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IN THE COURT OF APPEALS OF INDIANA

OCTAVIOUS D. MORRIS,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 82A05-0702-CR-76
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable J. Douglas Knight, Judge
Cause No. 82D02-0609-FC-722 & 82D02-0601-FD-54

November 28, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Octavious Morris appeals his sentence for two counts of sexual misconduct with a minor as class C felonies.[1] Morris raises one issue, which we revise and restate as whether Morris's sentence is inappropriate in light of the nature of the offense and the character of the offender.[2] We affirm.[3]

The relevant facts follow. On January 20, 2006, the State charged Morris with auto theft as a class D felony[4] under cause number 82D02-0601-FD-54 ("Cause #54"). On March 23, 2006, Morris pleaded guilty to auto theft as a class D felony. On April 25, 2006, the trial court sentenced Morris to eighteen months and suspended all but one hundred days.

In July 2006, Morris, who was eighteen years old, had sexual intercourse with M.P., who was between fourteen and sixteen years old, on two different occasions. The first time Morris had sexual intercourse with M.P. he was "strung out on marijuana and cocaine." Appellee's Appendix at 7. When M.P. told Morris that she was too young and he would get in trouble for having sex with her, Morris told her that he had been to prison

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[1] Ind. Code § 35-42-4-9 (2004).

[2] Morris argues that his sentence is manifestly unreasonable. However, the Indiana Supreme Court amended Ind. Appellate Rule 7(B), effective January 1, 2003. Under the amended rule, in considering whether to revise a sentence, we must determine if the sentence is "inappropriate" rather than whether the sentence is "manifestly unreasonable."

[3] We note that this is a consolidated appeal of cause number 82D02-0601-FD-54 ("Cause #54") and cause number 82D02-C01-0609-FC-722 ("Cause #722"). Although this is a consolidated appeal, Morris does not appeal the revocation of his probation in Cause #54 or his sentence in Cause #54.

[4] Ind. Code § 35-43-4-2.5 (2004).

and did not have a problem going back to prison. As a result of the encounters, M.P. was infected with gonorrhea and syphilis.

The State charged Morris with two counts of sexual misconduct with a minor as class C felonies under cause number 82D02-C01-0609-FC-722 ("Cause #722"). Morris pleaded guilty as charged. The trial court found Morris's mental illness and severe depression as a mitigator. The trial court found that Morris's heavy cocaine use "kind of cuts both ways as a mitigator and a[n] aggravator." Transcript at 36. The trial court found the following aggravators: Morris's persistent pattern of conduct that is antisocial, Morris's criminal history, Morris was on probation at the time of the offense, Morris understood that the victim was underage, Morris told the victim that he had been to prison before and it was no problem to go back, and Morris transmitted two sexually communicable diseases to the victim. The trial court sentenced Morris to four years for each count and ordered that the sentences be served consecutively.

At the same hearing, the trial court also found that Morris failed to report to the probation office and that he tested positive for cocaine and marijuana. The trial court revoked Morris's probation under Cause #54, and sentenced him to the Indiana Department of Correction for eighteen months, and ordered that this sentence be served consecutively to the sentences in Cause #722.

The sole issue is whether Morris's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute 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." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). Morris argues that we should revise the consecutive sentences for the two counts of sexual misconduct with a minor as class C felonies to concurrent sentences.

Our review of the nature of the offense reveals that Morris had sexual intercourse with M.P. on two different occasions. The first time Morris had sexual intercourse with M.P. he was "strung out on marijuana and cocaine." Appellee's Appendix at 7. When M.P. told Morris that she was too young and he would get in trouble for having sex with her, Morris told her that he had been to prison and did not have a problem going back to prison. As a result of the encounters, M.P. was infected with gonorrhea and syphilis.

Our review of the character of the offender reveals that Morris pleaded guilty to the offenses. Morris has been diagnosed with depression and anxiety and has attempted to kill himself six or seven times. Morris uses cocaine and marijuana. The presentence investigation report reveals that Morris has juvenile adjudications for battery as a class B misdemeanor, escape as a class D felony, and disorderly conduct as a class B misdemeanor. As an adult, Morris has been convicted of auto theft as a class D felony.

After due consideration of the trial court's decision, we cannot say that the sentence is inappropriate in light of the nature of the offense and the character of the offender. See, e.g., Hayden v. State, 830 N.E.2d 923, 930 (Ind. Ct. App. 2005) (holding

that defendant's sentence for sexual misconduct with minors was not inappropriate), trans. denied.

For the foregoing reasons, we affirm Morris's sentence for two counts of sexual misconduct with a minor as class C felonies.

Affirmed.

RILEY, J. and FRIEDLANDER, J. concur