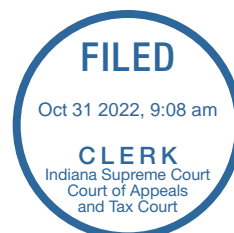


MEMORANDUM DECISION

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

Richard L. Haverkamp,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

October 31, 2022

Court of Appeals Case No.
22A-CR-1162

Appeal from the
Tippecanoe Superior Court

The Honorable
Sean M. Persin, Judge

Trial Court Cause No.
79C01-2103-F1-8

Vaidik, Judge.

Case Summary

- [1] Richard L. Haverkamp was convicted of Level 1 felony and Level 4 felony child molesting and sentenced to thirty years. He now appeals, arguing the evidence is insufficient to support his convictions and his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] Haverkamp is the grandfather of T.H., who was born in May 2004. In 2016 and 2018, Haverkamp was investigated for molesting T.H. Haverkamp denied the allegations, and no charges were filed. Around the fall of 2018, T.H. went to live in a group home for two years. In 2021, T.H.'s father learned of "additional allegations" against Haverkamp. Tr. p. 14. Law enforcement was contacted, and an investigation ensued.
- [3] In March 2021, the State charged Haverkamp with Level 1 felony child molesting (sexual intercourse or "other sexual conduct") and Level 4 felony child molesting (touching or fondling).¹ The offenses were alleged to have occurred in February 2018 when T.H. was thirteen years old. The police interviewed Haverkamp. He admitted rubbing T.H.'s clitoris with his hand in

¹ The State also charged Haverkamp with two counts of incest, but those charges were dismissed.

February or March 2021 when she was sixteen years old but denied any sexual conduct with her before then. *See* Ex. 2 at 35:30-37:20.

[4] A bench trial was held in March 2022. Haverkamp was seventy-six years old, and T.H. was seventeen. Text messages between Haverkamp and T.H. from February and March 2021 were admitted into evidence. *See* Ex. 1. T.H. testified that when she was between the ages of seven and fourteen, Haverkamp molested her in a spare bedroom at his house. According to T.H., Haverkamp used his hands to touch her “chest” and “between [her] legs” on the “inside” and his mouth to touch her “chest,” “neck,” and “between [her] legs.” Tr. p. 36. Haverkamp also inserted his penis “halfway” into her vagina. *Id.* at 42. T.H. estimated that Haverkamp touched her with his hands and mouth “more than ten” times and inserted his penis into her vagina “a couple of times.” *Id.* at 43. T.H. testified that on at least one occasion, her younger sister was in the room. When her younger sister asked what they were doing, Haverkamp answered that they were playing a “game.” *Id.* at 30.

[5] T.H. testified that she spoke to three people, including her counselor, about the allegations against Haverkamp. She acknowledged that she “wasn’t fully honest” when she spoke to them because she “didn’t want [Haverkamp] to get in trouble.” *Id.* at 44, 45. The judge asked T.H. if she knew the difference between a truth and lie, and T.H. said yes and that her trial testimony was “honest” and “truthful.” *Id.* at 48.

[6] During closing argument, defense counsel argued that the case boiled down to “[Haverkamp’s] word against [T.H.’s] word.” *Id.* at 57. The judge believed T.H. and found Haverkamp guilty of both counts:

[T.H.] went away for a couple of years and she came back and grandfather and grandchild immediately have a sexual relationship in March of 21 and it is supported by the text messages, it’s supported by the victim’s testimony, it’s supported by the defendant’s [interview] that even though he knew he wasn’t allowed to be at her house, excuse me dad’s house, goes to dad’s house and he managed to rub[] her vagina for five minutes because she wanted it, I found the victim to be credible. She corrected the attorneys today. So, one point [defense counsel] said so you know it happened four or five times and she said no as to his penis and her vagina it only happened a couple of times. She is listening, she is saying no[] that wasn’t four or five it was a couple of times. And [the prosecutor] asked a question about the inappropriate touching of her vagina with his finger and his mouth and so it happened about five times? No, it happened more than ten. Are you telling the truth? Yes I am telling the truth today. I understand (inaudible) I’m telling you what happened today. I found the victim credible. And I find it well this notion that she went away for a couple of years, and she comes back and he has no contact with her and out of thin air the sexual relationship develops is not consistent with the evidence before the court. What’s consistent is that there was sexual conduct over a period of years on multiple occasions. And that this was something that was normalized to the victim.

Id. at 58.

