

Case Summary

Appellant-Defendant Gregory Scott Michael requests that this Court conduct an independent review under Indiana Appellate Rule 7(B) of his sentence for Child Molesting, as a Class A felony.¹ We affirm.

Facts and Procedural History

On February 22, 2008, Michael pled guilty, without a written plea agreement, to Child Molesting, as a Class A felony, in exchange for the State dismissing the count of Child Molesting, as a Class C felony, and Habitual Offender allegation. Michael testified that on June 13, 2007, he was at least twenty-one-years old and performed sexual deviate conduct upon T.M. by placing his finger in her vagina while she slept in her bedroom. T.M., Michael's niece, was less than fourteen years of age at the time. The trial court sentenced Michael to the maximum sentence of fifty years.

Discussion and Decision

We first note that although Michael's statement of the issue is in terms of abuse of discretion, he truly seeks review under Indiana Appellate Rule 7(B). In Anglemyer v. State, our Supreme Court clearly expressed that there are two separate claims by which a defendant can challenge his sentence: abuse of discretion and the independent review under 7(B) as to whether the sentence is inappropriate. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007), clarified on reh'g, 875 N.E.2d 218 (Ind. 2007). These are separate, distinct arguments and the respective terminology should not be intermingled.

¹ Ind. Code § 35-42-4-3.

Our Supreme Court recently reviewed the standard by which appellate courts independently review criminal sentences:

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 through Indiana Appellate Rule 7(B), which provides that a 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.

Reid v. State, 876 N.E.2d 1114, 1116 (Ind. 2007) (internal quotation and citations omitted).

As to the nature of the offense, Michael had been permitted to stay at his sister's home. That evening, Michael entered his young niece's bedroom while she was sleeping. He then placed his finger in her vagina. As a guest in his sister's home, Michael violated the trust of his sister and his niece by molesting his niece.

As to the character of the offender, Michael did plead guilty. However, he did not decide to do so until after the State filed a notice of intent to introduce statements of a protected person and a hearing was conducted. See Ind. Code § 35-37-4-6. Furthermore, Michael received a significant benefit in exchange for pleading guilty, the dismissal of the Habitual Offender allegation, which, if proven, would have added thirty years to Michael's sentence. See Ind. Code § 35-50-2-8. Indicative of his poor character is Michael's lengthy criminal history. Michael's record includes eighteen misdemeanor and six felony convictions. His felony convictions include Criminal Conversion, Burglary, Operating a Vehicle While Intoxicated, Escape, and Resisting Law Enforcement. Michael's probation

has been revoked four times, and he was on parole when he committed the current offense.

In light of the nature of the offense and the character of the offender, Michael has not convinced this Court that his maximum sentence of fifty years is inappropriate.

Affirmed.

RILEY, J., and BRADFORD, J., concur.