MEMORANDUM DECISION

IN THE

Court of Appeals of Indiana

Wayne A. Jewell,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 11, 2024

Court of Appeals Case No.
23A-CR-1080

Appeal from the Howard Superior Court

The Honorable Brant J. Parry, Special Judge

Trial Court Cause No.
34D04-2112-F1-3797

Memorandum Decision by Judge Riley
Judges Brown and Foley concur.

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Wayne Jewell (Jewell), appeals his sentence for child molesting, a Level 1 felony, Ind. Code § 35-42-4-3(a)(1); child molesting, a Level 4 felony, I.C. § 35-42-4-3(b); and child exploitation, a Level 5 felony, I.C. § 35-42-4-4(b)(4)(A).

[2] We affirm.

ISSUE

[3] Jewell presents this court with one issue: Whether his sentence is inappropriate in light of the nature of his offenses and his character.

FACTS AND PROCEDURAL HISTORY

[4] In 2021, thirteen-year-old C.R.'s older brother, Damien, began living with Jewell at Jewell's home in the 1000 block of Lafountain Street in Kokomo, Indiana. Damien and C.R. would both do work around the house for Jewell. Jewell began requesting sexual contact with C.R. and would lure C.R. to his home by falsely telling C.R. that Damien wanted to see him.

[5] Between the late summer or early fall of 2021 and November 1, 2021, Jewell exchanged money and a video game console for oral sex with C.R. This occurred on at least two occasions. During the same time period, Jewell gave C.R. an iPhone and fondled C.R.'s genitals "[a]ll the time" when C.R. was at Jewell's house. (Transcript Vol. I, p. 197). Jewell also took photographs of

C.R. while C.R. showered. While Jewell's sexual abuse of C.R. was ongoing, those closest to C.R. noted that his attitude changed from being an easygoing boy to being angry and belligerent.

[6] On November 1, 2021, Jewell confided in two of his friends, who later that day walked C.R. to his mother's house so that C.R. could inform her about what Jewell was doing. While at his mother's house, C.R. texted Jewell to come there, which Jewell did. When confronted by C.R.'s mother and friends with C.R.'s report of molestation, Jewell faked a seizure and was taken to the hospital by ambulance. At the hospital, Jewell told an officer that he had faked having a seizure because C.R.'s mother and friends had threatened him with knives, forced him to consume dog food and urine, and beat him. The Department of Child Services (DCS) was alerted and conducted an investigation. C.R. was forensically interviewed and confirmed that Jewell had engaged in oral sex with him for money and that Jewell had taken nude photographs of him showering. DCS personnel interviewed Jewell, who admitted that he had performed oral sex on C.R. and had taken nude photographs of C.R. which he had subsequently deleted from his cellphone.

[7] On December 7, 2021, the State filed an Information, charging Jewell with Level 1 felony child molesting, Level 4 felony child molesting, and Level 5 felony child exploitation. On March 21, 2023, the trial court convened Jewell's four-day jury trial. At the conclusion of the evidence, the jury found Jewell guilty as charged.

[8] On April 10, 2023, the Howard County Probation Department filed its presentence investigation report on Jewell. Jewell was fifty-five years old. In 2003, Jewell was charged with two Counts of Class C felony child molesting, as well as one Count of Class B misdemeanor battery. Jewell pleaded guilty to the Class B misdemeanor and was sentenced to 180 days. In 2005, Jewell was charged with two Counts of Class A felony child molesting, two Counts of Class B felony sexual misconduct with a minor, one Count of Class D felony sexual misconduct with a minor, and one Count of Class C felony child molesting. As a result of those charges, Jewell was subsequently convicted of two Counts of Class A felony child molesting and Class D felony sexual misconduct with a minor. Jewell received a sixty-three-year aggregate sentence for those convictions. Jewell was on parole for his child molesting and misconduct convictions when he committed the instant offenses. Jewell attended sex offender treatment from 2018 to 2020.

[9] On April 14, 2023, the trial court held Jewell's sentencing hearing. C.R. testified about the effect the offenses had on his life. C.R. experienced severe depression after the offenses and had sought therapy. The trial court found as aggravating circumstances that Jewell had a criminal record, prior attempts to rehabilitate him had been unsuccessful, and that Jewell was on parole for a sex offense when he committed the instant offenses. The trial court found no mitigating circumstances. The trial court imposed a sentence of forty years for Jewell's Level 1 felony child molesting conviction, ten years for his Level 4 felony child molesting conviction, and five years for his Level 5 felony child

exploitation conviction. The trial court ordered Jewell to serve his sentences consecutively, for an aggregate sentence of fifty-five years.

[10] Jewell now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

[11] Jewell requests that we review and revise his sentence. Pursuant to Appellate Rule 7(B), we 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 principal goal of our review is to leaven the outliers rather than to achieve a perceived correct sentence. *Hall v. State*, 177 N.E.3d 1183, 1197 (Ind. 2021). In conducting our review, we are not limited to a trial court's findings of aggravators and mitigators, and we may consider any evidence in the record. *Id.*; *George v. State*, 141 N.E.3d 68, 73 (Ind. Ct. App. 2020), *trans. denied*. When reviewing a sentence under Appellate Rule 7(B), we show the trial court's sentencing decision considerable deference. *Oberhansley v. State*, 208 N.E.3d 1261, 1267 (Ind. 2023). This deference will prevail unless overcome by compelling evidence portraying the nature of the offense and the defendant's character in a positive light. *Id*. It is the defendant who bears the burden to persuade us that the sentence imposed is inappropriate. *McCallister v. State*, 91 N.E.3d 554, 566 (Ind. 2018).

