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IN THE
COURT OF APPEALS OF INDIANA

HANNAH L. STONE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 20A03-0605-CR-217
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE ELKHART CIRCUIT COURT
The Honorable Terry C. Shewmaker, Judge
Cause No. 20C01-0508-MR-149

December 27, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Hannah Stone appeals her sentence after pleading guilty to Murder, a felony; Conspiracy to Commit Murder, a Class A felony; and Criminal Confinement, a Class B felony. Stone presents two issues for review, namely:

1. Whether the trial court properly sentenced her.

2. Whether the trial judge committed fundamental error when he did not recuse himself.

We affirm.

FACTS AND PROCEDURAL HISTORY

On August 4, 2005, seventeen-year-old Stone and her mother, Barbara Keim, argued about Stone's boyfriend, eighteen-year-old Spenser Krempetz. Keim and Stone eventually agreed that Stone would move out of Keim's house. After the argument, Stone smoked marijuana and went to the home of seventeen-year-old Aaron McDonald. Krempetz arrived at McDonald's house later that day. The three teens created a plan to kill Stone's mother.

Later that day, Stone, McDonald, and Krempetz drove to Keim's house to carry out their plan. Stone knocked on Keim's door, knowing that Keim would not answer if she saw Krempetz or McDonald. When Keim opened the door for Stone, Krempetz entered the house and tackled Keim. Krempetz bound Keim's hands and covered her eyes and mouth with duct tape, and McDonald stole money, Keim's debit card, and a check from the home. After Stone and Krempetz put Keim in a car, Krempetz and McDonald drove Keim to a cornfield in nearby Kosciusko County, where Krempetz shot and killed her.

The State charged Stone with murder, a felony; conspiracy to commit murder, a Class A felony; and criminal confinement, a Class B felony. Stone originally pleaded not guilty, but in March 2006 she entered into a plea agreement, under which she pleaded guilty as charged. The plea agreement provided, in part: "The parties agree to a stipulated sentence of one hundred years (100). All other terms of the Defendant's sentence shall be determined by the Court." Appellant's App. at 54.

The advisory sentences for each of the three offenses, if served consecutively, totals ninety-five years. Thus, in order to impose a 100-year sentence, the trial court had to impose a sentence higher than the advisory on one offense. The trial court enhanced the sentence for criminal confinement by five years, thereby reaching the 100-year term as provided in the plea agreement. In the written order, the court sentenced Stone as follows:

> The Court finds mitigating circumstances to be the Defendant's age of eighteen (18) years; the fact that she has accepted responsibility for her criminal conduct; and her drug addictions [sic] issues. The Court finds aggravating circumstances to be as follows: The defendant committed a conspiracy to commit murder and then later committed in fact a murder as a result of the conspiracy. Another aggravating circumstance is the fact that the Defendant admits being on probation and learned nothing from being on probation previously in juvenile court. Another aggravating circumstance is that this Defendant involved others in the commission of this crime as a result of it being originally her idea to "get rid of" her mother. The Court also notes that the Defendant consistently broke controlled substance laws of this state by consistently using marijuana which she knew to be illegal. The Court also notes as an aggravating circumstance that the Defendant committed this offense while under the influence of smoking marijuana. The Court also notes as another aggravating circumstance the Defendant's rather minor juvenile history. The Court notes as an extreme aggravating circumstance that the Defendant took advantage of a position of trust with her mother in creating a plan to murder her own mother. The court notes that this involved subterfuge and tricking her mother into opening the door so that co-defendants could enter

> the residence and physically restrain the Defendant's mother, who was ultimately murdered in this case. The Court notes that this involved taking advantage of a position of trust and the Court finds this to be an extreme aggravator. As a result of the aggravating circumstances being weighed against the mitigating circumstances, the Court notes that the aggravating circumstances do in fact outweigh the mitigating circumstances warranting an enhanced sentence of five (5) years on the Criminal Confinement conviction alone for a total sentence of fifteen years. . . . The Court notes that this Court had weighed the aggravating and mitigating circumstances and chose not to enhance the sentence for Murder or Conspiracy to Commit Murder over and above the advisory sentences for each count. The Court notes that the parties and Defendant had agreed to a 100-year sentence and this Court has in fact imposed a 100-year sentence by combining the advisory sentence of 55 years for the murder charge, the advisory sentence of 30 years for the conspiracy to commit murder charge, and an aggravated sentence of 15 years for criminal confinement charge. The Court notes that each of said sentences are consecutive and not concurrent which was also required by the parties' agreement to impose a 100-year sentence and the Court notes that the aggravating circumstances described herein outweigh the mitigating circumstances warranting the imposition of consecutive sentences.

