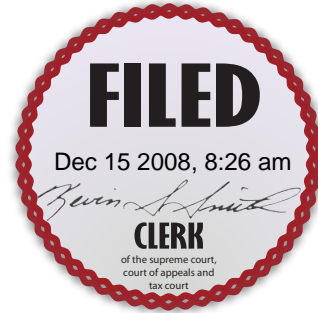


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

SHANTEL MARTIN,)
)
 Appellant-Defendant,)
)
 vs.) No. 49A04-0805-CR-304
)
 STATE OF INDIANA,)
)
 Appellee-Plaintiff.)

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0705-FA-87396

December 15, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Shantel Martin (“Martin”) asks that we revise her sentences for two judgments of Child Molesting, as Class A felonies.¹ We affirm.

Facts and Procedural History

Martin was married to Dennis Martin (“Dennis”). She had a daughter, D.F., and a son, D.D., from a prior relationship. Martin twice performed fellatio on D.D., once when he was eleven or twelve and once when he was twelve or thirteen. In the same information, the State charged Dennis with nineteen counts of sexual offenses related to his step-children, D.F. and D.D., and charged Martin with four counts of Child Molesting, as Class A felonies. Pursuant to a plea agreement, Martin pled guilty to two counts of Child Molesting, as Class A felonies. The State dismissed the other two counts.

The trial court found three aggravating circumstances, Martin’s criminal history, exploiting a position of trust, and the fact that the conduct occurred over a period of time, and one mitigating circumstance, accepting responsibility by pleading guilty. The trial court sentenced Martin to concurrent, thirty-year terms of imprisonment, the advisory term for a Class A felony. Three years of each sentence was suspended.

Martin now appeals.

Discussion and Decision

On appeal, Martin argues that the trial court abused its discretion in not finding her

¹ Ind. Code § 35-42-4-3(a)(1).

husband's control over her to be a mitigating circumstance. "So long as the sentence is within the statutory range, it is subject to review only for abuse of discretion," including the finding of an aggravating circumstance and the omission to find a proffered mitigating circumstance. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007), clarified on other grounds, 875 N.E.2d 218 (Ind. 2007); and Hollin v. State, 877 N.E.2d 462, 464 (Ind. 2007). "An abuse of discretion occurs if the decision is 'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Anglemyer, 868 N.E.2d at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)).

When imposing sentence for a felony, the trial court must enter "a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing a particular sentence." Anglemyer, 868 N.E.2d at 491. Where a sentence fails to meet these standards, we may 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. A trial court is neither obligated to find a circumstance to be mitigating simply because it was proffered by the defendant, nor to explain why it found that the factor did not exist. Id. at 493; and Highbaugh v. State, 773 N.E.2d 247, 252 (Ind. 2002).

The probable cause affidavit, which Martin acknowledged to be true, reflected taped statements given by Martin, Dennis, D.F., and D.D. In Martin's, she stated that, at two of their residences, Dennis forced her to perform and submit to fellatio involving D.D., thereby

committing four Class A felonies against her son.² D.F. stated that Martin and Dennis once fought after Martin found him molesting D.F. Age sixteen, D.F. stated that Dennis's conduct started when she was twelve. According to D.F., Martin saw Dennis violate her at their apartment. They lived there as late as November 2005, at least fourteen months prior to commencement of the investigation. Martin did nothing.

Martin admitted knowing that Dennis had committed offenses at three of their residences. In the sentencing hearing, Martin's counsel argued,

[P]erhaps the worst thing she did was doing nothing in this case for a long period of time, and that's why she believes she's guilty. There were – there were opportunities when she should have gone to authorities, you should have talked to anybody on the outside to have this stopped.

Transcript at 32.

There was some evidence in the record that Dennis coerced Martin. The great majority of it, though, was Martin's own statements not made under oath and not subject to cross-examination. Martin victimized her son over some course of time, and she knew that Dennis was repeatedly victimizing her daughter. The trial court did not abuse its discretion in omitting to find Dennis's alleged control over Martin as a mitigating circumstance.

Affirmed.

MATHIAS, J., and BARNES, J., concur.

² While no one in the family made this explicit, it appears that they resided sequentially at three places from fall 2004 to early 2007.