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**IN THE  
COURT OF APPEALS OF INDIANA**

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DONALD L. ADAMS,  
  
Appellant-Defendant,

vs.

STATE OF INDIANA,  
  
Appellee-Plaintiff.

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No. 27A04-0607-CR-357

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APPEAL FROM THE GRANT CIRCUIT COURT  
The Honorable Thomas R. Hunt, Judge  
Cause No. 27C01-0004-CF-21

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**November 20, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**FRIEDLANDER, Judge**

Donald Lee Adams, Jr. pleaded guilty to twenty counts of Child Molesting,<sup>1</sup> all class A felonies, and presents the following expanded and restated issues:

- (1) Did the trial court abuse its discretion by failing to find mitigating circumstances?
- (2) Was the sentence appropriate?

We affirm.

Adams is the biological father of J.A. (Child I), born on September 29, 1988, and J.A. (Child II), born on February 18, 1991 (collectively, the children). Adams lived with his wife, Virginia, and the children. Child I has cerebral palsy, is communicative but speaks only approximately ten words and does so in isolation, suffers from seizures, and has “spasticity” in both legs and one arm. *Transcript* at 15. Child I also “has what’s described as an ataxic gate which means . . . one leg is dragging. It’s sort of off balance, wide based.” *Id.* at 16. At the time the crimes were committed, Child II had substantial behavioral problems and a learning disability.

Between April 1999 and late-March 2000, Adams would go to Child I’s and Child II’s bedrooms while Virginia slept. Adams inserted his fingers into both Child I’s and Child II’s vaginas and rectums “[a]lmost on a nightly basis.” *Id.* at 33. Child II complained to Adams that the insertions were painful, but Adams’s molestations persisted. Adams observed Child II’s rectum bleeding, but did not inform Virginia or consult Child II’s pediatrician, Dr. Joyce Fisher. In approximately March 2000, a nurse

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<sup>1</sup> Ind. Code Ann. § 35-42-4-3 (West 1999).

at Child II's school informed Virginia that Child II would not be permitted to return to school until a physician was consulted to address her menstrual cramps.

Virginia took Child II to Dr. Fisher. Dr. Fisher examined Child II. The results of Dr. Fisher's examination were deeply disturbing. It is sufficient to note that Dr. Fisher observed substantial tears in Child II's vagina and rectum, and stated Child II had not started menstruation. Based upon her examination of Child II, Dr. Fisher requested that she be allowed to examine Child I, which Virginia permitted. Dr. Fisher's examination of Child I revealed that similar trauma was inflicted upon Child I. Dr. Fisher concluded, based upon her examinations of Child I and Child II, "something larger than a finger [] went in and out of both the rectum and the vagina[,] . . . and obviously more than one time." *Id.* at 26, 27. Dr. Fisher also noted both Child I and Child II started to and would continue to develop scars on their vaginas which would be painful for the remainder of their lives.

Detective Sergeant Kevin Pauley arrested Adams on April 3, 2000. After providing several implausible explanations for Child I's and Child II's physical conditions, Adams admitted to molesting the children. Adams stated he heard the children moaning at night from an unrelated physical condition, became sexually aroused, and masturbated himself while he molested the children. Child II informed an employee of Grant County Child Protective Services that Adams and she wrestled with her pants off and that her "vagina . . . would be rubbed by a rock that she call[ed] 'best buddy'. That this rock would have to be fed at times [and] . . . cleaned at times and that

[Adams] got candy out of his underwear and gave [it] to her and then she'd have to give the candy back . . . ." *Appellant's Appendix* at 19-20. Adams's penis was "best buddy."