Appellant's App. at 58-59. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Aggravators and Mitigators

Stone first argues that the trial court improperly identified and weighed aggravators and mitigators when it imposed an enhanced sentence for criminal confinement.[1] We note initially that the standard of reviewing a sentence imposed under the advisory sentencing scheme, when the trial court has identified aggravating and mitigating factors, is far from clear. As this court recently noted:

[1] In her brief, Stone states that the trial court imposed an advisory sentence for each of her convictions and then characterizes her aggregate sentence as enhanced. But, according to the sentencing order, the trial court imposed the advisory sentence for murder and conspiracy to commit murder and an enhanced sentence for criminal confinement. Thus, we address only the propriety of the enhanced sentence for criminal confinement.

[The] after-effects [of Blakely v. Washington, 542 U.S. 296 (2004),] are still felt because the new [advisory sentencing] statutes raise a new set of questions as to the respective roles of trial and appellate courts in sentencing, the necessity of a trial court continuing to issue sentencing statements, and appellate review of a trial court's finding of aggravators and mitigators under a scheme where the trial court does not have to find aggravators or mitigators to impose any sentence within the statutory range for an offense, including the maximum sentence. The continued validity or relevance of well-established case law developed under the old "presumptive" sentencing scheme is unclear.

We attempted to address these questions in Anglemyer v. State, 845 N.E.2d 1087 (Ind. Ct. App. 2006), trans. granted. We observed that under the current version of Indiana Code Section 35-38-1-7.1(d), trial courts may impose any sentence that is statutorily and constitutionally permissible "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." [Anglemeyer, 845 N.E.2d] at 1090. We also noted, however, that Indiana Code Section 35-38-1-3(3) still requires "a statement of the court's reasons for selecting the sentence that it imposes" if a trial court finds aggravating or mitigating circumstances. Id. In attempting to reconcile this language, we concluded that any possible error in a trial court's sentencing statement under the new "advisory" sentencing scheme necessarily would be harmless. Id. at 1091. Therefore, we declined to review Anglemyer's challenges to the correctness of the trial court's sentencing statement. Id. Nevertheless, we stated, "oftentimes a detailed sentencing statement provides us with a great deal of insight regarding the nature of the offense and the character of the offender from the trial court judge who crafted a particular sentence" and encouraged trial courts to continue issuing detailed sentencing statements to aid in our review of sentences under Indiana Appellate Rule 7(B). Id.

Our attempt in Anglemyer to analyze how appellate review of sentences imposed under the "advisory" scheme should proceed was met with a swift grant of transfer by our supreme court. Until that court issues an opinion in Anglemyer, we will assume that it is necessary to assess the accuracy of a trial court's sentencing statement if, as here, the trial court issued one, according to the standards developed under the "presumptive" sentencing system, while keeping in mind that the trial court had "discretion" to impose any sentence within the statutory range for [the felony level of each conviction] "regardless of the presence or absence of aggravating circumstances or mitigating circumstances." See Ind. Code § 35-38-1-7.1(d); see also Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006) ("a sentencing court is under no obligation to find, consider, or weigh either aggravating or mitigating circumstances.")[, trans. denied]. We will

> assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed here was inappropriate. In other words, even if it would not have been possible for the trial court to have abused its discretion in sentencing [a defendant] because of any purported error in the sentencing statement, it is clear we still may exercise our authority under Article 7, Section 6 of the Indiana Constitution and Indiana Appellate Rule 7(B) to revise a sentence we conclude is inappropriate in light of the nature of the offense and the character of the offender. See Childress v. State, 848 N.E.2d 1073, 1079-80 (Ind. 2006); see also Buchanan v. State, 767 N.E.2d 967, 972 (Ind. 2002) (holding that Indiana Constitution permits independent appellate review and revision of a sentence even if trial court "acted within its lawful discretion in determining a sentence").
>
> In reviewing a sentencing statement, "we are not limited to the written sentencing statement but may consider the trial court's comments in the transcript of the sentencing proceedings." Corbett v. State, 764 N.E.2d 622, 631 (Ind. 2002).

