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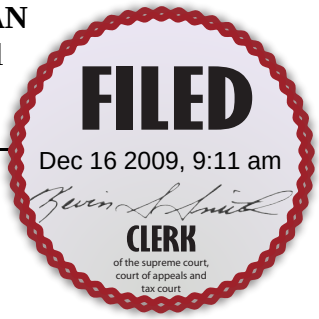

IN THE COURT OF APPEALS OF INDIANA

JIMMY SAXON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 48A02-0905-CR-485
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
DIVISION III
The Honorable Thomas Newman, Jr., Judge
Cause No. 48D03-0810-FA-361

December 16, 2009

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Jimmy Saxon (Saxon), appeals his sentence following a guilty plea for Count I, child molesting, a Class A felony, Ind. Code § 35-42-4-3(a)(1) and Counts II-IV, child molesting, Class C felonies, I.C. § 35-42-4-3(b).

We affirm.

ISSUES

Saxon raises one issue on appeal, which we restate as the following two issues:

(1) Whether the trial court abused its discretion when it determined mitigators and aggravators; and

(2) Whether his sentence is inappropriate in light of his character and the nature of his offense.

FACTS AND PROCEDURAL HISTORY

On October 23, 2008, Saxon was babysitting twelve-year-old J.H. in Saxon's residence. During the past seven years, Saxon had assisted in helping and taking care of J.H. and J.H.'s family. That day, J.H. was in the computer room playing computer games, when Saxon entered the room. Saxon told J.H. that they didn't have much time. Saxon replaced the computer game with pornography while J.H. pulled down his pants "because that is what he knew he was supposed to do." (Appellant's Green App. p. 16). Saxon began rubbing J.H.'s penis very quickly "just like he ha[d] done numerous times in the past," causing J.H. to have an erection. (Appellant's Green App. p. 16).

Emily Knowle (Knowle), the girlfriend of Saxon's son, observed Saxon and J.H. in the computer room. She noticed Saxon rubbing and stroking J.H.'s bare penis. Knowle immediately took the child out of the house, informed J.H.'s parents, and together, they reported the incident to the Anderson Police Department. While they filed a police report, Saxon also called the police department and admitted that "he just molested a child." (Appellant's Green App. p. 15).

Police interviewed J.H. who, besides the incident which occurred on October 23, 2008, provided a detailed statement concerning prior sexual abuse by Saxon. In this light, J.H. mentioned that in July of 2008, Saxon entered the computer room and began rubbing and stroking J.H.'s penis, causing J.H. to ejaculate. Subsequently, Saxon engaged in similar behavior with J.H. on other occasions in July and August of 2008. Sometimes, Saxon would also masturbate and ejaculate with J.H. Saxon usually molested J.H. while showing J.H. pornography on the computer. J.H also described incidents over the same time period where Saxon performed oral sex on him. J.H. declined when Saxon asked J.H. to put Saxon's penis in his mouth.

After the police interviewed J.H., Saxon came to the police department and stated that he knew why he was there. Saxon refused to describe what he had done to J.H. but did admit to being a child molester. Saxon's computer was analyzed forensically and the analysis confirmed that pornographic images had been displayed on the computer on the date that Knowle caught Saxon molesting J.H.

On October 29, 2008, the State filed an Information, charging Saxon with Count I, child molesting, a Class A felony, I.C. § 35-42-4-3(a)(1) and Counts II-IV, child molesting, Class C felonies, I.C. § 35-42-4-3(b). On January 15, 2009, the trial court set Saxon's jury trial for March 24, 2009. On the eve of trial, on March 23, 2009, Saxon pled guilty as charged pursuant to a plea agreement with the State which provided that the sentences for all Counts would run concurrently. In addition, a pending child molesting charge, as a Class C felony, dating from January 13, 2002, was to be dismissed pursuant to the plea agreement for the instant offenses.

On April 13, 2009, the trial court conducted a sentencing hearing. During the hearing, the trial court found as mitigating circumstances the fact that Saxon pled guilty and his expression of remorse. As aggravating factors, the trial court found that Saxon had committed multiple acts of molestation, had committed these offenses while released on bond, and had J.H. view pornographic material. Finding that the aggravators outweighed the mitigators, the trial court sentenced Saxon to concurrent terms of fifty years on Count I and eight years each on Counts II through IV.

