

Case Summary

Appellant-Defendant Ronald Sweatt (“Sweatt”) appeals his convictions and sentence for three counts of Child Molesting, as Class A felonies,¹ and one count of Sexual Misconduct with a Minor, as a Class B felony.² We affirm.

Issues

Sweatt presents three issues for review:

- I. Whether the trial court erroneously disallowed testimony from two witnesses;
- II. Whether there is sufficient evidence to support his convictions; and
- III. Whether the trial court abused its sentencing discretion.

Facts and Procedural History

On April 14, 2004, the State charged Sweatt with four counts of Child Molesting, alleging that he engaged in sexual intercourse with his step-daughter K.M. on multiple occasions from 2001 to 2004. On April 6, 2005, the fourth count was amended to allege Sexual Misconduct with a Minor. On January 18, 2007, at the conclusion of a bench trial, Sweatt was convicted as charged.³ On April 25, 2007, he was sentenced to forty years imprisonment on each of the Class A felony convictions, and ten years on the Class B felony conviction, to be served concurrently, resulting in an aggregate term of forty years. Sweatt now appeals.

Decision and Discussion

¹ Ind. Code § 35-42-4-3(a)(1).

² Ind. Code § 35-42-4-9(a)(1).

³ A jury trial on September 6, 2005 had resulted in a mistrial.

I. Excluded Testimony

Sweatt complains that the trial court erroneously denied him the opportunity to present the testimony of two witnesses, Eric and Ron Metz, who would have spoken to K.M.'s lack of credibility. A pre-trial discussion before the bench indicates that the State filed a written objection after notification that the Metzses were anticipated witnesses. In response, Sweatt filed an affidavit. It appears that the trial court excluded the proffered testimony on grounds that it was impermissible under the Indiana Rape Shield Rule, Indiana Evidence Rule 412.⁴

Sweatt alleges that he was prejudiced by the exclusion. However, the record on appeal includes no offer of proof as to the witnesses' expected testimony, nor does it include the affidavit examined by the trial court. "It is well settled that the duty of presenting a record adequate for intelligent appellate review on points assigned as error falls upon the appellant." Bambi's Roofing, Inc. v. Moriarty, 859 N.E.2d 347, 352 (Ind. Ct. App. 2006). Accordingly, Sweatt has failed to establish reversible error arising from the exclusion of pertinent evidence.

II. Sufficiency of the Evidence

To convict Sweatt of Child Molesting, as a Class A felony, the State was required to show that he, being at least twenty-one years of age, performed sexual intercourse or deviate sexual conduct with a child under fourteen years of age. Ind. Code § 35-42-4-3(a)(1). To

⁴ Rule 412 provides that in prosecutions for a sex crime, evidence of a victim's or witness' past sexual conduct is inadmissible, except in the following circumstances: (1) evidence of the victim's or witness' past sexual conduct with the defendant; (2) evidence that shows that some person other than the defendant committed the act upon which the prosecution is founded; (3) evidence that the victim's pregnancy at the time of trial was not caused by the defendant; or (4) evidence of a conviction for a crime offered for impeachment under Rule 609.

convict Sweatt of Sexual Misconduct with a Minor, as a Class B felony, the State was required to show that he, being at least twenty-one years of age, performed sexual intercourse or deviate sexual conduct with a child at least fourteen years of age but less than sixteen years of age. Ind. Code § 35-42-4-9(a)(1).

At trial, K.M. testified that Sweatt became her step-father when K.M. was six years old. Soon thereafter, he began to reach under her clothing and fondle her. When K.M. was eleven, in the year 2001, Sweatt began to engage her in oral sex and intercourse. This happened “at least a couple times a month” during the years from 2001 to 2004. (Tr. 27.) After K.M. discovered Sweatt taking a shower with K.M.’s four-year-old half-sister, K.M. reported that Sweatt had been molesting her.

On appeal, Sweatt claims that there is a lack of evidence to support his convictions because K.M.’s testimony is incredibly dubious. He alleges that K.M. lacks credibility because she could not recall some details during her testimony, she once told a distant relative that she and Sweatt “had sex” but later recanted, and she briefly threatened to accuse her first boyfriend of rape after their dating relationship ended. (Tr. 94.)

In a trial before the bench, the court is responsible for weighing the evidence and judging the credibility of witnesses as the trier of fact, and we do not interfere with this function on appeal. O’Neal v. State, 716 N.E.2d 82, 87 (Ind. Ct. App. 1999), trans. denied. In reviewing a claim of insufficient evidence, we look only to the evidence most favorable to the judgment and all reasonable inferences that support the judgment. Hubbard v. State, 719 N.E.2d 1219, 1220 (Ind. 1999.) We must affirm a conviction if the factfinder heard evidence

of probative value from which it could have inferred the defendant's guilt beyond a reasonable doubt. Graham v. State, 713 N.E.2d 309, 311 (Ind. Ct. App. 1999), trans. denied. A victim's testimony even if it is uncorroborated is ordinarily sufficient to sustain a conviction for child molesting. Bowles v. State, 737 N.E.2d 1150, 1152 (Ind. 2000); Snider v. State, 274 Ind. 401, 406, 412 N.E.2d 230, 234 (1980).