Gibson v. State, No. 48A04-0603-CR-165, 2006 Ind. App. LEXIS 2320, at *4-*8 (Nov. 8, 2006). Lacking further guidance to date from our supreme court on the standard of review to be applied, we apply the standard described above in Gibson.

A. Position of Trust

Stone first contends that the trial court improperly identified position of trust as an aggravator. Stone argues that the abuse of a position of trust may not be used as an aggravator to support an enhanced sentence. We cannot agree.

In support of her contention that position of trust is not a proper aggravator, Stone cites to Trusley v. State, 829 N.E.2d 923 (Ind. 2005). There, the trial court listed several aggravators, including that Trusley had abused a position of trust. Trusley appealed, arguing in part that the position of trust aggravator was neither found by a jury nor admitted in accordance with the holding in Blakely v. Washington, 542 U.S. 296 (2004). Our supreme court found that the position of trust aggravator was supported factually by

Trusley's admission that she was the victim's day care provider. The court noted that "the [trial] court did not enhance the sentence on the grounds that Trusley was both in a position of trust and [the victim's] day care provider. Rather, it supported the position of trust aggravator by reference to the admitted fact that Trusley was Small's day care provider." Trusley, 829 N.E.2d at 927.

We note that the supreme court's opinion in Trusley may be confusing when it states, "[o]f course, as we said in Morgan, judicial statements such as 'in a position of trust' cannot 'serve as separate aggravating circumstances.'" Trusley, 829 N.E.2d at 927 (citing Morgan v. State, 829 N.E.2d 12, 17 (Ind. 2005)). But the supreme court did not hold in Trusley that abuse of a position of trust may never be used as an aggravator. And despite the appearance from the quoted language in Trusley, the court in Morgan also did not so hold. Rather, in Morgan, the court held that statements such as those that are "'derivative' of criminal history[] are legitimate observations about the weight to be given to facts appropriately noted by a judge alone under Blakely. [But] they cannot serve as separate aggravating circumstances." Morgan, 829 at 17. Read together, Morgan and Trusley stand for the rule that facts derivative of and/or supporting an aggravator may be used to prove an aggravator but may not be used, by themselves, as separate aggravators.

Stone also argues that position of trust, if a proper aggravator in general, is not applicable on the facts of this case. Again, we cannot agree. The position of trust aggravator is often used in the context of the relationship between an adult and a minor where there is at least an inference of the adult's authority over the minor. See, e.g.,

Kincaid v. State, 839 N.E.2d 1201 (Ind. Ct. App. 2005) (trial court properly considered defendant's position of trust with two-month-old victim as aggravator where defendant had admitted that victim was his son); Frey v. State, 841 N.E.2d 231 (Ind. Ct. App. 2006) (record supported finding that defendant was in position of trust with two-year-old victim where defendant admitted that he had been acting as victim's father); Trusley, 829 N.E.2d at 927 (sentence for reckless homicide was enhanced in part based on defendant's position as the victim's day care provider). But the position of trust aggravator is not limited to situations in which an adult has violated a child's trust. Indeed, the aggravator has been applied where an offender violated an adult victim's trust. See, e.g., Cloum v. State, 779 N.E.2d 84 (Ind. Ct. App. 2002) (position of trust aggravator applied where defendant killed his spouse); Avirette v. State, 824 N.E.2d 1283 (Ind. Ct. App. 2005) (record supported finding position of trust aggravator where adult stepdaughter helped murder stepfather); Walter v. State, 727 N.E.2d 443 (Ind. 2000) (record supported position of trust aggravator where defendant murdered his spouse and an aunt with whom he had lived in high school). Thus, the position of trust aggravator is not limited to adult/child relationships.

