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IN THE
COURT OF APPEALS OF INDIANA

ERIC LEO ARMSTRONG, IV,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 79A02-0705-CR-372
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Thomas H. Busch, Judge
Cause No. 79D02-0506-FB-51

November 30, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARNES, Judge

Case Summary

Eric Armstrong IV appeals his sentence for two counts of Class D felony sexual misconduct with a minor. We reverse and remand.

Issues

Armstrong presents two issues, which we restate as:

I. whether the trial court properly characterized Armstrong as in a position of trust with the victim; and

II. whether his sentence is appropriate in light of the nature of the offense and his character.

Facts

Armstrong was a twenty-one year old student at Purdue University when he coached L.S.'s youth soccer team as a volunteer assistant. L.S. was eleven years old during that soccer season. The two did not have regular contact after the season, and there were long periods without any contact. Sometime during the summer of 2005, L.S. contacted Armstrong via America Online instant messaging after obtaining his screen name.

In August 2005, Armstrong and L.S. arranged to meet during the night. He was twenty-four years old at the time and L.S. was fourteen. L.S. got into Armstrong's vehicle outside her father's house. The two began hugging and kissing. L.S. placed her hand on Armstrong's genital area.

On September 16, 2005, L.S. reported the incident to Lafayette Police. The State charged Armstrong with Class B felony sexual misconduct with a minor and two counts

of Class C felony sexual misconduct with a minor on September 23, 2005. On February 16, 2007, Armstrong pled guilty to two counts of Class D felony sexual misconduct with a minor. The plea agreement stipulated that Armstrong would serve a term with Tippecanoe County Community Corrections in lieu of an executed sentence.

On April 10, 2007, the trial court sentenced Armstrong to three years for each charge, to run concurrently. The sentence was suspended and to be served on supervised probation.[1] The trial court also imposed a $10,000.00 fine and ordered Armstrong to pay $1,000.00 to the Sex Crimes Victim's Fund and $100 to the Child Abuse Prevention Fund. This appeal followed.

Analysis

Our supreme court recently provided an outline for the respective roles of trial and appellate courts under the 2005 amendments to Indiana's sentencing statutes. See Anglemyer v. State, 868 N.E.2d 482, 491 (Ind. 2007). First, a trial court must issue a sentencing statement that includes "reasonably detailed reasons or circumstances for imposing a particular sentence." Id. Second, the reasons or omission of reasons given for choosing a sentence are reviewable on appeal for an abuse of discretion. Id. Third, the weight given to those reasons, i.e. to particular aggravators or mitigators, is not

[1] It seems the Tippecanoe County Community Correction would be utilized for this sentence, and it would determine the level at which Armstrong would serve his term. Specifically, the sentencing statement provided: "It is further ordered and adjudged that three (3) years of the sentences of imprisonment should be, and the same hereby are, suspended and the defendant placed on supervised probation for three (3) years to include three (3) years on the Tippecanoe County Community Correction at a level to be determined by the Tippecanoe County Community Correction with a recommendation of home detention." Tr. pp. 11-12.

subject to appellate review. Id. Fourth, the merits of a particular sentence are reviewable on appeal for appropriateness under Indiana Appellate Rule 7(B). Id.

I. Abuse of Discretion

Armstrong argues that the trial court improperly identified the abuse of his position of trust as an aggravator. An abuse of discretion in identifying or not identifying aggravators and mitigators occurs if it is "'clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions to be drawn therefrom.'" Id. at 490 (quoting K.S. v. State, 849 N.E.2d 538, 544 (Ind. 2006)). Additionally, an abuse of discretion occurs if the record does not support the reasons given for imposing a sentence, or the sentencing statement omits reasons that are clearly supported by the record and advanced for consideration, or the reasons given are improper as a matter of law. Id. at 490-91.

The trial court issued detailed oral and written sentencing statements. It relied on Armstrong's position as the former coach of L.S.'s soccer team to make this assessment:

> There is a natural stimulation of warm feelings, even love, between teacher and student, between coach and the coached, between mentor and the mentee. It's one of the ones in which education occurs. It's something that the person in the position of responsibility and trust needs to deal with and make sure that the line is drawn. And make sure that you don't cross the line. And then that's something which the defendant failed in here and of which you are guilty. . . . . I think this is far more than simply sexual misconduct with a minor. There is the relationship that was abused that goes beyond that that makes it an aggravating factor. The law refers to that as a position of trust.

Tr. pp. 60-61.