The State charged Adams with twenty counts of child molesting as class A felonies. Each odd-numbered count correlated to Child I, and each even-numbered count correlated to Child II. Pursuant to a plea agreement, Adams pleaded guilty to all twenty counts of child molesting, which constituted ten counts each for the molestations of Child I and Child II. The plea agreement stipulated that the sentences imposed upon all odd-numbered counts would run concurrently, that the sentences imposed upon all even-numbered counts would run concurrently, but that the sentences for all odd-numbered counts would run consecutive to the sentences for all even-numbered counts. After a plea agreement hearing and a sentencing hearing, the trial court sentenced Adams to 100 years of imprisonment, the maximum sentence authorized under the plea agreement. Adams subsequently filed a petition for post-conviction relief, which was dismissed without prejudice upon Adams's motion. Adams thereafter filed a belated notice of appeal, which was granted. Adams now appeals.

1.

Adams contends the trial court erred in sentencing him. Sentencing determinations lie within the sound discretion of the trial court, and we will reverse a trial court's determination only upon an abuse of discretion. *Henderson v. State*, 848 N.E.2d 341 (Ind. Ct. App. 2006). An abuse of discretion occurs if a trial court's decision is clearly against the logic and effect of the facts and circumstances before it. *Id.* Where, as here, a trial court imposes an enhanced sentence, it must identify all significant

aggravating and mitigating factors, explain why such factors were found, and balance the factors in arriving at the sentence. *Id.*

The existence of and weight to be given significant mitigating circumstances are determinations within a trial court's discretion, and we will reverse a trial court's decision only upon an abuse of its discretion. *Pennington v. State*, 821 N.E.2d 899 (Ind. Ct. App. 2005). A trial court abuses its discretion only when there is substantial evidence in the record of significant mitigating circumstances that the trial court overlooked. *Id.* Although a trial court must consider evidence of mitigating factors presented by a defendant, it is not required to find that mitigating circumstances exist, nor obligated to explain why certain circumstances are not sufficiently mitigating. *Id.* Further, a trial court is not compelled to weigh mitigating factors in the manner proposed by a defendant. *Id.* An allegation on appeal that the trial court failed to find a mitigating circumstance requires the defendant to establish that the mitigating evidence is both significant and clearly supported by the record. *Id.*

Adams argues the trial court abused its discretion by failing to extend mitigating weight to his guilty plea. Generally, a defendant who pleads guilty extends a benefit to the State and accepts some responsibility for the crime, and, thus, deserves to have some mitigating weight extended to him at sentencing based upon the plea. *Scott v. State*, 840 N.E.2d 376 (Ind. Ct. App. 2006), *trans. denied*. The mitigating weight assigned to a defendant's guilty plea, however, will vary from case to case, and a guilty plea is not necessarily a significant mitigating circumstance. *Francis v. State*, 817 N.E.2d 235 (Ind. 2004). Where a defendant reaped a substantial benefit by pleading guilty, the trial court

does not abuse its discretion in refusing to consider the guilty plea to be a significant mitigating circumstance. *Robbins v. State*, 839 N.E.2d 1196 (Ind. Ct. App. 2005).

In this case, Adams pleaded guilty to twenty counts of child molesting. In exchange for Adams's guilty plea, the State agreed to limit Adams's potential sentence to 100 years. Thus, Adams derived some benefit from his guilty plea. The guilty plea, however, did not reduce the number of counts of child molesting nor the class of felony of the crimes, and allowed the State to seek up to a 100-year sentence. Moreover, it is clear that the State received a substantial benefit from Adams's guilty plea because Child I and Child II, the State's primary witnesses, would have had difficulty testifying. *See Comer v. State*, 839 N.E.2d 721, 728 (Ind. Ct. App. 2005) (“[w]here the State reaps a substantial benefit from the defendant's act of pleading guilty, the defendant deserves to have a substantial benefit returned”), *trans. denied*. Under these circumstances, we cannot say that Adams received a substantial benefit from his guilty plea, and, therefore, conclude that the trial court abused its discretion in extending it no mitigating weight. *See Cotto v. State*, 829 N.E.2d 520 (Ind. 2005) (trial court abused its discretion by not identifying at all defendant's guilty plea as a mitigating circumstance where the State derived a benefit from the guilty plea).

