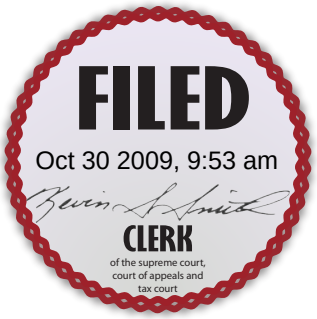

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IN THE
COURT OF APPEALS OF INDIANA

GEORGE MANSFIELD,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0904-CR-386
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Lisa F. Borges, Judge
Cause No. 49G04-0806-FC-154464

October 30, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant George Mansfield appeals the aggregate four-year sentence imposed by the trial court after Mansfield pleaded guilty to Child Solicitation,[1] a class C felony. Mansfield argues that the sentence is inappropriate in light of the nature of the offense and his character, and the State offers no challenge to his position on appeal. Finding the four-year sentence inappropriate, we reverse and remand with instructions to impose a sentence of two years with one year suspended to probation.

FACTS

On May 8, 2008, Indianapolis Metropolitan Police Detective Darren Odier was posing as a fourteen-year-old female online. He received an instant message from a user called "ossian_60," and proceeded to have an online chat session with that user for a couple of hours. Mansfield later admitted that he was ossian_60. During the chat, Mansfield and the ostensibly underage female discussed her nipples, and Mansfield asked, "'If we met would you let me touch them?'" Guilty Plea Tr. p. 14. He also directed his chat companion to "'[p]lay with your boobs'" and "'[f]inger [your] pussy,'" additionally stating, "'[s]omeday put cock in you[.]'" Id. at 15.

Eventually, Indianapolis Metropolitan Police detectives discovered that Mansfield was ossian_60 and went to his residence. Mansfield admitted that ossian_60 was his screen name and remembered chatting with an underage girl on May 8 and on one other occasion.

On June 26, 2008, the State charged Mansfield with two counts of class C felony child solicitation. On March 25, 2009, Mansfield pleaded guilty to one count in

[1] Ind. Code § 35-42-4-6(c).

exchange for the State's oral agreement to dismiss the remaining count. Id. at 5. Sentencing was left to the trial court's discretion. On March 31, 2009, following a sentencing hearing, the trial court found the following mitigating circumstances: (1) Mansfield has only a very limited criminal history; (2) Mansfield accepted responsibility by pleading guilty; and (3) Mansfield entered counseling voluntarily. Additionally, the trial court found the following aggravators: (1) Mansfield's intended victim was unable to consent legally; (2) Mansfield assumed the risk of incarceration; (3) Mansfield was attempting to groom the intended victim to break down barriers to actual physical contact; and (4) Mansfield admitted to a therapist that he had engaged in online sexual chats with other minor children. The trial court found that the aggravators and mitigators balanced and imposed an advisory four-year sentence, with one and one-half years suspended to probation. Mansfield now appeals.

DISCUSSION AND DECISION

Mansfield's sole argument on appeal is that the aggregate four-year sentence imposed by the trial court is inappropriate in light of the nature of the offense and his character pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Here, the trial court imposed the advisory four-year sentence. See Ind. Code § 35-50-2-5(a) (providing that a person who commits a class C felony shall be imprisoned for a term of two to eight years, with an advisory sentence of four years); see also Weiss v. State, 848 N.E.2d 1070,

1072 (Ind. 2006) (holding that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed").

Turning first to the nature of the offense, Mansfield admitted to engaging in a sexual online discussion with a person whom he believed to be a fourteen-year-old female. We hesitate to attribute the additional facts described in the probable cause affidavit to Mansfield because he did not admit to them during the guilty plea hearing. Instead, Mansfield admitted to the charging information, which essentially provides a recitation of the elements of the offense and basic, bare bones details.

That said, Mansfield did admit to certain specific facts that went beyond those contained in the charging information. Specifically, Mansfield asked the purported underage female, "'If we met would you let me touch them?'" Guilty Plea Tr. p. 14. He also directed his chat companion to "'[p]lay with your boobs'" and "'[f]inger [your] pussy,'" additionally stating, "'[s]omeday put cock in you[.]'" Id. at 15. Even these facts, however, do not lead us to conclude that Mansfield's offense was more egregious than a standard child solicitation[2] offense.

Turning to Mansfield's character, he has one self-reported driving while intoxicated conviction in 1984 and no other past convictions. He immediately admitted his actions when the police detectives came to his house and cooperated throughout the

[2] The relevant portion of the child solicitation statute states that "[a] person at least twenty-one (21) years of age who knowingly or intentionally solicits . . . an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in (1) sexual intercourse; (2) deviate sexual conduct; or (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person; commits child solicitation, a class D felony. However, the offense is a class C felony if it is committed by using a computer network . . . ." I.C. § 35-42-4-6(c).

investigation. He also pleaded guilty, saving the State the time and expense of a trial. The informal plea agreement reached with the State at the guilty plea hearing left sentencing to the trial court's discretion. Mansfield sought out counseling and group therapy voluntarily. Additionally, following his arrest and of his own volition, Mansfield decided that he would no longer own or operate a computer, gain access to the Internet, or have any interaction with any minor children.

Mansfield has maintained steady employment for nearly his entire adult life and also served in the United States Army until he received an Honorable Discharge in May 1970. He was employed by Skiles Company, Inc., at the time of the offense and his employer wrote a letter to the court acknowledging Mansfield's mistake but asking that he be permitted to continue to work for Skiles because he was an "exemplary worker" who had expressed remorse and taken responsibility for his actions. Appellant's App. p. 76.

Given the nature of the offense and Mansfield's character, we find the aggregate four-year sentence to be inappropriate. We instead direct the trial court to impose the minimum two-year sentence. The trial court clearly believed that it was proper to suspend a portion of the sentence; however, since we have reduced the aggregate sentence, we will also reduce the suspended portion from eighteen months to one year. Therefore, we direct the trial court to impose a sentence of two years with one year suspended to probation.[3]

[3] We do not revise the terms of probation imposed by the trial court or the requirement that Mansfield register as a sex offender.

The judgment of the trial court is reversed and remanded with instructions.

FRIEDLANDER, J., and RILEY, J., concur.