[7] At sentencing, the judge found two aggravators: (1) Haverkamp was T.H.’s grandfather and breached his position of trust and (2) on at least one occasion the molesting occurred in the presence of T.H.’s younger sister. The judge

found two mitigators: (1) Haverkamp had no prior convictions and (2) he was honorably discharged from the U.S. Navy. Finding the aggravators and mitigators to balance, the judge sentenced Haverkamp to the advisory term of thirty years for the Level 1 felony and the advisory term of six years for the Level 4 felony, to be served concurrently.

[8] Haverkamp now appeals.

Discussion and Decision

I. Incredible-Dubiosity Doctrine

[9] Haverkamp contends that the evidence is insufficient to support his convictions. Specifically, he argues that T.H.'s testimony should be disregarded under the doctrine of incredible dubiosity. Under this doctrine, we can impinge upon a fact-finder's responsibility to judge the credibility of the witnesses when "the testimony is so incredibly dubious or inherently improbable that no reasonable person could believe it." *Hampton v. State*, 921 N.E.2d 27, 29 (Ind. Ct. App. 2010), *reh'g denied, trans. denied*. The doctrine "requires that there be: 1) a sole testifying witness; 2) testimony that is inherently contradictory, equivocal, or the result of coercion; and 3) a complete absence of circumstantial evidence." *Moore v. State*, 27 N.E.3d 749, 756 (Ind. 2015). Application of this rule is rare. *Leyva v. State*, 971 N.E.2d 699, 702 (Ind. Ct. App. 2012), *trans. denied*.

- [10] Haverkamp asserts that T.H.’s testimony is inherently contradictory. In support, Haverkamp notes that when T.H. testified about the first time he molested her at age seven—ten years before trial—she wasn’t clear about whether his “head, hands, or both were under the blankets” or whether he touched her with his hand and mouth **or** just his hand. Appellant’s Br. p. 11. But even if T.H. wasn’t clear when describing the first incident, she testified that the molestations continued for seven more years and Haverkamp touched her chest and genitals with both his hands and mouth at least ten times. She also testified that Haverkamp inserted his penis into her vagina a couple of times.
- [11] Haverkamp also notes that T.H. told people a different version of events than what she testified to at trial. This argument focuses on inconsistencies between T.H.’s trial testimony and her pretrial statements. But as we have explained:

When a witness’s trial testimony contradicts a statement she made before trial, it is the jury’s province to decide which statement to believe. Discrepancies between pretrial statements and trial testimony go to the weight of testimony and credibility of the witness but do not render such testimony incredibly dubious.

Chambless v. State, 119 N.E.3d 182, 193 (Ind. Ct. App. 2019), *trans. denied*. The judge heard all T.H.’s testimony, including that she “wasn’t fully honest” when she spoke to the people, and found her to be credible. Haverkamp has failed to satisfy the second requirement of the incredible-dubiosity doctrine. Thus, his sufficiency challenge fails.

II. Inappropriate Sentence

- [12] Haverkamp next contends that his thirty-year sentence is inappropriate. Indiana Appellate Rule 7(B) provides that an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).
- [13] The sentencing range for a Level 1 felony is twenty to forty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4(b). The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5. The judge sentenced Haverkamp to the advisory term of thirty years for the Level 1 felony and the advisory term of six years for the Level 4 felony, to be served concurrently. Haverkamp asks us to reduce his advisory sentence to the minimum sentence of twenty years. A defendant claiming an advisory sentence is inappropriate “bears a particularly heavy

burden” since the advisory sentence is the starting point our legislature has selected as an appropriate sentence for the crime committed. *Fernbach v. State*, 954 N.E.2d 1080, 1089 (Ind. Ct. App. 2011), *trans. denied*.

- [14] The nature of the offenses is disturbing. Haverkamp molested his granddaughter multiple times between the ages of seven and fourteen. He touched T.H.’s chest and genitals with his hands and mouth at least ten times and penetrated her vagina with his penis a couple of times. At least one of the incidents occurred when T.H.’s younger sister was in the room.
- [15] As for Haverkamp’s character, we acknowledge that he is a Navy veteran. We also acknowledge that at the time of sentencing he was “76 years-old with no prior contacts with the criminal justice system.” Appellant’s Br. p. 9. But as the judge noted, it is hard to “reward [Haverkamp] for good and lawful conduct when there is a pattern of horrible conduct[.]” Tr. p. 71. Haverkamp has failed to carry his “particularly heavy burden” of convincing us that his advisory sentence is inappropriate.
- [16] Affirmed.

Riley, J., and Bailey, J., concur.