The position of trust aggravator applies where the defendant had a more than casual relationship with the victim and abused the trust resulting from that relationship. As noted above, this aggravator does not apply only to adult defendants with child victims but, instead, may apply in any case where there is an element of increased trust arising from the closeness of the relationship between the defendant and the victim, such as between a husband and wife, see Cloum, 779 N.E.2d at 84, or where there is an

element of increased trust inherent in one's position, such as between a minister and a parishioner, see Wilson v. State, 611 N.E.2d 160, 167 (Ind. Ct. App. 1993), trans. denied, or a police officer and the community in general, Marshall v. State, 643 N.E.2d 957, 963 (Ind. Ct. App. 1995), trans. denied.

Here, Keim and Stone were mother and daughter. A mother-daughter relationship is generally a close one, and Stone lived with her mother. The fact that the two had recently been arguing does not undermine the intimacy of the mother-daughter relationship. Further, Stone admitted that there was an element of trust in her relationship with her mother and that she had betrayed that trust:

> Court: Would you agree with me that there's a special bond or relationship between a mother and her child?
>
> Stone: Yes.
>
> Court: You kind of took advantage of that position of trust between mother and child, didn't you?
>
> Stone: Yes.

Transcript at 71. On these facts, we conclude that the trial court properly identified Stone's position of trust as an aggravator.

B. Weighing of Aggravators and Mitigators

We next consider whether the aggravators outweigh the mitigators. Stone contends that the trial court improperly enhanced her sentence because the mitigators outweigh the aggravators that were properly identified by the court.[2] We cannot agree.

[2] Although Stone argues that the trial court improperly identified five of the six aggravators, we need not address her argument with regard to any aggravator except position of trust because we determine below that the position of trust aggravator, by itself, outweighs the mitigators.

When a trial court improperly applies an aggravator, a sentence enhancement may be upheld if other valid aggravators exist. Pickens v. State, 767 N.E.2d 530, 535 (Ind. 2002). A single aggravator may be enough to justify an enhancement or the imposition of consecutive sentences. Bryant v. State, 841 N.E.2d 1154, 1156 (Ind. 2006). But the existence of that aggravator does not relieve the trial or appellate judges from the obligation to consider what weight to assign a particular aggravator and to balance the aggravators and mitigators. Trusley, 829 N.E.2d at 927. When a court has relied on valid and invalid aggravators, the standard of review is whether we can say with confidence that, after balancing the valid aggravators and mitigators, the sentence enhancement should be affirmed. See id. (where the court balanced the valid aggravators and mitigators and stated "with confidence" that Trusley's sentence enhancement should be affirmed).

Here, the trial court identified three mitigators, namely, Stone's age of eighteen, the fact that she had accepted responsibility for her criminal conduct, and her drug addiction. And the court identified six aggravators, including her position of trust. With regard to position of trust, the court stated:

> The sole, serious, extreme aggravator in this case is the fact that you did take advantage of a position of trust with your mother to cause this crime to occur. [The] court will find that to be an extreme aggravating circumstance. [The] court notes that the killing of a human being is one of the elements of murder. [The] court also notes that the killing of a human being, the subject of a conspiracy, is also one of [the] elements [of conspiracy]. It is not one of [the] elements of either crime, however, that you take advantage of a position of trust to develop a plan to take the life of your mother. And it is for that reason the court will find it to be an extreme aggravator.

Transcript at 74.

In Gross v. State, 769 N.E.2d 1136, 1140-41 (Ind. 2002), our supreme court identified as mitigators the defendant's difficult childhood, his age of eighteen at the time of the crime, his graduation from high school, his conduct at Boy's School and at a youth center, his tutoring of other inmates while incarcerated at the Marion County Jail, and his expression of remorse. The court noted that "[t]he mitigating weight warranted for each of these considerations is in the low range, individually and cumulatively." Id. at 1141. The court then found a "substantial and serious" aggravator, namely, that the defendant intentionally killed someone in the course of a robbery. Id. The court held that the single aggravator outweighed the mitigators and affirmed the sentence of life without parole. Id.

As noted above, a single aggravator is sufficient to support a sentence enhancement if we can say with confidence that such aggravator outweighs the cumulative weight of the properly identified mitigators. Trusley, 829 N.E.2d at 927. Here, the trial court emphasized that the position of trust aggravator was "serious" and "extreme." Transcript at 74. Considering the mitigators identified by the trial court and the valid aggravator of position of trust, we can say with confidence that the "extreme aggravator" of position of trust outweighs the cumulative weight of the mitigators. See Transcript at 74. We also note that the trial court did not impose the maximum possible enhancement of Stone's sentence and that the aggregate sentence comports with the term Stone agreed to under the plea agreement. Thus, we hold that the trial court properly enhanced Stone's sentence for criminal confinement.

