

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Charles E. Thieme,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

March 11, 2024

Court of Appeals Case No.
23A-CR-1869

Appeal from the Washington Circuit Court
The Honorable Larry W. Medlock, Judge

Trial Court Cause No.
88C01-2212-F1-997

Memorandum Decision by Judge Weissmann
Judges Mathias and Tavitias concur.

Weissmann, Judge.

- [1] Charles Thieme pleaded guilty to child molestation with a cap in his plea agreement limiting his executed prison time to six years. Thieme was subsequently sentenced to eight years, with six years executed and two years suspended.
- [2] On appeal, Thieme raises two issues. He first claims that his eight-year sentence exceeds the agreed six-year executed cap. And second, Thieme claims that his sentence is inappropriate in light of his character and the nature of the offense. We affirm.

Facts

- [3] Over a two-and-a-half-year period, 53-year-old Thieme molested his fiancé’s 11-year-old granddaughter, S.C. In December 2022, Thieme promised S.C. a gift card in return for her bending down in front of him. When she did so, Thieme pulled her pants down to her ankles. Thieme admitted to police that he wished to use this memory to masturbate.
- [4] The State charged Thieme with five counts of child molesting: three Level 1 felonies and two Level 4 felonies. As part of a written plea agreement, Thieme pleaded guilty to one of the Level 4 counts in exchange for the State’s dismissal of the other charges. The plea agreement also provided for a sentencing “cap of six (6) years on the executed portion of the sentence” and a waiver of Thieme’s right to appeal if his sentence was within the terms of the agreement. App. Vol. II, p. 143.

[5] Accepting the plea agreement, the trial court entered judgment of conviction for one count of Level 4 child molesting and sentenced Thieme to eight years with six years executed plus two years suspended to probation.¹ He promptly filed a motion to correct error claiming his sentence exceeded the plea cap and mitigating sentencing factors were not given weight. The trial court denied Thieme’s motion, and this appeal followed.

Discussion and Decision

[6] On appeal, Thieme claims his eight-year sentence exceeds the agreed cap of six years executed. In the alternative, Thieme argues that his sentence is inappropriate and deserving of revision under Indiana Appellate Rule 7(B). Both claims lack merit.

I. Plea Agreement Cap

[7] We review the denial of a motion to correct error for an abuse of discretion, which occurs when “the trial court’s judgment is clearly against the logic and effect of the facts and circumstances before it or where the trial court errs on a matter of law.” *Berg v. Berg*, 170 N.E.3d 224, 227 (Ind. 2021) (quoting *Perkinson v. Perkinson*, 989 N.E.2d 758, 761 (Ind. 2013)).

¹ Although not now before the Court, in the interests of judicial economy we note that the portion of the trial court’s sentencing order providing that the full portion of Thieme’s suspended sentence “shall be served if [Thieme] violates [the] conditions of probation” is unenforceable. App. Vol. II, p. 191; *Woods v. State*, 892 N.E.2d 637, 641 (Ind. 2008) (stating, “in the face of a probation violation the trial court may nonetheless exercise its discretion in deciding whether to revoke probation”).

- [8] Thieme’s plea agreement required the trial court to sentence him to no more than six years “on the executed portion of the sentence.” App. Vol. II, p. 143. Thieme argues that his sentence violates this cap because he could spend more than six years in jail if he were to violate the terms of his probation during the two-year suspended portion of the sentence. *See* Ind. Code § 35-38-2-3(h) (listing the consequences of violating probation as, among other things, “the execution of all or part of the [suspended] sentence”).
- [9] Thieme’s argument is unavailing. His plea agreement capped only the executed portion of his sentence and the trial court’s sentence complied with that cap. This Court has often upheld aggregate sentences exceeding an executed sentencing cap specified in a plea agreement. *See, e.g., Cox v. State*, 850 N.E.2d 485, 487 (Ind. Ct. App. 2006) (affirming twelve-year sentence of six executed and six suspended where plea agreement only capped sentence at ten years executed); *Abernathy v. State*, 852 N.E.2d 1016, 1018 (Ind. Ct. App. 2006) (affirming eight-year sentence of five executed and three suspended where plea agreement only capped sentence at five years executed).
- [10] Accordingly, the trial court sentenced Thieme in accordance with his plea agreement.

II. Inappropriate Sentence²

- [11] Thieme next challenges his sentence under Indiana Appellate Rule 7(B). Under this rule, we may revise a sentence 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.” Ind. Appellate Rule 7(b). Our “principal role” in reviewing sentence appropriateness is to “attempt to leaven the outliers” and “not to achieve a perceived ‘correct’ sentence.” *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). We therefore defer 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).
- [12] Here, Thieme pleaded guilty to one count of Level 4 felony child molesting, which has a statutory sentencing range of two to twelve years and an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Thieme fails to demonstrate that his eight-year sentence is inappropriate in light of his offense and nature of his character.
- [13] Thieme concedes that, on its face, the crime of child molesting “is always a serious offense.” Appellant’s Br., p. 18. Thieme, however, was in a position of trust over S.C. which casts his abuse of trust in a more negative light. *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). Thieme argues that his victim

² Despite the appeal waiver in Thieme’s plea agreement, we address his remaining appellate argument.

was not subject to violence or coercion, but Thieme coerced S.C. with the promise of a monetary reward. Thieme has failed to present any “compelling evidence portraying in a positive light the nature of the offense.” *Stephenson*, 29 N.E.3d at 122.

[14] Thieme’s character also does not support revision. While Thieme claims some people consider him to be of good character, his actions show him in a different light. Thieme claimed that S.C. lied about her abuse because she wished to move out of state and even blamed S.C. for the failure of his relationship with her grandmother. He also has an extensive criminal history, including misdemeanor domestic battery and felony leaving the scene of an accident, which reflects poorly on his character. *See Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020). While we acknowledge his assertion that his poor health should be factored, Thieme does not present persuasive evidence showing his character in a positive light.

Conclusion

[15] The trial court’s eight-year sentence does not exceed Thieme’s plea agreement guidelines and Thieme’s sentence is not inappropriate in light of the nature of the offense and his character. We therefore affirm the trial court’s denial of Thieme’s motion to correct error.

[16] Affirmed.

Mathias, J., and Tavitas, J., concur.

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