abuse of discretion occurs if "the decision is clearly against the logic and effect of the facts and circumstances before the court." Id.

A trial court abuses its discretion if it: (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence – including a finding of aggravating and mitigating factors if any – but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law." Id. at 490-491. If the trial court has abused its discretion, we will remand for resentencing "if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record." Id. at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or those that should have been found, is not subject to review for abuse of discretion. Id.

Doeden argues that the trial court failed to assign the appropriate mitigating weight to his guilty plea and acceptance of responsibility and that, if the trial court had properly weighed the aggravating and mitigating factors, it would have ordered

[4] Indiana's sentencing scheme was amended effective April 25, 2005 to incorporate advisory sentences rather than presumptive sentences. See Ind. Code § 35-50-2-7 (Supp. 2005).

concurrent sentences. Pursuant to Anglemyer, the relative weight or value assignable to reasons properly found is not subject to our review for abuse of discretion. Consequently, we cannot review Doeden's argument.[5] See, e.g., Anglemyer, 868 N.E.2d at 491.

II.

The next issue is whether Doeden's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Doeden argues that his sentence was inappropriate because he pled guilty and accepted responsibility for the offenses. We agree.

Our review of the nature of the offense reveals that Doeden repeatedly molested his girlfriend's daughter over a period of two and one-half years. Doeden also took pictures of R.L. during some of these incidents.

[5] Doeden also argues that the trial court improperly "considered Doeden's conviction for five counts of child molesting as an aggravator in itself." Appellant's Brief at 12. The presentence investigation report reveals that, in 1995, Doeden was charged with three counts of child molesting as class B felonies and three counts of child molesting as class C felonies. In 1996, he pled guilty to two counts of child molesting as class B felonies, and the State dropped the remaining charges. At sentencing, the trial court listed Doeden's "prior criminal conviction for a very similar thing" as an aggravating factor. Transcript at 33. The trial court's consideration of Doeden's criminal history was not improper.

Our review of the character of the offender reveals that Doeden has previous convictions for two counts of child molesting as class B felonies, as well as convictions for possession of marijuana and reckless possession of paraphernalia as class A misdemeanors. In the present case, when confronted by the police, Doeden admitted to the allegations and later pled guilty to all the charges against him. At sentencing, the trial court noted that Doeden testified that he was remorseful and pled guilty, "saving the State the time and cost of a trial and also not forcing the victim in this case to hav[e] to testify." Transcript at 33.

Although the trial court found valid mitigating factors, it sentenced Doeden to the maximum sentence for each count and ordered that the sentences be served consecutively, for a total sentence of 116 years. We recognize that crimes against children are "particularly contemptible." Walker v. State, 747 N.E.2d 536, 538 (Ind. 2001). Nevertheless, we find Doeden's sentence inappropriate in light of his guilty plea and acceptance of responsibility. Accordingly, we conclude that Doeden's sentences should be reduced to consecutive sentences of forty-five years for each of the two class A felony child molesting convictions. We impose sentences of six years for the child molesting as a class C felony conviction and six years for the child exploitation as a class C felony conviction to be served concurrently with each other and concurrently with the class A felony convictions, for a total sentence of ninety years in the Indiana Department of Correction. See, e.g., Francis v. State, 817 N.E.2d 235, 239 (Ind. 2004) (reducing defendant's inappropriate fifty-year sentence for one count of child molesting as a class A felony to thirty years in light of defendant's guilty plea); Serino v. State, 798 N.E.2d

852, 858 (Ind. 2003) (reducing defendant's 385-year sentence for twenty-six counts of child molesting and sexual misconduct involving a minor to "three consecutive standard terms or 90 years total" in light of the nature of the offense and the character of the offender).

For the foregoing reasons, we remand this case to the trial court with instructions to issue an amended sentencing order and to issue any other documents or chronological case summary entries necessary to impose a sentence of ninety years.

Remanded with instructions.

BAKER, C. J. and MATHIAS, J. concur