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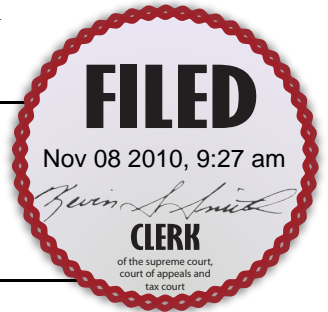
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**IN THE
COURT OF APPEALS OF INDIANA**



HARVEY O. COFFEY, JR.,)

Appellant-Defendant,)

vs.)

No. 53A04-1005-CR-316)

STATE OF INDIANA,)

Appellee-Plaintiff.)

APPEAL FROM THE MONROE CIRCUIT COURT
The Honorable Marc R. Kellams, Judge
Cause No. 53C02-0901-FA-00059

NOVEMBER 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Appellant Harvey O. Coffey, Jr., appeals the sentence imposed by the trial court following his plea of guilty to one count of child molesting as a class A felony and one count of child molesting as a class B felony. Ind. Code § 35-42-4-3. We affirm.

ISSUES

Coffey raises one issue, which we restate as whether Coffey's sentence is inappropriate in light of the nature of the offenses and the character of the offender.

FACTS

In 2009, the police received a report that Coffey had been molesting his two granddaughters. At the time of the report, the older grandchild was twelve and the younger grandchild was nine. The police interviewed the granddaughters and discovered that over a period of seven years, Coffey had molested his older granddaughter on repeated occasions. Coffey had also repeatedly molested his younger granddaughter during the previous year. In addition, Coffey smoked marijuana around his granddaughters and gave them marijuana to smoke with him.

The State charged Coffey with numerous offenses related to molesting his grandchildren and providing them with marijuana. Coffey pleaded guilty to one count of child molesting as a class A felony for wrongdoing with his older granddaughter and one count of child molesting as a class B felony for wrongdoing with his younger granddaughter. The State dismissed the remaining charges. The court sentenced Coffey to thirty years on the first conviction and ten years on the second conviction, to be served

consecutively for an aggregate sentence of forty years. The aggregate sentence is the maximum allowed by the parties' plea agreement.

Subsequently, Coffey sought and received leave from the trial court to pursue this belated appeal of his sentence.

DISCUSSION AND DECISION

Coffey's sentencing challenge is governed by Indiana Appellate Rule 7(B), which provides, in relevant part, "The 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." We may look to any factors appearing in the record to conduct the examination. *Schumann v. State*, 900 N.E.2d 495, 497 (Ind. Ct. App. 2009). It is the defendant's burden to demonstrate that his or her sentence is inappropriate. *Major v. State*, 873 N.E.2d 1120, 1130 (Ind. Ct. App. 2007).

The "nature of the offense" portion of the standard articulated in Appellate Rule 7(B) speaks to the statutory advisory sentence for the class of crimes to which the offense belongs. *Id.* That is, the advisory sentence is intended to be the starting point for the court's consideration of the appropriate sentence for the particular crime committed. *Id.* at 1130-1131. The advisory sentence for a class A felony is thirty years, with a minimum of twenty years and a maximum of fifty years. Ind. Code § 35-50-2-4. In addition, the advisory sentence for a class B felony is ten years, with a minimum of six years and a maximum of twenty years. Ind. Code § 35-50-2-5.

In this case, the trial court sentenced Coffey to serve thirty years for the class A felony conviction and ten years for the Class B felony conviction, which are the advisory sentences for both crimes. The nature of the offenses reflects poorly on Coffey. He molested his granddaughters while they were in his care. Furthermore, although Coffey was convicted for one act of molestation on each granddaughter, he acknowledged that he molested each of them repeatedly on other occasions. Coffey also gave marijuana to his granddaughters, which no doubt facilitated his sexual assaults. Finally, Coffey told both granddaughters that if they told anyone about the molestations, he would commit suicide, which doubtlessly increased their emotional trauma.

The character of the offender portion of the standard set forth in Appellate Rule 7(B) refers to the general sentencing considerations and the relevant aggravating and mitigating circumstances. *Major*, 873 N.E.2d at 1131.

Regarding Coffey's character, Coffey asserts that his criminal history, which consists of three misdemeanors, is minor in nature and remote in time from his current convictions. It is true that before this case, Coffey was last convicted of a crime in 2001. Nevertheless, Coffey does not dispute that he repeatedly molested his older granddaughter over a period of seven years before the current case began and has smoked marijuana on a daily basis for twenty years, which undercuts any claim Coffey may have to exhibiting a law-abiding nature.

Coffey also notes that he pleaded guilty, thereby saving his granddaughters from having to testify at trial. However, as he acknowledges, Coffey received a substantial benefit from his guilty plea because the State dismissed several other charges against

him. Consequently, Coffey's guilty plea does not necessarily reflect well on his character.

Finally, Coffey asserts that his sentence is inappropriate because his wife will suffer hardship while he is incarcerated. Coffey's wife testified that she is disabled and that she relies on Coffey to maintain their household and fill out paperwork. However, she also testified that she has been able to live on her own while Coffey is incarcerated. Those who violate laws cannot expect to avoid punishment simply because that punishment would work a hardship on family members. It does not appear to us that that Coffey's incarceration will result in undue hardship to his wife as that mitigating circumstance normally is used. *See Stewart v. State*, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007) (determining that an appellant's sentence was not inappropriate despite the appellant's argument that his mother would be deprived of his help around the house during his incarceration).

Coffey has failed to convince us that the advisory sentence for each of his convictions is inappropriate in light of the nature of his crimes or his character.

CONCLUSION

For the reasons stated above, we affirm the judgment of the trial court.

Affirmed.

MAY, J., and VAIDIK, J., concur.