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IN THE COURT OF APPEALS OF INDIANA

JEFFREY L. MOSES,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 27A04-0606-CR-321
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Jeffrey D. Todd, Judge
Cause No. 27D01-9910-CF-96

December 19, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBB, Judge

Case Summary and Issue

Jeffrey Moses entered a plea of guilty to seventeen counts of child molesting based upon repeated molestation of his adopted son. Moses appeals his aggregate sixty-one year sentence, contending that it is inappropriate. Concluding that his sentence is not inappropriate, we affirm.

Facts and Procedural History

Over a five-year-period, Moses repeatedly molested his adopted son, who was nine years old when the molestation began. When Moses' wife discovered and reported the molestation, Moses admitted the molestation to police and was arrested. Moses was charged with seventeen counts of child molesting – ten counts of Class A felony child molesting, two counts of Class B felony child molesting, and five counts of Class C felony child molesting.

Upon Moses' motion, his trial was continued several times, until it was ultimately set for July 31, 2000. On July 24, 2000, Moses entered into a plea agreement with the State that provided, in pertinent part, as follows:

> 1. [Moses] will enter a plea of guilty to the crimes of: all Seventeen (17) Counts of Child Molesting, as originally charged in the Criminal Information filed in this Cause on October 22, 1999.
>
> 2. [The State] and the Defendant agree that the sentences, if this agreement is accepted, shall be open and left to the Court's discretion, except that the sentences imposed for all Class A felonies shall be served concurrently with each other but consecutively to those imposed for the Class B and Class C Felonies. Further, the sentences imposed for the Class B Felonies shall be served concurrently with each other but consecutively to the sentences imposed for the Class A and Class C Felonies. Finally, the sentences imposed for the Class C Felonies shall be served concurrently with each other but consecutively to those imposed for the Class A and Class B Felonies.

Appellant's Appendix at 39. The trial court accepted Moses' guilty pleas. Following a sentencing hearing, the trial court ordered that Moses serve forty years for each Class A felony conviction, all to be served concurrently; fifteen years for each Class B felony, all to be served concurrently to each other but consecutively to the Class A felony sentences; and six years for each Class C felony, all to be served concurrently to each other but consecutively to the Class A and Class B felony sentences.[1] The trial court cited Moses' position of trust with his victim and that the crimes occurred over a long period of time as aggravating factors. Moses now appeals his aggregate sixty-one-year sentence.

Discussion and Decision

Moses contends that the trial court imposed upon him an inappropriate sentence considering the nature of his offenses and his character. In particular, Moses asserts that the trial court failed to find mitigating circumstances that were clearly supported by the record and that reflect favorably upon his character. In general, sentencing decisions are within the trial court's sound discretion. White v. State, 846 N.E.2d 1026, 1034 (Ind. Ct. App. 2006), trans. denied. However, Indiana Appellate Rule 7(B) permits us to 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."

[1] We note that although our sentencing statutes have been amended to provide for "advisory sentences" rather than "presumptive sentences," Moses was charged, pled guilty, and was sentenced prior to the amendment, and we therefore refer to "presumptive sentences" herein. The presumptive sentence for a Class A felony was thirty years, with up to twenty years added for aggravating circumstances and up to ten years subtracted for mitigating circumstances. Ind. Code § 35-50-2-4 (amended effective April 25, 2005). The presumptive sentence for a Class B felony was ten years, with up to ten years added for aggravating circumstances and four years subtracted for mitigating circumstances, and the presumptive sentence for a

In sentencing Moses, the trial court found two aggravating circumstances – that Moses occupied a position of trust with the victim and that this was long-standing criminal activity – and no mitigating circumstances in imposing enhanced sentences. If a trial court relies upon aggravating or mitigating circumstances to modify the presumptive sentence, it must 1) identify all significant aggravating and mitigating circumstances; 2) explain why each circumstance is aggravating or mitigating; and 3) articulate the evaluation and balancing of the circumstances. Wilson v. State, 835 N.E.2d 1044, 1051-52 (Ind. Ct. App. 2005), trans. denied. If we find an irregularity in a trial court's sentencing decision, we may remand to the trial court for a clarification or new sentencing determination, affirm the sentence if the error is harmless, or reweigh the proper aggravating and mitigating circumstances at the appellate level. Payne v. State, 838 N.E.2d 503, 506 (Ind. Ct. App. 2005), trans. denied. Moses urges this court to consider his proferred mitigating circumstances significant, reweigh the aggravating and mitigating circumstances independently, and revise his sentence accordingly.