Adams further argues the trial court abused its discretion by failing to consider his remorse as a mitigating circumstance. A trial court's determination of a defendant's remorse is similar to a credibility determination. *Dylak v. State*, 850 N.E.2d 401 (Ind. Ct. App. 2006), *trans. denied*. Without evidence of some impermissible consideration by the trial court, we accept its determination of credibility because it is in the best position to

judge the sincerity of a defendant's remorseful statements. *Id.* Adams does not allege any impermissible considerations. The trial court, therefore, did not abuse its discretion by failing to consider Adams's alleged remorse to be a mitigating factor. *See, e.g., Pickens v. State*, 767 N.E.2d 530 (Ind. 2002) (where the trial court concluded the defendant's proclaimed remorse was an attempt to avoid consequences rather than a true expression, the trial court did not abuse its discretion by failing to identify remorse as mitigating absent evidence of an impermissible consideration).

Having found an irregularity in the trial court's sentencing decision, we are left with the following options: (1) to remand to the trial court for a clarification or new sentencing determination; (2) to affirm the sentence if the error is harmless; or (3) to reweigh the proper aggravating and mitigating circumstances independently at the appellate level. *Johnson v. State*, 845 N.E.2d 147 (Ind. Ct. App. 2006), *trans. denied*. In this case, the trial court identified five valid aggravating circumstances, which were: (1) Adams was in a position of trust with the children; (2) the molestations exploited the children's handicaps; (3) the children suffered significant physical injury as a result of the molestations; (4) the molestations were repeated at least weekly for an entire year; and (5) the molestations resulted in the children's placement in foster care. The trial court identified Adams's lack of criminal history as a mitigating circumstance to which we add the mitigating factor of Adams's guilty plea. While the trial court also should have extended some mitigating weight to Adams's guilty plea, we conclude the error in the trial court's sentencing decision is harmless because the aggravating circumstances substantially outweigh the mitigating circumstances. *See id.* (the trial court's sentencing

error was harmless because the defendant's relationship with his victim and his extensive criminal history of sexual crimes warranted presumptive sentences).

2.

Adams contends his sentence is inappropriate. Pursuant to article 7, section 6 of the Indiana Constitution, we have the constitutional authority to review and revise sentences where the sentence imposed is "inappropriate in light of the nature of the offense and the character of the offender." *Smith v. State*, 839 N.E.2d 780, 787 (Ind. Ct. App. 2005); Ind. Appellate Rule 7(B). Appellate Rule 7(B) confers authorization to review and revise sentences when certain broad conditions are satisfied. *Smith v. State*, 839 N.E.2d 780. Nevertheless, our review under Appellate Rule 7(B) is very deferential to the trial court because of its special expertise in making sentencing decisions. *Id.* The presumptive sentences for the class of crimes to which the offenses belong are meant to be the starting point for the trial court's consideration of what sentences are appropriate for the crimes committed. *Id.*

At the time Adams committed these crimes, the presumptive sentence for a class A felony was thirty years and the maximum was fifty years. Ind. Code Ann. § 35-50-2-4 (Ind. 1999). The nature of the class A felony offenses was that Adams molested his own children who are physically and mentally disabled. Adams caused pain and injury, both of which he disregarded. Adams's criminal acts are likely to result in permanent scarring and cause his children physical and emotional pain for the remainder of their lives. Further, Adams's actions took place almost daily for an entire year. Regarding Adams's character, we note that he had no reported criminal history. Adams did lie, however, to



Sergeant Pauley about molesting his children, submitting several implausible explanations that are unnecessary to delineate here. We are confident in concluding the egregious nature of the numerous class A felonies and Adams's character warrant a 100-year sentence. That is, Adams's sentence is appropriate in light of the nature of the offenses and his character. *See Purvis v. State*, 829 N.E.2d 572 (Ind. Ct. App. 2005) (50-year sentence for one count of child molestation appropriate where nature of the offense was defendant planned to and did victimize a vulnerable child and defendant was a repeat child molester), *trans. denied, cert. denied*, No. 05-8651, 74 USLW 3530 (Mar. 20, 2006).

Judgment affirmed.

NAJAM, J., and DARDEN, J., concur.