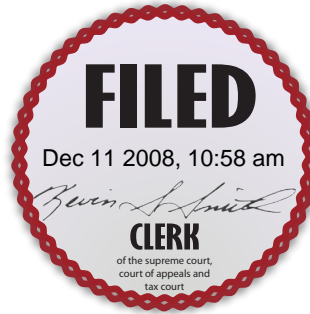


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

JOHN PINNOW
Greenwood, Indiana

STEVE CARTER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

RICHARD GEPHART,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 90A02-0806-CR-517

APPEAL FROM THE WELLS CIRCUIT COURT
The Honorable David L. Hanselman, Sr., Judge
Cause No. 90C01-0609-FA-5

December 11, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Richard Gephart appeals his sixty-year sentence for two counts of Class A felony child molesting. We affirm.

Issues

Gephart raises two issues for our review, which we restate as:

- I. whether the trial court abused its discretion in sentencing him; and
- II. whether his sixty-year sentence is appropriate in light of the nature of the offenses and his character.

Facts

On September 7, 2006, the State charged Gephart with nine felony counts based on the sexual abuse of his daughter B.G. and his step-daughter J.K. The charges included three counts of Class A felony child molesting, two counts of Class C felony child molesting, one count of Class C felony sexual misconduct with a minor, two counts of Class B felony sexual misconduct with a minor, and one count of Class D felony child seduction.

Gephart began having sexual intercourse with J.K. when she was twelve or thirteen years old. He had been touching her breasts and vaginal area since before she was eleven. Gephart estimated he had sex with J.K. about 100 times in a five year period. Gephart forced B.G. to perform oral sex on him twelve or more times since she was at least eight years old.

On October 2, 2007, Gephart pled guilty to two counts of Class A felony child molesting, one count for each of the victims. The State dismissed the remaining seven

counts pursuant to the plea agreement, which did not provide sentencing terms. The trial court sentenced Gephart to thirty years on each count, to be served consecutively. This appeal followed.

Analysis

I. Abuse of Discretion

Gephart argues that the trial court abused its discretion in failing to recognize his guilty plea and lack of criminal history as mitigating factors. Gephart pled guilty to abusing J.K. between 1997 and 1999, and these acts occurred prior to the revision of the sentencing statutes. The record does not provide a basis for determining the exact dates of the abuse of B.G. The trial court used the presumptive sentencing scheme to determine both sentences, and the parties do not dispute this treatment.

Accordingly, we review the trial court's sentencing decision for an abuse of discretion, which occurs when the sentencing decision is clearly against the logic and effect of the facts and circumstances before the trial court, or the reasonable, probable, and actual deductions to be drawn therefrom. McElroy v. State, 865 N.E.2d 584, 588 (Ind. 2007). A trial court can impose consecutive sentences if warranted by aggravating circumstances, but it must "articulate, explain, and evaluate the aggravating circumstances that support the sentence." Monroe v. State, 886 N.E.2d 578, 579-80 (Ind. 2008). Indiana Code Section 35-50-1-2(c) provides that the trial court shall determine whether the terms of imprisonment shall be served concurrently or consecutively, and it may consider the aggravating and mitigating circumstances in making that determination.

The trial court did not enhance the presumptive sentences here; rather, it assigned the presumptive thirty years to each conviction and ordered them to be served consecutively. In so doing, the trial court found the following aggravating circumstances: that Gephart molested J.K. over 100 times, which was significantly greater than the elements necessary to convict him of the crime, that B.G. was under twelve years old, that Gephart abused a position of trust in relation to both victims, and that there were two different victims. The trial court did not find Gephart's lack of prior criminal convictions to be mitigating because the sexual abuse spanning many years indicated that he truly had not been leading a law-abiding life. The trial court gave little, if any, weight to the fact that Gephart pled guilty, was a well behaved inmate, and had medical issues.

Gephart contends the trial court abused its discretion by failing to recognize and give adequate weight to his guilty plea and lack of criminal history as mitigators. The trial court offered a reasonable explanation for its conclusion that Gephart's lack of criminal history did not merit significant mitigating weight, which was that Gephart admitted to molesting both girls for a number of years. Given this secretive abuse, Gephart clearly was not leading a law-abiding life. It is true that Gephart did otherwise lead a law-abiding life and did not accumulate arrests or convictions, but such behavior is expected from the general population.

The trial court acknowledged that Gephart proposed that his cooperation, guilty plea, good behavior as an inmate, and medical problems should be mitigators. With this acknowledgment, however, the trial court found "to the extent that those are in fact mitigators, the court gives them very little weight, if any and they certainly don't

outweigh the aggravating factors.” Tr. p. 25. Gephart received a substantial benefit, dismissal of seven charges, for his guilty plea. Even if the trial court were to recognize the guilty plea and lack of criminal history as mitigators with some weight, the multiple and serious aggravators would vastly outweigh them.

Finally, the trial court did not abuse its discretion in sentencing Gephart to two consecutive thirty years terms, rather than ordering the sentences to be served concurrently. Our supreme court has explained that “when the perpetrator commits the same offense against two victims, enhanced and consecutive sentence seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person.” Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003). The consecutive sentences here are supported by the aggravators and represent the separate harms to J.K. and B.G. The trial court did not abuse its discretion in sentencing Gephart.

II. Appropriateness

Gephart argues that his sixty-year sentence is inappropriate considering the nature of the offenses and his character. See Ind. Appellate Rule 7(B). Although Indiana Appellate Rule 7(B) does not require us to be “extremely” deferential to a trial court’s sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. “Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate.” Id.

The nature of these crimes is depraved and disturbing. Gephart repeatedly molested his step-daughter and daughter. The abuse of each victim went on for years. The long term implications of this sexual abuse on the victims cannot be predicted. By his own admission, Gephart had sexual intercourse with J.K. at least one hundred times. J.K. once told Gephart she feared she may be pregnant, and Gephart punched in her the stomach. Gephart forced B.G. to perform oral sex on him and to swallow his ejaculate. B.G. explained the abuse began when she was in second grade. Nothing about the nature of these offenses merits a reconsideration of the sentence.

Although Gephart's lack of criminal history could bode well for his character, the abuse of his position of trust destroys any potential for a positive character assessment. Gephart, as the stepfather and father to his victims, was in a parenting role. He abused this role and violated the victims within their own home. Gephart's statement of remorse simply does not and cannot make up for the harm he inflicted and does not improve our assessment of his character. Moreover, Gephart's belief that he "should see no more the [sic] 5 yrs locked up" with long term probation illustrates the insincerity of his statement of remorse and his inability to appreciate the gravity of his crimes. App. p. 156. Finally, Gephart's guilty plea does not contribute much to a positive assessment of his character when the State dismissed seven pending charges in exchange for the plea. To the extent that Gephart requests the sentences be served concurrently, we have held that consecutive sentences are appropriate for crimes with multiple victims. Green v. State, 870 N.E.2d 560, 568 (Ind. Ct. App. 2007). Gephart has failed to persuade us that the nature of these offenses and his character warrant a revision to the sixty-year sentence.

Conclusion

The trial court did not abuse its discretion in sentencing Gephart. His sixty-year sentence is appropriate in light of the nature of the offenses and his character. We affirm.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.