Moses posits that his guilty plea, his acknowledgement of wrongdoing, and his minimal criminal history should be considered significant mitigating factors and warrant a reduction of his sixty-one-year sentence.[2] A guilty plea may be a significant mitigating factor in circumstances in which it saves judicial resources and spares the victim a lengthy

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Class C felony was four years, with up to four years added for aggravating circumstances and two years subtracted for mitigating circumstances. Ind. Code §§ 35-50-2-5, -6 (amended effective April 25, 2005).

[2] Moses also posits that the undue hardship to his dependents should be given mitigating weight. However, we note that Moses did not proffer this alleged mitigating circumstance to the trial court and moreover, has not shown any special circumstances that would impose a greater hardship on his dependents than the dependents of any other incarcerated individual. See Ware v. State, 816 N.E.2d 1167, 1178 (Ind. Ct.

trial. Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004). When a defendant extends a substantial benefit to the State, he deserves to have a substantial benefit extended to him in return. Patterson v. State, 846 N.E.2d 723, 729 (Ind. Ct. App. 2006). However, a plea agreement is not necessarily a significant mitigating factor. Sensback v. State, 720 N.E.2d 1160, 1165 (Ind. 1999). Here, Moses did plead guilty to each and every count as charged and therefore did not receive the typical benefit of a plea agreement in the form of a reduction in the number or severity of charges, but he did receive the benefit of assurance that the sentences for the most severe charges could not be made consecutive to each other. Absent the plea agreement, Moses faced a possible sentence much greater than sixty-one years. Moses' plea also saved the victim the trauma of testifying about difficult and embarrassing events. However, Moses did not enter his plea until nine months after the charges were filed, during which time trial had been set on four different occasions and continued at Moses' request. Moreover, the guilty plea was entered only one week prior to the final trial setting. Under these circumstances, the State was not spared much, if anything, in the expenditure of time and resources to prepare, and the victim, while spared the actual act of testifying, was subjected to a lengthy wait for resolution and required on multiple occasions to face the possibility of testifying. Further, as will be discussed below, the extent to which Moses' guilty plea represents acceptance of responsibility is debatable. Moses' guilty plea, although perhaps entitled to some mitigating weight, is not entitled to significant

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App. 2004) ("Many people convicted of serious crimes have one or more children, and absent special circumstances, trial courts are not required to find that imprisonment will result in undue hardship").

mitigating weight in our determination of whether his sentence is inappropriate.[3]

With respect to Moses' acknowledgement of wrongdoing, Moses did express to police officers that he knew his behavior was wrong. However, despite allegedly knowing this, he molested the victim for nearly five years. He also told officers that even though the victim had asked him to stop, he continued to molest the victim because he enjoyed the relationship and it was "convenient [because] he didn't have to go out on the streets and look for somebody." Tr. at 52. In order to continue the molestation, Moses bribed and threatened the victim. In speaking with officers, Moses made statements purporting to blame the victim for the molestation. Because there is no indication that Moses would have ended the molestation but for being discovered in the act, it appears that Moses only acknowledged the wrongdoing because he was caught.

Finally, Moses points to his criminal history, which includes only a public intoxication conviction when Moses was nineteen years old. Moses posits that considering his lack of criminal history as a mitigating factor is "especially appropriate for a defendant like Moses, thirty-seven years old at the time of his sentencing, who has lived a law-abiding life for decades." Brief of Appellant at 11. Although Moses only has one prior conviction, he molested the victim for over five years, and had not therefore been living a "law-abiding life." To the extent Moses' lack of criminal history in the recent past reflects favorably upon his character, it is offset by his undiscovered criminal activity during a significant part of that

[3] Moses does not ask us to determine whether the trial court should have found his guilty plea as a mitigating factor. Rather, he asks us to independently consider his guilty plea as it impacts our assessment of his character in determining whether his sentence is inappropriate.

time.

In sum, the nature of this offense included Moses coming into the victim's family as a husband and father, adopting the victim as his own, and then using the "convenience" of having the victim in his home to molest the victim repeatedly for several years. To facilitate the molestation, Moses exposed the victim to pornography, bribed him, and threatened him. As for Moses' character, we acknowledge that he has virtually no criminal history and that he did admit his conduct. However, he admitted his conduct and the wrongfulness of his actions only after the molestation was discovered. Further, his statement to officers indicating that if he had not been molesting his adopted son, he would have been molesting someone, reflects poorly on his character. The trial court ordered enhanced, but not maximum, sentences. Considering the nature of Moses' offense and the length of time over which it occurred, we cannot say that a sixty-one-year sentence is inappropriate.

Conclusion

After due consideration of the nature of Moses' offenses and his character, we cannot say that a sixty-one-year sentence is inappropriate. His sentence is therefore affirmed.

Affirmed.

SULLIVAN, J., and BARNES, J., concur.