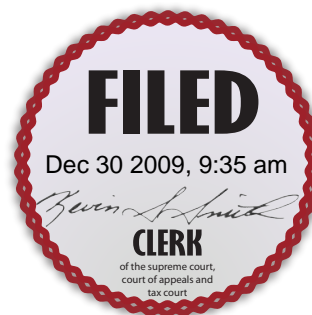


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

THOMAS W. VANES
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

GARY DAMON SECREST
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

DARRELL COLLINS ELLER,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 45A03-0906-CR-281

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0711-FB-102

December 30, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Darrell Eller pleaded guilty to Impersonating a Public Servant,¹ a class D felony, and Sexual Misconduct with a Minor,² a class C felony. The trial court subsequently sentenced Eller to concurrent terms of thirty-five months and ninety-five months, respectively. Eller presents one issue for our review: Is his sentence inappropriate in light of the nature of the offense and the character of the offender?

We affirm.

According to the stipulated factual basis, on July 9, 2006, D.L.'s grandmother went to Skate World, a roller skating rink, to pick up her granddaughters. D.L.'s grandmother took two of her granddaughters home, but left D.L. with Eller because Eller advised D.L.'s grandmother that he was a police officer. Eller told D.L.'s grandmother that he would take her home. Before taking D.L. home, Eller drove D.L. to another location where he engaged in sexual intercourse with D.L. At the time, D.L. was fifteen years of age and Eller was at least eighteen years of age.

The State initially charged Eller with two counts of impersonating a public servant as class D felonies and one count of sexual misconduct with a minor as a class B felony. The State subsequently amended the charging information to include a charge of sexual misconduct with a minor as a class C felony. On April 14, 2009, Eller entered into a plea agreement with the State, in which he agreed to plead guilty to one count of impersonating a public servant, a class D felony, and to sexual misconduct with a minor as a class C felony,

¹ Ind. Code Ann. § 35-44-2-3 (West, PREMISE through 2009 1st Regular Sess.).

² Ind. Code Ann. § 35-42-4-9 (West, PREMISE through 2009 1st Regular Sess.).

and the State agreed to dismiss the remaining charges as well as a theft charge in another cause. The plea agreement provided that the sentences would be served concurrent to each other but that sentencing was otherwise left to the discretion of the trial court.

The trial court held a sentencing hearing on May 20, 2009. The trial court found undue hardship on Eller's dependents and his guilty plea to be mitigating factors. The trial court found as aggravators Eller's criminal record, his failure to be deterred from criminal behavior after previously being afforded leniency, and the egregious nature and circumstances of the crime. Eller's criminal history includes two felony convictions, one for robbery and one for felon in possession of a firearm. Eller has also been convicted of several misdemeanors, including possession of a pistol with no permit, conversion, battery, and unlawful use of a police radio. The trial court found that the aggravators outweighed the mitigators and sentenced Eller to concurrent terms of thirty-five months for class D felony impersonating a public servant and ninety-five months for class-C-felony sexual misconduct with a minor. Both sentences are one month shy of the maximum sentence for each offense.³

Eller argues that his sentence is inappropriate. We have the constitutional authority to revise a sentence if, after consideration of the trial court's decision, we conclude the sentence is inappropriate in light of the nature of the offense and character of the offender. *See* Ind. Appellate Rule 7(B); *Anglemyer v. State*, 868 N.E.2d 482 (Ind. 2007), *clarified on reh'g by* 875 N.E.2d 218. Although we are not required under App. R. 7(B) to be "extremely"

³The maximum sentence for a class D felony is three years, and the maximum sentence for a class C felony is eight years. *See* Ind. Code Ann. § 35-50-2-7 (West, PREMISE through 2009 1st Regular Sess.) and I.C. § 35-50-2-6 (West, PREMISE through 2009 1st Regular Sess.), respectively.

deferential to a trial court's sentencing decision, we recognize the unique perspective a trial court brings to such determinations. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Moreover, we observe that Eller bears the burden of persuading this court that his sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867.

With regard to the nature of the offense, the trial court found the circumstances to be particularly egregious. The trial court noted the disparity in age between the victim, then fifteen years old, and Eller, then in his forties, and that Eller placed himself in a position of trust and authority when he represented to D.L.'s grandmother that he was a police officer. Eller takes issue with the court's characterization of the offense, asserting that the nature of the sexual misconduct in this case falls within the "heartland" of such offenses. *Appellant's Brief* at 4. We disagree with Eller's characterization.

Here, Eller represented himself to be a police officer to D.L.'s grandmother, who, believing Eller, entrusted the care of her granddaughter to him. Further, Eller represented himself to be in a position of authority, indeed, that of a police officer, when he drove D.L. to a separate location and engaged in sexual intercourse with her. Eller clearly took advantage of a young girl at a vulnerable moment. These circumstances set Eller's offense apart from the run-of-the-mill sexual misconduct with a minor offense.

With regard to his character, Eller admits that his criminal history is "troublesome." *Id.* As noted above, Eller has accumulated two prior felony convictions and several misdemeanor convictions. Eller's troubles with the law actually began over thirty years ago when he was a juvenile. Further, prior leniency has not deterred Eller's criminal behavior.

Eller has been given suspended sentences, short jail sentences, and probation. Eller has even served two terms of imprisonment, and yet, he continues to disobey the rules of society.

We recognize that Eller pleaded guilty, but find that he has failed to truly take responsibility. During the sentencing hearing, Eller claimed that D.L. seduced him and asked the trial court, “What do you expect for [a man] to do? He will submit to it, you know?” *Transcript* at 68. Eller also maintained that he never identified himself as a police officer to D.L.’s grandmother, which is inconsistent with the stipulated factual basis submitted with the plea agreement.

Further diminishing the impact of his guilty plea as a positive consideration for his character, we note that Eller received a substantial benefit from his guilty plea in that the State dismissed a charge of class B felony sexual misconduct with a minor and a second charge of impersonating a public servant. As described by the trial court, Eller’s character is that of a “dishonest, opportunistic pervert.” *Id.* at 86. In light of the nature of the offense and the character of the offender, the sentence imposed by the trial court is not inappropriate.

Judgment affirmed.

NAJAM, J., and BRADFORD, J., concur.