MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Shawn D. Rogers,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

December 7, 2023

Court of Appeals Case No. 23A-CR-1085

Appeal from the Clark Circuit Court

The Honorable Nicholas A. Karaffa, Judge

Trial Court Cause No. 10C01-1912-F1-6

Memorandum Decision by Judge Weissmann
Chief Judge Altice and Judge Kenworthy concur.

Weissmann, Judge.

[1] While in his mid-50s, Shawn Rogers sexually molested and impregnated his 13-year-old neighbor. Rogers pleaded guilty to one count of Level 1 felony child molesting, for which the trial court sentenced him to 30 years in prison. Rogers now appeals his sentence as inappropriate under Indiana Appellate Rule 7(B) in light of the nature of the offense and the character of the offender. We affirm.

Facts

[2] In 2019, Rogers lived with his elderly mother in Louisville, Kentucky, next door to a 13-year-old child (Child). Child resided with a guardian. In the summer of that year, Rogers drove Child to a Clarksville, Indiana, hotel several times and had sexual intercourse with her during each stay.

[3] After learning of the molestation, Child's guardian took her to the hospital and discovered she was pregnant. When interviewed by police, Rogers admitted he had taken Child to the hotel but claimed he only kissed her. The State charged Rogers with four counts of child molesting, a Level 1 felony, for separate acts of sexual intercourse with Child on different dates at the same hotel.

[4] Three years later, shortly before Rogers's trial was to start, the State and Rogers entered into a plea agreement calling for Rogers to plead guilty to one count of Level 1 child molesting in exchange for dismissing the remaining counts. The plea agreement provided that the trial court would have discretion to sentence Rogers to a maximum of 30 years in prison. Under the agreement, Rogers also

would register for life on the sex offender registry and have no contact with Child or her family. The trial court accepted Rogers's guilty plea.

[5] At the sentencing hearing, an emotional Child testified that Rogers had manipulated her by purchasing things for her and making her feel that she needed him. Child reported that Rogers's molestation had ruined her life, worsened her depression, and left her fearful and unable to trust. She dreaded telling her son about his father's identity and the context in which her son was conceived.

[6] When sentencing Rogers, the trial court found the harm caused by Rogers's offense—the pregnancy of a 13-year-old child, among other things—was an aggravating circumstance. The court also found as an aggravating circumstance Rogers's criminal history, which consisted of one felony conviction for making a false statement to obtain a firearm and one misdemeanor conviction for failing to maintain insurance. As mitigating circumstances, the trial court found that Rogers's imprisonment would cause undue hardship to his family, whom he supported in various ways.

[7] The trial court imposed the maximum sentence available under the plea agreement—30 years imprisonment. Noting that it had struggled to decide on the proper sentence, the trial court concluded it could not suspend any portion of the sentence.

Discussion and Decision

[8] Rogers challenges his sentence under Appellate Rule 7(B). This rule permits this Court to "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." App. R. 7(B). Our principal role in reviewing sentence appropriateness is to "attempt to leaven the outliers . . . not to achieve a perceived 'correct' sentence." *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). We therefore defer substantially to the trial court's sentencing decision, which prevails unless "overcome by compelling evidence portraying in a positive light the nature of the offense . . . and the defendant's character." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[9] Rogers pleaded guilty to Level 1 felony child molesting under Indiana Code § 35-42-4-3(a)(1) (2015), which carries a statutory sentencing range of 20 to 50 years, with an advisory sentence of 30 years. Ind. Code § 35-50-2-4(c). Thus, although the trial court sentenced Rogers to the maximum sentence available under his plea agreement, Roger's 30-year sentence is only the advisory sentence for his specific conviction. A defendant challenging an advisory sentence bears a particularly heavy burden of persuading us that sentencing revision is warranted, given that an advisory sentence is not likely to be inappropriate under Rule 7(B). *Mise v. State*, 142 N.E.3d 1079, 1088 (Ind. Ct. App. 2020). We conclude Rogers has not met this burden.

Nature of the Offense

[10] Rogers acknowledges the serious nature of his offense and that its severity increased due to Child's pregnancy. But he claims the nature of the offense supports a sentencing revision because of Child's age. According to Rogers, if he had engaged in sexual intercourse with Child when she was 14, rather than 13, he could only have been charged with sexual misconduct with a minor, a Level 4 felony, which carries a maximum sentence of 12 years imprisonment. *See* Ind. Code § 35-42-4-9(a)(1) (providing that a person at least 21 years of age who has sexual intercourse with a child less than 16 years of age commits sexual misconduct with a minor, a Level 4 felony); Ind. Code § 35-50-2-5.5 (providing sentencing range of 2 to 12 years for Level 4 felonies).

[11] But Rogers did not molest a 14-year-old. He molested a younger child, and he does not allege that he was unaware of Child's age at the time of the offense. The General Assembly has determined that sexual intercourse with a 13-year-old child is a more serious crime that carries a harsher penalty than the molestation of a slightly older child. *See generally Miller v. State*, 709 N.E.2d 48, 50 (Ind. Ct. App. 1999) ("The nature and extent of penal sanctions are primarily legislative considerations."). We reject Rogers's claim that he is entitled to greater leniency simply because he chose to engage in sexual intercourse with a 13-year-old, rather than an older child.

Character of the Offender

[12] Rogers's character also does not support sentence revision. Rogers points to evidence showing he was an Army veteran who financially supported his family and helped care for his mother and her home. Rogers also notes he has a limited criminal record, expressed remorse, and accepted responsibility for his offense by pleading guilty.

[13] But this positive character evidence was offset by evidence showing Rogers, as a 55-year-old man, groomed, seduced, and impregnated a 13-year-old child. In an apparent effort to conceal his wrongdoing, Rogers took Child to a hotel in another state multiple times over the summer of 2019.

[14] Neither is Rogers's guilty plea particularly helpful to his argument. The timing and nature of his guilty plea suggests it was motivated by pragmatism, rather than remorse. Rogers did not plead guilty until the eve of trial more than three years after he was charged and only in exchange for dismissing three of the four pending Level 1 felony counts. *See Anglemyer v. State,* 875 N.E.2d 218, 221 (Ind. 2007). ("[A] guilty plea may not be significantly mitigating when . . . the defendant receives a significant benefit in return for the plea."). Rogers's arguments that his good character supported a sentencing reduction are unpersuasive.

[15] As Rogers has not shown that his advisory sentence is inappropriate in light of the nature of the offense and the character of the offender, we affirm the trial court's judgment.

Altice, C.J., and Kenworthy, J., concur.