Armstrong contends he was no longer in a position of trust because three years had passed since he had a coached L.S., and he only had incidental contact with her during that time. He contends their relationship, if any, was one more like that of a neighbor or casual friend and the trial court's classification of a position of trust was in error. We disagree. The facts presented are much different than in other cases where Indiana courts have found a relationship between the perpetrator and victim to be too attenuated to constitute a position of trust. See Edgecomb v. State, 673 N.E.2d 1185, 1198 (Ind. 1996) (reasoning that defendant was not in a position of trust because she was merely a neighbor who conversed with victim occasionally and it was clear victim did not trust defendant, as she told her not to visit after discovering a theft); Oberst v. State, 748 N.E.2d 870, 879-80 (Ind. Ct. App. 2001) (reasoning that the perpetrator who only met the victim at a livestock auction was not in a position of trust just because he told her they had something in common), trans. denied. "The position of trust aggravator is frequently cited by sentencing courts where an adult has committed an offense against a minor and there is at least an inference of the adult's authority over the minor." Rodriguez v. State, 868 N.E.2d 551, 555 (Ind. Ct. App. 2007). Though Indiana courts have noted that the position of trust aggravator is usually applied to parent or stepparents, that type of relationship is not necessary. Id.

Any relationship Armstrong had with L.S. stemmed from his experience as her youth soccer coach. In that role, Armstrong acted as a leader, authority figure, and mentor for L.S. The fact that time had passed between his coaching and the incident does not completely negate this characterization of his role in her life. Armstrong's own

statement to the police revealed that L.S. contacted him to discuss problems she was having with her family and life in general. In listening to these problems, Armstrong was continuing his role as a mentor to L.S. Armstrong's character witness, Professor John Oakes, testified that Armstrong "self-described himself as a mentor" and would act as a big brother figure to the girls he coached. Tr. p. 35. The trial court did not abuse its discretion in finding the position of trust aggravator.

Any weight assigned to this aggravator is not reviewable on appeal. Because Armstrong does not contest any of the other reasons cited or omitted by the trial court in assigning his sentence, we next turn our review to the appropriateness of the sentence under Appellate Rule 7(B).

II. Appropriateness

Having concluded the trial court acted within its lawful discretion in sentencing Armstrong, we now independently assess whether his sentence is inappropriate under Appellate Rule 7(B) in light of his character and the nature of the offense. See Anglemyer, 868 N.E.2d at 491. Armstrong argues the three-year sentence is inappropriate. Although Rule 7(B) does not require us to be "extremely" deferential to a trial court's sentencing decision, we still must give due consideration to that decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. "Additionally, a defendant bears the burden of persuading the appellate court that his or her sentence is inappropriate." Id.

We turn first to the nature of the offense. Considering the type of crime charged and the range of disturbing acts it can encompass, we do not find the facts to be peculiar or especially egregious. As Armstrong's attorney pointed out during sentencing, the incident was isolated and there was no evidence Armstrong acted in a predatory nature. Although it is vexing that Armstrong once coached L.S., we do not believe this aggravating circumstance merits overwhelming weight because of the distant nature of the coaching relationship. As such, we do not believe the nature of the crime by itself warranted the maximum sentence.

Armstrong's character warrants more consideration. Armstrong had no criminal history and was a model student while attending Purdue University. A lack of criminal history is generally a substantial mitigating factor. Cloum v. State, 779 N.E.2d 84, 91 (Ind. Ct. App. 2002) (quoting Loveless v. State, 642 N.E.2d 974, 976 (Ind. 1994)). He was not only involved in various on-campus activities, but also volunteered in the community. After the charges were filed, Armstrong lost his job at Eli Lilly, but has obtained steady employment in retail management since then. He expressed to the trial court that he could have a future in senior management in that company.

Armstrong's professor and fellow coach testified and spoke highly of his character, abilities in the classroom, and talents in coaching. Testimony from Armstrong's father indicated he has strong family support. Armstrong accepted responsibility for his actions and expressed remorse to the victim and her family who attended the sentencing hearing. Although he also pled guilty, we will not assign a great deal of mitigating weight to the plea. Armstrong was initially charged with two Class C

felonies and one Class B felony, and it appears the State could have easily proven these charges. Because Armstrong received a substantial benefit by pleading to two lesser charges and having the remaining charge dismissed his guilty plea is not so mitigating. Payne v. State, 838 N.E.2d 503, 509 (Ind. Ct. App. 2005), trans. denied.

Taken together, we find that the nature of the offense and the character of the offender do not merit a three year sentence. Armstrong received the maximum sentence possible.[2] The advisory sentence for Class D felonies is eighteen months and the maximum term is three years. It should also be noted that the probation department recommended only eighteen months of supervised probation. We hold that Armstrong's sentence should be reduced to eighteen months, to be served on supervised probation in accordance with the terms of his plea agreement and the remainder of the sentencing order.

Conclusion

We find that the trial court did not abuse its discretion in finding that Armstrong abused a position of trust. In reviewing his sentence under Rule 7(B), however, we find that the three-year sentence is inappropriate in light of the nature of the offense and the character of the offender. The sentence should be reduced to eighteen months on supervised probation. We reverse and remand with instructions for the trial court to enter judgment consistent with this opinion.

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[2] Concurrent rather than consecutive sentences were required here because the two charged crimes took place simultaneously. See Kien v. State, 782 N.E.2d 398, 416 (Ind. Ct. App. 2003), trans. denied.

Reversed and remanded.

KIRSCH, J., and ROBB, J., concur.