C. Appellate Rule 7(B)

Stone also contends that her enhanced sentence is inappropriate in light of the nature of the offense and her character. The State argues that Stone cannot raise a claim under Appellate Rule 7(B) because she consented to a specific term in the plea agreement. We cannot agree with the State.

A plea agreement that is not "open" but nevertheless allows the trial court some discretion in sentencing is subject to review under Indiana Appellate Rule 7(B). Rivera v. State, 851 N.E.2d 299, 301-02 (Ind. 2006) (holding that an agreed ten-year sentence was subject to Rule 7(B) review because trial court had exercised discretion in determining how much of sentence was suspended to probation). Such is the case here, where the trial court identified aggravators and mitigators and then determined which count or counts were to be enhanced from the advisory sentences in order to reach the agreed 100-year sentence. Thus, Stone's sentence is subject to review for appropriateness under Appellate Rule 7(B).

As noted above, if the sentence imposed is authorized by statute, we will not revise or set aside the sentence unless it is inappropriate in light of the nature of the offense and the character of the offender. Ind. App. R. 7(B). "Regarding the nature of the offense, the [advisory] sentence is the starting point the Legislature has selected as an appropriate sentence for the crime committed."[3] Weiss v. State, 848 N.E.2d 1070, 1072

[3] In a footnote to the quoted language, the court in Weiss referred to the "presumptive sentence (now advisory sentence)" for a particular class of felony. Weiss, 848 N.E.2d at 1072. The court has used identical language in other cases. See, e.g., Hole v. State, 851 N.E.2d 302, 303 n.1 (Ind. 2006); Childress v. State, 848 N.E.2d 1073, 1081 (Ind. 2006). See also Reyes v. State, 848 N.E.2d 1081, 1083 (Ind. 2006) ("presumptive sentence, now advisory sentence"). We conclude that such references mean that the court

(Ind. 2006). A person who commits criminal confinement, as a Class B felony, "shall be imprisoned for a fixed term of between six (6) years and twenty (20) years, with the advisory sentence being ten (10) years." Ind. Code § 35-50-2-5. Here, the trial court enhanced Stone's criminal confinement sentence by five years, for a total sentence on that count of fifteen years and an aggregate sentence for all three counts of 100 years.

Stone contends that her sentence is inappropriate given the nature of the offense. In support of that contention, she refers to her prior arguments that the trial court should not have identified position of trust and her juvenile history as aggravators. She then argues that the mitigators identified by the trial court, especially her youth and her acceptance of responsibility, should have outweighed the properly identified aggravators. We cannot agree.

As stated above, we conclude that the trial court did not improperly identify or weigh the position of trust aggravator. And Stone has not shown that the trial court improperly weighed that aggravator against the mitigators. Thus, the trial court's sentence is not inappropriate in light of the nature of the offense.

Stone also argues that her sentence is inappropriate in light of her character. She points out that she was only seventeen years old at the time of the offenses, she had been diagnosed with bipolar disorder, she had been referred to mental health programs, she had a poor relationship with her stepfather, and she had low self-esteem. We cannot agree that her sentence is inappropriate in light of those factors.

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has construed "advisory sentence" to equate to the former "presumptive sentence" in the context of Appellate Rule 7(B) review.

With the exception of her youth, Stone does not support with meaningful argument or citations to authority her contention that the sentence is inappropriate in light of the listed factors. Therefore, she has waived the issue for appellate review except as to her youth. See Ind. App. R. 46(A)(8)(a). On that point, she cites to Carter v. State, 711 N.E.2d 835, 842 (Ind. 1999), as support for her request that we review and reduce her sentence. But Carter is distinguishable. In Carter, our supreme court addressed a similar argument and held that youth was a greater factor for an offender younger than sixteen. Id. The court reasoned:

