

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Ralph A. Troxail,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

November 16, 2021

Court of Appeals Case No.
21A-CR-1094

Appeal from the Marion Superior
Court

The Honorable Mark D. Stoner,
Judge

Trial Court Cause No.
49D32-2002-F1-4731

Altice, Judge.

Case Summary

- [1] Following a bench trial, Ralph Troxail was convicted of Level 4 felony child molesting, and the trial court imposed a sentence of twelve years with two years suspended. Troxail appeals and asserts that the sentence was inappropriate in light of the nature of the offense and his character.
- [2] We affirm.

Facts & Procedural History

- [3] In January 2020, sixty-five-year-old Troxail was living in an Indianapolis motel room with his wife, S.T. (Mother), and their three children: two sons, E.T. (age ten) and C.T. (age five), and daughter, L.T. (age seven). On the evening of January 29, Mother left shortly before the kids' bedtime to visit a friend, and Troxail stayed with the children. There were two beds in the room. Troxail was in one bed with L.T. and C.T. Troxail and L.T. were next to each other, with C.T. lying sideways across the foot of the bed. Troxail got in bed wearing "nothing," and L.T. had on "[a] shirt and panties." *Transcript* at 55. E.T. (Brother) was in the other bed.
- [4] At some point, Troxail began touching L.T., who was "pretend sleeping" at the time because she was scared of Troxail when he got upset, as he would yell at her and say "mean things." *Id.* at 59, 75. Brother was awake and observed Troxail's hand "touching [L.T.'s] private part" located "below her waist." *Id.* at 92. He also saw Troxail "on top of [L.T.] and moving back and forth," and he heard L.T. making "whining" sounds. *Id.* at 89, 91, 101. Believing that

Troxail was “putting his private part in her,” Brother got out of bed and tried to push Troxail off L.T., while calling Troxail a “b*tch.” *Id.* at 92, 93. Brother’s efforts were unsuccessful, and he returned to his bed.

[5] Mother came back to the room the next morning, and sometime after Troxail left for work, L.T. and Brother told Mother what had happened. Mother walked them to a nearby restaurant where she called the police.

[6] On February 3, 2020, the State charged Troxail with Level 1 felony child molesting (Count I), Level 4 felony child molesting (Count II), and Level 4 felony incest (Count III). Troxail waived his right to a jury trial, and the matter proceeded to a bench trial on May 17, 2021. At trial, Troxail testified and denied that he molested L.T. or touched her inappropriately in any way, maintaining that Mother “orchestrated all of this” in order to be able to take the kids and move to Florida. *Id.* at 178-79.

[7] Noting the existence of “intrafamily strife,” especially between the parents, as well as some inconsistency in the evidence, the court determined that the State had not proven “sexual intercourse and other deviant conduct beyond a reasonable doubt” but had proven “the fondling or touching.” *Id.* at 191, 193. Therefore, the trial court found Troxail guilty of Count II and not guilty of the remaining charges.

[8] At the June 4, 2021 sentencing hearing, Troxail indicated that he had no changes to the presentence investigation report (the PSI) that had been submitted to the trial court. The PSI reflected that Troxail had at least twenty

prior convictions of which eight were felonies. His convictions began in 1973 and included burglary, theft, resisting law enforcement, and nine convictions for public indecency or voyeurism. Between 1994 and 2005, Troxail violated probation twice. He was also on probation for a public indecency conviction at the time of the current offense.

[9] The trial court found that Troxail’s age and health issues, as well as positive remarks from his recent employer, were mitigating factors. The trial court found Troxail’s criminal history to be an aggravating circumstance, commenting, “I don’t know that I’ve seen this many public indecency convictions on an individual,” and “all of these public indecencies were huge warning signs of things that shouldn’t be occurring and should have had boundaries.” *Id.* at 205. The court sentenced Troxail to twelve years of incarceration, with two suspended to sex offender probation. Troxail now appeals.

Discussion & Decision

[10] Troxail argues that his sentence is inappropriate. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana’s flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court “prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the

defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). The principal role of appellate review should be to attempt to leaven the outliers, “not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Upon the review of sentence appropriateness under [] Rule 7, appellate courts may consider all aspects of the penal consequences imposed by the trial judge in sentencing the defendant.” *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Troxail bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[11] When considering the nature of the offense, we first look to the advisory sentence for the crime. *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). Troxail was convicted of a Level 4 felony, the sentencing range for which is two to twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. Troxail argues that “the maximum sentence of twelve years, even with two years suspended, is inappropriate to the nature of the offense and [his] character,” and he asks us to revise his sentence to the advisory six years. *Appellant’s Brief* at 18.

[12] When reviewing the nature of the offense we look to the details and circumstances of the offense and the defendant’s participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). Here, at a time when his three children were in his sole care, Troxail got into bed naked with seven-year-old L.T., who was wearing underwear and a shirt. With his two other children

in the room, indeed one at the foot of the bed, Troxail touched L.T. in her “private area” below the waist, and he got on top of her and was “moving back and forth.” *Transcript* at 89, 92. Not only was this done in the presence of his other two minor children, one child was awake and tried, unsuccessfully, to get Troxail to stop what he was doing. That is, Brother got out of bed and attempted to push Troxail off L.T. Troxail has failed to establish that the nature of the offense warrants reduction of his sentence.

[13] We conduct our review of a defendant’s character by engaging in a broad consideration of his qualities. *Id.* at 564. Character is found in what we learn of the offender’s life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). Criminal history is one relevant factor in analyzing character. *Madden*, 162 N.E.3d at 564.

[14] Troxail concedes that he “does have a significant criminal history,” *Appellant’s Brief* at 21, but emphasizes that his elderly mother needed his help and that he had been employed and supporting his family before his arrest. We are unpersuaded by his character arguments. Troxail has an extensive criminal history dating back to 1973. He had misdemeanor public indecency convictions in 1975, 1991, 1994, two in 1998, and 2003, and felony public indecency convictions in 2005 and 2019. When the instant offense occurred, he was on probation that required him to participate and engage in treatment to address sexually maladaptive behavior. He had a voyeurism conviction in 1996. The record reflects that he was charged with “child molest” in 1978, but the matter was dismissed, as were other charges over the years including domestic battery

and invasion of privacy.¹ *Appellant's Appendix* at 105. Troxail's disturbing pattern "of continuing to engage in criminal sexual behavior, even after contacts with the justice system, reflects poorly on his character." *McHenry*, 152 N.E.3d at 47. The aforementioned offenses are in addition to other convictions for theft, burglary, battery, and resisting law enforcement. Troxail's character does not warrant revision of his sentence.

[15] The question under App. R. 7(B) is not whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018) (quotations omitted). Troxail has failed to carry his burden of establishing that his sentence is inappropriate in light of the nature of the offense and his character.

[16] Judgment affirmed.

Bradford, C. J. and Robb, J., concur.

¹ We recognize that although a record of arrests by itself is not evidence of a defendant's criminal history, "it is appropriate to consider such a record as a poor reflection on the defendant's character, because it may reveal that he or she has not been deterred even after having been subjected to the police authority of the State." *See Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).