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IN THE
COURT OF APPEALS OF INDIANA

TIFFANY STALLWORTH,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A05-0704-CR-205
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Steven Rubick, Commissioner
Cause No. 49G04-0603-FA-058561

December 4, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Tiffany Stallworth appeals the sentences she received after pleading guilty to two counts of Child Molesting,[1] a class B felony. Specifically, Stallworth argues that the trial court found an aggravating factor that was not supported by the record and that her sentence is inappropriate in light of the nature of the offenses and her character. Finding no error, we affirm the judgment of the trial court.

FACTS

T.B. was born on August 22, 1998. Stallworth, who had been romantically involved with T.B.'s mother for more than seven years, lived in the same house as T.B. and had known her since birth. Multiple times between August 22, 2004, and February 21, 2006, Stallworth performed or submitted to deviate sexual conduct with T.B. Although Stallworth told T.B. she would kill her mother if T.B. told anyone about the molestation, T.B. eventually confided in her school principal.

Trina Hawkings-Staten, an investigator for the Marion County Department of Child Services, and Jessica Irish, a forensic child interviewer, separately interviewed T.B. on February 21, 2006. During the interviews, T.B. referred to Stallworth as her "second mother" and told Irish that Stallworth had molested her multiple times. Ex. 1 at 31. T.B. detailed the multiple occasions on which Stallworth had licked her finger and inserted it into T.B.'s vagina. Stallworth also asked T.B. to perform oral sex on her, but T.B. refused. Additionally, T.B., indicated that Stallworth had licked her chest and made T.B. lick Stallworth's chest on more than one occasion.

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[1] Ind. Code § 35-42-4-3.

On March 30, 2006, the State charged Stallworth with one count of class A felony child molesting and two counts of class C felony child molesting. On February 23, 2007, the State amended the charging information to add Count IV—class B felony child molesting—and Count V—class B felony attempted child molesting. Stallworth pleaded guilty to Count IV and V that same day, and the State dismissed the remaining three counts. The parties' plea agreement left sentencing open to the trial court's discretion and, after a sentencing hearing on March 9, 2007, the trial court sentenced Stallworth to ten years imprisonment for each conviction. The trial court ordered the sentences to run consecutively, for an aggregate term of twenty years imprisonment. Stallworth now appeals.

DISCUSSION AND DECISION

We review challenges to the trial court's sentencing process for an abuse of discretion. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind. 2007).[2] Sentencing statements are not required to contain a finding of aggravators or mitigators; rather, they need include only a "reasonably detailed recitation of the trial court's reasons for imposing a particular sentence." Id. If the statement does, however, include a finding of aggravators or mitigators, then it must "identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating." Id.

Indiana Code section 35-50-2-5 provides that a person who commits a class B felony

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[2] The exact dates on which Stallworth molested T.B. are unclear and the charging information cites an eighteen-month time span from August 22, 2004, to February 21, 2006. The Indiana felony sentencing statutes were amended on April 25, 2005, and our Supreme Court has held that we apply the version of the statutes that was in effect when the defendant committed the crime. Gutermuth v. State, 868 N.E.2d 427, 431

shall be imprisoned for a fixed term of between six and twenty years, with the advisory sentence being ten years. At sentencing, the trial court declined to find Stallworth's minimal criminal history to be an aggravating factor but did find the "long-term pattern of conduct" and Stallworth's violation of her position of trust with T.B. to be aggravators. Tr. p. 23. The trial court found Stallworth's guilty plea and her remorse to be mitigating factors. After balancing the factors, the trial court found the weight of the mitigators and aggravators to be in equipoise and imposed ten years imprisonment on each conviction.

I. Multiple Acts of Molestation

Stallworth argues that the evidence in the record does not support the trial court's finding that the long-term pattern of molestation was an aggravating factor. Therefore, Stallworth argues that the trial court abused its discretion by "entering a sentencing statement that explains reasons for imposing a sentence . . . but the record does not support the reasons." Anglemyer, 868 N.E.2d at 490.

At the child hearsay hearing,[3] a forensic child interviewer testified that T.B. told her that "on more than one occasion" Stallworth made T.B. suck on or lick her nipples. Ex. 1 at 31. The investigator also testified that T.B. told her that Stallworth stuck her finger in T.B.'s vagina "on more than one occasion." Id. Additionally, Stallworth asked T.B. to perform oral sex on her but T.B. refused. At her deposition, T.B. attested that Stallworth touched her

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n.4 (Ind. 2007). Because Stallworth and the State both apply the amended sentencing statutes and rely on our Supreme Court's ruling in Anglemyer, we also apply the amended version thereof.