In rare cases, the "incredible dubiousity rule" will permit an appellate tribunal to impinge upon the factfinder's responsibility to judge the credibility of witnesses. Berry v. State, 703 N.E.2d 154, 160 (Ind. 1998). Application of the rule is limited to cases where a sole witness provides inherently contradictory testimony that is equivocal or coerced, and no circumstantial evidence supports the defendant's guilt. Id.

Sweatt argues that K.M.'s credibility is undermined because she recanted an earlier allegation against him and also threatened her former boyfriend with a rape allegation. Sweatt ignores the testimony of K.M.'s distant cousin that K.M. recanted her allegation after appearing "embarrassed" and "scared that she let it get out." (Tr. 95.) He also ignores the testimony of the former boyfriend that K.M. immediately apologized to him for a threat made during the heat of an argument, and did not pursue an unfounded allegation. Nevertheless, the incredible dubiousity rule may have application only when the factfinder is presented with equivocal testimony. See Corbett v. State, 764 N.E.2d 622, 626 (Ind. 2002) (holding that inconsistencies between a witness's statement to police and his trial testimony did not render his testimony inherently contradictory as a result of coercion); Love v. State, 761 N.E.2d 806, 810 (Ind. 2002) (holding that the victim's testimony was not incredibly dubious or coerced

although she initially denied, in out-of-court conversation with her mother, that the defendant had molested her); Holeton v. State, 853 N.E.2d 539, 541 (Ind. Ct. App. 2006) (holding that discrepancies between statements made to police and trial testimony goes only to the weight of that testimony and witness credibility and does not render the testimony inherently contradictory).

Sweatt also complains that K.M. did not recall certain details consistent with having been subjected to intercourse against her will. However, he identifies no basis for applying the incredible dubiousity rule. K.M. did not provide testimony that was inherently contradictory, equivocal or coerced. Sweatt simply asks this Court to assess K.M.'s credibility absent the exceptional circumstances that support the application of the incredible dubiousity rule. This we cannot do. Sufficient evidence of probative value supports Sweatt's convictions for Child Molesting and Sexual Misconduct with a Minor.

III. Sentence

Finally, Sweatt argues that the trial court abused its discretion in the weighing of aggravators and mitigators, such that an "impermissibly harsh" sentence was imposed upon him. Appellant's Brief at 16. He contends that the mitigating circumstances outweigh the aggravating circumstances and that he should have received no more than the presumptive sentence for a Class A felony.

At the time of Sweatt's offenses, Indiana Code Section 35-50-2-4 provided in relevant part: "A person who commits a Class A felony shall be imprisoned for a fixed term of thirty (30) years, with not more than twenty (20) years added for aggravating circumstances or not

more than ten (10) years subtracted for mitigating circumstances.” Indiana Code Section 35-50-2-5 provided in relevant part: “A person who commits a Class B felony shall be imprisoned for a fixed term of ten (10) years, with not more than ten (10) years added for aggravating circumstances or not more than four (4) years subtracted for mitigating circumstances.” Accordingly, Sweatt received the presumptive sentence for the Class B felony conviction.

In sentencing Sweatt to a term of ten years more than the presumptive sentence for the Class A felonies, the trial court found the following aggravators: Sweatt violated a position of trust, the acts took place over a long period of time, and the acts were planned rather than the result of impulsivity. The trial court found Sweatt’s lack of a significant criminal history and his provision of financial support for his family to be mitigating.

In general, sentencing determinations are within the trial court’s discretion. Cotto v. State, 829 N.E.2d 520, 523 (Ind. 2005). We will revise a sentence only when it is inappropriate in light of the nature of the offenses and the character of the offender. Ind. Appellate Rule 7(B).

Sweatt’s character is such that he had only a minor criminal history, consisting of a single misdemeanor. Nevertheless, Sweatt has a criminal history and he does not cite authority for the proposition that he is entitled to great mitigating weight because the criminal history is not worse. Too, he had been gainfully employed for a long period of time and had provided support to his minor children. However, “[m]any persons 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 an undue hardship.” Dowdell v. State, 720 N.E.2d 1146, 1154 (Ind. 1999). Sweatt has identified no such special circumstances.

With regard to the nature of the offenses, they spanned several years, and were facilitated by Sweatt’s role as K.M.’s step-parent having the responsibility for her care. Sweatt was often alone at home with K.M. while her mother worked, did errands, or picked up the younger children from their grandparents’ home. Sweatt groomed K.M. for sexual contact from a very early age, and began to engage her in sexual intercourse at age eleven. The episodes were planned to occur during the half-hour or hour after K.M. got off the school bus and before her mother typically returned home with the younger siblings. Sweatt kept condoms hidden in the basement to use during those encounters. The molestations occurred several times per month. The record amply supports the trial court’s findings that the offenses were planned, repetitive, and in violation of Sweatt’s position of trust with K.M.

In light of the foregoing, we do not find that the trial court abused its discretion in weighing the aggravators and mitigators, nor do we find the aggregate forty-year sentence to be inappropriate.

Affirmed.

BAKER, C.J., and VAIDIK, J., concur.