

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Austin D. Doremus,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 4, 2024

Court of Appeals Case No.
23A-CR-1791

Appeal from the Tippecanoe Superior Court
The Honorable Randy J. Williams, Judge

Trial Court Cause No.
79D01-2212-F3-28

Memorandum Decision by Judge Bradford
Chief Judge Altice and Judge Felix concur.

Bradford, Judge.

Case Summary

- [1] Austin Doremus pled guilty to Level 3 felony child molestation. Doremus, who was sixteen years old when he sexually molested his then-six-year-old nephew, requested to be sentenced as a juvenile. The trial court denied this request and sentenced Doremus to a twelve-year sentence, with nine years executed and three years suspended to probation. Doremus contends that the trial court abused its discretion in denying his request to be sentenced as a juvenile. Alternatively, he contends that his sentence is inappropriate. We affirm.

Facts and Procedural History

- [2] On December 5, 2022, then-sixteen-year-old Doremus took his then-six-year-old nephew into a room, pulled down his nephew's pants, inserted his penis into his nephew's buttocks, and "thrusted three times." Appellant's App. Vol. II p. 13. Doremus was charged with Level 3 felony rape and Level 3 felony child molesting. Doremus pled guilty to Level 3 felony child molesting, admitting that he had "knowingly or intentionally perform[ed] or submit[ted] to sexual intercourse or other sexual conduct" with a child under the age of fourteen. Tr. Vol. II p. 11. In exchange for Doremus's guilty plea, the State agreed to dismiss the rape charge. Sentencing was left to the discretion of the trial court.

[3] On May 9, 2023, Doremus requested to be sentenced as a juvenile. The trial court denied Doremus’s request and sentenced him to a twelve-year term with nine years executed and three years suspended to probation.

Discussion and Decision

I. Denial of Request for Juvenile Sentencing

[4] Doremus contends that the trial court abused its discretion in denying his request to be sentenced under the alternate-juvenile-sentencing scheme, which “provides that a child waived into adult criminal court may receive a suspended sentence or be placed in a juvenile facility.” *Harris v. State*, 165 N.E.3d 91, 99 (Ind. 2021) (citing Ind. Code § 31-30-4-2(a)–(b)).

As with all sentencing decisions, the trial court has broad discretion when determining whether to impose the alternative and will be reversed only for an abuse of that discretion. [*Id.* at 94-95]; *Legg v. State*, 22 N.E.3d 763, 767 (Ind. App. 2014), *trans. denied*. Our legislature has provided no guidelines for determining when alternative sentencing should be imposed. *Legg*, 22 N.E.3d at 767. That said, we have found instructive the same factors used for determining whether to waive a child to adult court. *Id.* Those factors include: 1) the severity of the act or whether it is part of a pattern of acts; 2) whether the child is “beyond rehabilitation under the juvenile justice system”; and 3) whether it is in the “best interests” of the safety and welfare of the community to treat the child as an adult for prosecution purposes. *Id.*; Ind. Code § 31-30-3-2.

James v. State, 178 N.E.3d 1236, 1240 (Ind. Ct. App. 2021), *trans. denied*.

[5] In denying Doremus’s request to be sentenced as a juvenile, the trial court noted the seriousness of Doremus’s offense, specifically noting that the victim had been under the age of seven at the time the molestation occurred. The trial court also noted a report indicating that placing Doremus “in a juvenile setting would be a substantial threat to other juveniles in that setting” and that prior placement in “juvenile settings haven’t worked.” Tr. Vol. II p. 26. The trial court determined that Doremus was “beyond rehabilitation in the juvenile alternative setting” and that it was “in the best interest of the safety and welfare of the community to treat [him] as an adult for prosecution purposes and for disposition purposes.” Tr. Vol. II p. 26.

[6] Doremus acknowledges that his “offense is significant” but claims that the trial court abused its discretion in denying his request to be sentenced as a juvenile because he had accepted responsibility for his offense and that his offense had not been part of a pattern as he had “no history of other sexual crimes.” Appellant’s Br. p. 11. Doremus asserts that he is not beyond rehabilitation and that although his “plea conferred little benefit, ... he still accepted responsibility and prevented the young victim from having to testify.” Appellant’s Br. p. 13. Doremus argues that while he had engaged in prior delinquent behavior, he had done so merely in an attempt “to escape his adoptive home, at which he [claimed to have been] subjected to” abuse. Appellant’s Br. p. 12.

[7] The record reveals that Doremus has previously been found to be a juvenile delinquent for committing what would be criminal acts if committed by an adult; has previously been placed on parole, the terms of which he violated; and

was on parole when he committed the underlying molestation. Prior to molesting his nephew, Doremus had previously been placed in alternative residential facilities and, in one such facility, had physically assaulted another juvenile. He had also exhibited violent behavior towards family, had stolen a firearm from his grandfather's home, and had exhibited behaviors which resulted in property damage. Prior to trial in this case, "no juvenile detention center in the State of Indiana [was] willing to accept [him] for pre-trial placement as a juvenile arrestee." Appellant's App. Vol. II p. 15.