[3] The transcripts from this hearing and T.B.'s deposition were admitted without objection as evidence at the sentencing hearing. Tr. p. 16.

inappropriately "a lot" and told her that she would kill her mother if T.B. told anyone. Ex. 3 at 72. While Stallworth complains that T.B. never specified how many times constituted "a lot," there is ample evidence in the record that Stallworth molested T.B. multiple times.[4] Based on the evidence in the record, we cannot conclude that the trial court abused its discretion by finding Stallworth's multiple molestations of T.B. to be an aggravating factor.

II. Appropriateness

Stallworth argues that her twenty-year sentence is inappropriate in light of the nature of the offenses and her character. Pursuant to Indiana Appellate Rule 7(B), our court has the constitutional authority to revise a sentence if, after due consideration of the trial court's decision, we find that the sentence is "inappropriate in light of the nature of the offense and the character of the offender." We defer to the trial court during appropriateness review, Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007), and we refrain from merely substituting our judgment for that of the trial court, Foster v. State, 795 N.E.2d 1078, 1092 (Ind. Ct. App. 2003). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

Regarding the nature of the offenses, Stallworth molested T.B. multiple times while the girl was no more than seven years old. Even though Stallworth was romantically involved with T.B.'s mother and T.B. considered Stallworth to be her "second mother," ex.. 1 at 31, Stallworth violated that position of trust and told T.B. that she would kill her mother if

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[4] Stallworth does not argue that she was convicted of each act of molestation that she committed. See Kien v. State, 782 N.E.2d 398, 411 (Ind. Ct. App. 2003) (finding that the trial court should not have considered

T.B. told anyone about the molestation, ex. 3 at 72. In light of these circumstances, we do not find the nature of the offenses to aid Stallworth's argument.

Turning to her character, Stallworth emphasizes that she has no prior felony convictions, has participated in a sex offender program and a substance abuse therapy group, pleaded guilty, and hopes to attend college in the future. While we applaud Stallworth's efforts to obtain her GED, Stallworth's sexual behavior with T.B. demonstrates her true character. Stallworth violated a position of trust in an attempt to fulfill her own sexual desires, showing her selfish inability to place T.B.'s well being above her own. Furthermore, Stallworth continued to molest T.B. even though she had numerous opportunities to reflect on the illegality of her behavior and the negative impact her actions could have on T.B. Finally, Stallworth waited until three days before a scheduled jury trial to plead guilty and, in exchange for the guilty plea, the State dismissed one class A and two class B felonies. Therefore, it appears that Stallworth's decision to plead guilty may have been largely pragmatic,[5] and we do not find her character to aid her inappropriateness argument.

Based on the nature of the offenses and Stallworth's character, we do not find the trial court's imposition of the advisory sentence for each offense and its decision to run the sentences consecutively to be inappropriate. Because we do not find Stallworth's twenty-year sentence to be inappropriate, we affirm the judgment of the trial court.

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defendant's multiple acts of molestation to be an aggravating factor when defendant was convicted for each act).

[5] The State's original charges exposed Stallworth to a maximum of sixty-six years imprisonment. I.C. §§ 35-50-2-4, -6. Although the parties' plea agreement left sentencing to the discretion of the trial court, the maximum sentence Stallworth could have received was forty years imprisonment. I.C. § 35-50-2-5.

The judgment of the trial court is affirmed.

BRADFORD, J., concur.

RILEY, J., concur in part and dissent in part with opinion.

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	)	
Appellee-Plaintiff.	)	

Judge, Riley, concurring in part and dissenting in part with separate opinion.

I respectfully concur in part and dissent in part. I find the consecutive nature of the sentences inappropriate when considering Stallworth's character, as evidenced by her lack of criminal history. Stallworth's criminal history consists of a single conviction for disorderly conduct, a misdemeanor, six years prior to being charged in this case. I acknowledge that crimes against children are particularly contemptible. *Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001). However, lack of criminal history is a significant mitigating factor. *Powell v. State*, 769 N.E.2d 1128, 1136 n. 7 (Ind. 2002). I find Stallworth's lack of criminal history speaks equally for her character as the facts which the majority relies upon to affirm her

twenty-year aggregate sentence. I would remand to the trial court with instructions that it re-sentence Stallworth to ten years imprisonment for each conviction, and order the sentences to run concurrent. I concur in all other aspects of the majority's decision.