[12] When determining the appropriateness of a sentence, our starting point is the advisory sentence that the legislature has selected as being appropriate for the particular offense. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Jewell's Level 1 felony child molesting conviction carried a sentencing range of between twenty and forty years, with an advisory sentence of thirty years. I.C. § 35-50-2-4(b). Jewell's Level 4 felony child molesting conviction had an advisory sentence of six years within a sentencing range of two and twelve years. I.C. § 35-50-2-5.5. A Level 5 felony child exploitation conviction carries a sentencing range of between one and six years, with an advisory sentence of three years. I.C. § 35-50-2-6. The trial court imposed sentences of forty, ten, and five years, all to be served consecutively. This represents a near-maximum aggregate sentence for the offenses.

A. *Nature of the Offenses*

[13] In assessing the nature of a defendant's offenses, we consider the surrounding details and circumstances of the offenses and the defendant's participation in them. *Woodcock v. State*, 163 N.E.3d 863, 878 (Ind. Ct. App. 2021), *trans. denied*. We may consider "the nature, extent, heinousness, and brutality" of the offenses, as well as whether the defendant was in a position of trust with the victim. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023).

[14] The nature of Jewell's offenses was that he used money and small luxuries that C.R. might otherwise not have been able to possess to manipulate C.R. into

sexual acts. Jewell also lured C.R. to his home by falsely telling the boy that his older brother wanted to see him. Jewell directed a variety of criminal activities toward C.R., including more than one act of oral sex, multiple acts of fondling, and photographing C.R. while showering. There is also evidence in the record that, at times, Jewell showered with C.R. and that Jewell attempted to penetrate C.R.'s anus with his penis. *See Walters v. State*, 68 N.E.3d 1097, 1102 (Ind. Ct. App. 2017) (considering the defendant's multiple acts against his victim when reviewing the appropriateness of an aggregate fifty-year sentence for Level 1 felony child molesting and two Counts of Level 4 felony child molesting), *trans. denied*; *Harlan v. State*, 971 N.E.2d 163, 170 (Ind. Ct. App. 2012) (holding that allegations of prior criminal activity not reduced to a conviction may be considered upon sentencing). Jewell was a trusted family friend, having been introduced to C.R. by C.R.'s mother, who allowed C.R. to go to Jewell's home to spend time. *See Walters*, 68 N.E.3d at 1102 (considering the defendant's violation of a position of trust in finding Walters' sentence not inappropriate). Jewell's offenses affected C.R. profoundly, first by changing him from an easygoing child to an angry and belligerent one and later by causing him to experience severe depression. *See Couch v. State*, 977 N.E.2d 1013; 1017 (Ind. Ct. App. 2012) (considering the psychological impact upon Couch's victim in affirming his aggregate ninety-one-year sentence for multiple child molesting, child exploitation, and possession of child pornography convictions), *trans. denied*.

[15] Jewell argues that his fifty-five-year sentence "amounts to a life sentence", C.R. was "within months of his fourteenth birthday", and that he did not use force against C.R. (Appellant's Br. pp. 11-12). However, we observe that even if the trial court had imposed advisory, concurrent sentences, Jewell would still be imprisoned for thirty years. *See* I.C. § 35-50-2-4(b). We also observe that, although C.R. was approaching his fourteenth birthday at the time of the offenses, Jewell's actions were still criminal, and that, here, where Jewell used bribery and falsehoods to lure C.R. to his home, we do not consider his lack of use of force to merit a reduced sentence. Given these circumstances, Jewell has failed to meet his burden of persuasion that his sentence is one of the outliers that requires revision in light of the nature of his offenses. *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019) ("[W]e reserve our 7(B) authority for exceptional cases.").

B. *Character of the Offender*

[16] We conclude that Jewell's character weighs heavily against a revision of his sentence. In assessing a defendant's character, we broadly consider a defendant's qualities. *Pritcher*, 208 N.E.3d at 668. It is well-established that we may consider a defendant's criminal history when assessing his or her character. *Williams v. State*, 170 N.E.3d 237, 246 (Ind. Ct. App. 2021), *trans. denied*. "The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in relation to the current offense." *Id*.

[17] In the present case, we find that Jewell's criminal history reflects poorly upon his character. In 2003 Jewell was arrested for child molesting but pleaded guilty to a misdemeanor battery. Then, in 2005, Jewell was arrested on charges that ultimately resulted in his convictions for two Counts of Class A felony child molesting and one Count of Class D felony sexual misconduct with a minor, for which he received a sixty-three-year sentence. Although the record is silent as to how many years of that sentence Jewell served, he received the benefit of parole and was still on parole for those convictions when he committed the instant offenses. Therefore, Jewell has demonstrated a pattern of victimizing children. In addition, Jewell has already participated in four years of sex offender treatment that were clearly unsuccessful in keeping him from harming children. The fact that Jewell admittedly faked a seizure to avoid being confronted by C.R.'s friends and family and then concocted a story that they had forced him to consume dog food and urine also reflects poorly on his character.

[18] On appeal, Jewell does not address his criminal record or other negative aspects of his character present in the record, and he has failed to present us with any compelling positive evidence of his character. *See Oberhansley*, 208 N.E.3d at 1267. As a result, Jewell has not persuaded us that there is anything inappropriate about his fifty-five-year sentence in light of his character.

CONCLUSION

[19] Based on the foregoing, we hold that Jewell's sentence is not inappropriate given the nature of his offenses and his character.

[20] Affirmed.

[21] Brown, J. and Foley, J. concur

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