> This is a more powerful factor for a fourteen-year-old defendant than it is for one who is sixteen or seventeen. The legislature has made at least two significant distinctions between the treatment accorded to offenders who are sixteen or older and those under sixteen. First, a child who is at least sixteen at the time of committing murder may be sentenced to death or life imprisonment without parole, but those penalties are not available for a child under the age of sixteen. Ind. Code § 35-50-2-3(b) (1998). Second, although a child who is at least ten years of age when committing an act that would be murder may be waived to adult court, see [Ind. Code] § 31-30-3-4, other serious charges may be waived only if the child is at least sixteen at the time of the alleged offense[, s]ee [Ind. Code] § 31-30-3-5; but see [Ind. Code] § 31-30-3-2(1) (permitting the waiver of fourteen year olds when certain conditions are met).

Id.

Here, Stone was seventeen at the time of the offense. The offender in Carter was only fourteen. Thus, the reasoning in Carter does not support her argument.

Although Stone's youth is a factor to be considered in our review, that factor does not outweigh the aggravating circumstances regarding the nature of the offense. Stone concedes in her brief that "the nature of the offenses [alone] might warrant the imposition of a one[-]hundred[-]year sentence." Appellant's Brief at 21. Because we have

determined that the mitigators do not outweigh the aggravators and the sympathetic characteristics of the offender do not outweigh the nature of the offense, we conclude that Stone's sentence is not inappropriate.

Issue Two: Recusal

Stone also contends that the trial judge committed fundamental error when he did not recuse himself despite his admission that he was acquainted with two State witnesses who testified at the sentencing hearing. The State counters that Stone invited the error and, alternatively, that the error is not fundamental. We must agree with the State.

Here, the trial judge informed the parties at the sentencing hearing that he was acquainted with Susan Stutzman, a State witness and the victim's sister, and Robert Keim ("Robert"), a State witness and the victim's husband. Specifically, while in private practice, the judge became acquainted with Stutzman because she had worked as a clerk for the court where he would occasionally file pleadings. And the judge knew Robert through his employment with the county sheriff's department and as a security officer. The judge stated that he had never had a social relationship with either witness. When asked whether the acquaintances made "any difference," defense counsel stated that it did not and that he knew the witnesses from the same proceedings. Transcript at 42-43, 46.

Stone now contends that the trial judge erred when he did not recuse himself because of his professional acquaintance with Stutzman and Robert. By denying at trial that any issue arose from the acquaintances, Stone invited the error she now raises. As such, the error is reversible only if it constitutes fundamental error. See Witte v. Mundy, 820 N.E.2d 128, 133 (Ind. 2005) ("a party may not take advantage of an error that she

commits, invites, or which is the natural consequence of her own neglect or misconduct.") The "fundamental error" rule applies only when the error constitutes a blatant violation of basic principles, the harm or potential for harm is substantial, and the resulting error denies the defendant fundamental due process. Dickenson v. State, 835 N.E.2d 542, 548-49 (Ind. Ct. App. 2005) (citation omitted), trans. denied.

We agree with Stone that a judge's personal knowledge from extrajudicial sources requires recusal. See Lee v. State, 735 N.E.2d 1169, 1172 (Ind. 2000). But here, the trial judge's acquaintance with both witnesses was strictly professional and arose from his work in private practice and as a judicial officer. Taken to its logical end, Stone's argument would prevent any employee of the court or the sheriff's department from testifying at a sentencing hearing before any judge in that county because of the "appearance of possible impropriety." See Appellant's Brief at 25. The mere allegation of the appearance of possible impropriety does not rise to the level of a violation of due process. Even if the judge's acquaintance with Stutzman were to be considered extrajudicial because it arose before he became a judge, Stone has not shown that the trial judge's failure to recuse himself denied her due process. Thus, Stone has not shown that the trial judge committed fundamental error.

Conclusion

We hold that Stone's sentence is proper. The trial court properly identified position of trust as an aggravator and gave that aggravator great weight. Even if we do not consider the other aggravators that Stone argues were improperly identified, the position of trust aggravator outweighs the mitigators identified by the trial court. We also

conclude that Stone's sentence is not inappropriate in light of the nature of the offense and her character. And we conclude that the trial judge did not commit fundamental error when he did not recuse himself on the basis of his professional acquaintance with two State witnesses.

Affirmed.

MAY, J., and MATHIAS, J., concur.