Saxon now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

Saxon contends that the trial court abused its discretion by sentencing him to an aggregate term of fifty years. A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with the advisory sentence being thirty

years. I.C. § 35-50-2-4. A person who commits a Class C felony, shall be imprisoned for a fixed term of between two and eight years, with the advisory sentence being four years. I.C. § 35-50-2-6. Here, the trial court sentenced Saxon to the maximum statutory term for each offense but ran the sentences of Counts II-IV concurrent to the sentence on Count I.

As long as the sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (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. *Id*. One way in which a trial court may abuse its discretion is by failing to enter a sentencing statement at all. Another example includes entering a sentencing statement that explains reasons for imposing a sentence, including aggravating and mitigating factors, which are not supported by the record. *Id*. at 490-91.

Because the trial court no longer has any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence, a trial court cannot now be said to have abused its discretion by failing to properly weigh such factors. *Id*. at 491. This is so because once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then impose any sentence that is authorized by statute and permitted under the Indiana Constitution. *Id*.

This does not mean that criminal defendants have no recourse in challenging sentences they believe are excessive. *Id*. Although a trial court may have acted within its

lawful discretion in determining a sentence, Appellate Rule 7(B) provides that the appellate court may revise a sentence authorized by statute if the appellate court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Id*. It is on this basis alone that a criminal defendant may now challenge his sentence where the trial court has entered a sentencing statement that includes a reasonably detailed recitation of its reasons for imposing the particular sentence that is supported by the record, and the reasons are not improper as a matter of law. *Id.*

II. *Abuse of Discretion*

Saxon first argues that the trial court abused its discretion by failing to consider his plea agreement as a significant mitigating factor. The record indicates that while the trial court recognized Saxon's plea as a mitigating circumstance, it also noted that Saxon merely pled guilty on the eve of his jury trial, after the State had fully prepared its case and child witness. Accordingly, the trial court awarded this mitigator "very insignificant weight." (Transcript p. 30). Insofar Saxon now challenges the weight of the mitigator, it should be noted that pursuant to *Anglemyer*, the weight the trial court awards to a mitigator or aggravator is no longer subject to review. *See Anglemyer*, 868 N.E.2d at 491.

In addition, Saxon contends that the trial court "improperly considered the fact that he was convicted of multiple Counts of child molest as an aggravator." (Appellant's Br. p. 11). Contrary to Saxon's claim, "[t]he law is settled that the fact of multiple crimes is a valid aggravating factor." *McDonald v. State*, 868 N.E.2d 1111, 1114 (Ind. 2007). Thus, we conclude that the trial court did not abuse its discretion.

III. *Appropriateness of the Sentence*

Next, we find that Saxon's sentence is appropriate in light of his character and nature of the crime. With respect to the nature of the crime, we note that Saxon had been molesting J.H. over a period of several months. J.H. even stated that Saxon had "been doing things to him every Thursday for at least three months." (Appellant's Green App. p. 15). We have held previously that repeated molestations occurring over a period of time may warrant the imposition of the maximum sentence. *See, e.g., Sullivan v. State*, 836 N.E.2d 1031, 1037 (Ind. Ct. App. 2005); *Newsome v. State*, 797 N.E.2d 293, 300 (Ind. Ct. App. 2003), *trans. denied*.

Turning to Saxon's character, we first observe that Saxon abused his position of trust with J.H. In this case, Saxon had known J.H. since he was five years old. J.H.'s mother had requested Saxon's help in mentoring her son as J.H.'s dad was in prison. Over the years, Saxon helped the family with food and clothes and paid for field trips. Saxon had built a trusting relationship with J.H. and abused that trust to satisfy his own sexual desires.

Saxon now points out that he turned himself in to the police and admitted to being a child molester. However, it should be noted that he only informed the police department after being observed molesting J.H. by Knowle. We have little doubt that if Knowle had been less observant, the abuse would still be ongoing today. Furthermore, while Saxon did admit to being a child molester, he refused to admit to any specifics. Thus, clearly, Saxon only acknowledged what he had done after he had been caught in the act.

While we agree that Saxon does not have a criminal history, we observe that he nevertheless was out on bond on a pending child molestation offense when the instant charges were filed. Moreover, after the State filed the Information, "other individuals have come forward, [and] at least one other individual has come forward and given statements to the detective working this case[.]" (Tr. p. 13). But, pursuant to Saxon's plea agreement, "no further charges will be filed" against Saxon. (Tr. p. 13).

In sum, based on the circumstances before us, we conclude that Saxon's sentence is appropriate in light of the nature of the offense and his character.

CONCLUSION

Based on the foregoing, we conclude that the trial court properly sentenced Saxon.

Affirmed.

VAIDIK, J., and CRONE, J., concur.