[8] In addition, Sean Samuels, a clinical psychologist who had examined Doremus at the request of the Tippecanoe County Public Defender's Office, opined that Doremus "is likely to demonstrate a disregard for the welfare of others, a socially intimidating manner, and a nonempathic and self-centered attitude." Appellant's App. Vol. II p. 80. Samuels noted that Doremus has shown "a preference to be cruel[,]"" is [e]asily provoked into sudden and unanticipated hostility[,]"" and "is willing to engage in risky and dangerous behavior and is fearless in the face of punitive consequences and threats." Appellant's App. Vol. II p. 80. Samuels opined that Doremus was a high risk to engage in future aggressive and violent behaviors and a "moderate-high risk to engage in maladaptive sexual behaviors if left unsupervised." Appellant's App. Vol. II p. 87.

[9] Doremus's trial counsel acknowledged that "previous rehabilitative attempts [had] failed" and that Doremus "essentially has exhausted [the] juvenile justice system." Tr. Vol. II p. 18. Doremus has exhibited increasingly violent

behavior, leading to the sexual molestation of his then-six-year-old nephew, which left his nephew “crying loudly and gasping for breath.” Appellant’s App. Vol. II p. 13. He was also determined to be a high risk for engaging in future violent behavior. These factors support the trial court’s determination that it was “in the best interest of the safety and welfare of the community to treat [Doremus] as an adult[.]” Tr. Vol. II p. 26. To the extent that Doremus argues on appeal that his behavior was caused by the abuse he had allegedly suffered at the hands of his adoptive parents, he identifies nothing in the record to support this contention. We therefore conclude that the trial court did not abuse its discretion in denying Doremus’s request to be sentenced as a juvenile.¹

II. Appropriateness

[10] Doremus alternatively contends that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that “The 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.” In analyzing such claims, we “concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical,

¹ Doremus also claims that his case is distinguishable from *Harris*, *James*, and *Legg*, three cases in which the reviewing courts concluded that the trial court had not abused its discretion in declining to apply juvenile sentencing. See *Harris*, 165 N.E.3d at 99; *James*, 178 N.E.3d at 1240; *Legg*, 22 N.E.3d at 767. Specifically, Doremus asserts that *Harris*, *James*, and *Legg* all involved murder or attempted murder and “[t]hrough the seriousness of [his] offense cannot be ignored, he did not take the life of another person.” Appellant’s Br. p. 13 (internal quotation omitted). Doremus’s reliance on these cases is misplaced, however, because nothing in *Harris*, *James*, or *Legg* even suggests that the denial of a request for alternative juvenile sentencing is only appropriate in cases of murder or attempted murder.

and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant's character." *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State*, 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[11] "A person who commits a Level 3 felony ... shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years." Ind. Code § 35-50-2-5. In sentencing Doremus, the trial court imposed an aggravated twelve-year sentence, with nine years executed and three years suspended to probation.

[12] Doremus argues that although he "committed a singular act of molestation against his young nephew[,]” his twelve-year sentence is inappropriate because “the consequence to the victim and moral revulsion inherent in the offense has already been accounted for in the sentencing range.” Appellant’s Br. pp. 16–17. We cannot agree. As is outlined above, Doremus forcefully sexually molested a six-year-old child by placing his penis in the child’s buttocks and “thrust[ing] three times.” Appellant’s App. Vol. II p. 13. As a result of Doremus’s actions, the child suffered pain and was left “crying loudly and gasping for breath.” Appellant’s App. Vol. II p. 13.

[13] As for his character, Doremus points to his “unstable” childhood and the fact that his adoptive parents allegedly failed to provide him with services that had

previously been recommended by the Department of Child Services, claiming that the alleged “instability at home [had] led [him] to intentionally violate his parole to avoid remaining in his adoptive home.” Appellant’s Br. p. 18. While Doremus attempts to claim that his behavior was nothing more than an attempt to escape what he alleges was a less-than-ideal childhood, his claim in this regard is not supported by the record, as nothing in the record would, in any way, justify Doremus’s violent and aggressive behavior. Doremus has previously been given multiple opportunities for rehabilitation, but has failed to take advantage of those opportunities, and instead has continued to engage in increasingly aggressive and violent behaviors. In sentencing Doremus, the trial court considered Doremus’s young age but found that an aggravated twelve-year sentence was appropriate given the nature of his offense and Doremus’s character, evidence of which is set forth in the preceding section. Doremus has failed to persuade us that the twelve-year sentence imposed by the trial court is inappropriate in light of the nature of his offense and his character. *See Sanchez*, 891 N.E.2d at 176.

[14] The judgment of the trial court is affirmed.

Altice, C.J., and Felix, J., concur.

ATTORNEY FOR APPELLANT

Aaron J. Spolarich
Bennett Boehning & Clary, LLP
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria N. Sons
Deputy Attorney General
Indianapolis, Indiana