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IN THE
COURT OF APPEALS OF INDIANA

Robert R. Wilmsen,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 31, 2022

Court of Appeals Case No. 21A-CR-1214

Appeal from the Elkhart Superior Court

The Honorable Teresa L. Cataldo, Judge

Trial Court Cause No. 20D03-1906-F1-10

Mathias, Judge.

[1] Robert R. Wilmsen was convicted in Elkhart Superior Court of three counts of Level 1 felony child molesting, one count of Level 1 felony attempted child molesting, two counts of Level 4 felony sexual misconduct with a minor, one count of Level 4 felony attempted sexual misconduct with a minor, two counts of Level 5 felony sexual misconduct with a minor, and one count of Level 6

felony dissemination of matter harmful to minors. Wilmsen was also found to be a repeat sex offender. He was ordered to serve a 190-year aggregate sentence in the Department of Correction. Wilmsen appeals and argues that his sentence is inappropriate in light of the nature of the offense and the character of the offender.

[2] We affirm.

Facts and Procedural History

[3] Wilmsen repeatedly molested his girlfriend's daughters, K.F. and M.F., for several months in 2018 and 2019. In May 2019, twelve-year-old K.F. started crying and told her school's librarian that she was afraid to go home because Wilmsen was at the home. K.F. then stated that Wilmsen "rapes" her. Tr. Vol. 2, p. 111. The librarian reported the disclosure to the appropriate authorities, and, as a result, the Department of Child Services and law enforcement officers investigated K.F.'s allegation.

[4] Twelve-year-old K.F. and her fourteen-year-old sister, M.F., were forensically interviewed by Child Abuse Prevention Services in Elkhart County. During the interview, M.F. reported that Wilmsen engaged in sexual conduct with her. The girls were also examined at St. Joseph Regional Medical Center. During that examination, K.F. stated that Wilmsen had sexually abused her the day before. The examining nurse took DNA swabs of K.F.'s right breast, palms, fingernails, and genitalia. It was found to be 7.4 billion times more likely that the DNA

from K.F.'s external genitalia originated from Wilmsen than an unknown, unrelated individual.

[5] On May 20, 2019, Detective Michael Price obtained a search warrant for Wilmsen's house. During the search, he found a sex toy that K.F. had described in her interview. He also discovered a pornography collection.

[6] As a result of the investigation, Wilmsen was charged with three counts of Level 1 felony child molesting, one count of Level 1 felony attempted child molesting, two counts of Level 4 felony sexual misconduct with a minor, one count of Level 4 felony attempted sexual misconduct with a minor, two counts of Level 5 felony sexual misconduct with a minor, and one count of Level 6 felony dissemination of matter harmful to minors. The State also alleged that Wilmsen was a repeat sexual offender.

[7] At trial, K.F. testified that Wilmsen touched her breasts, buttocks, and vagina with his hand and penis. K.F. could not recall how many times Wilmsen touched her but stated that it occurred "[a]lmost every day." Tr. Vol. 4, pp. 52, 65. K.F. testified to six specific occasions that Wilmsen touched her sexually with either his hands or penis. K.F. described multiple incidents of Wilmsen inserting and attempting to insert his penis in her vagina, causing her pain. K.F. also described Wilmsen touching her with a sex toy in her buttocks and her vagina. Wilmsen made K.F. touch his penis with her mouth. And he made K.F. watch pornographic movies. K.F. described the content of the movies to the jury.

[8] M.F. testified that Wilmsen's abuse began when she was thirteen and continued after her fourteenth birthday. She testified that Wilmsen touched her "[t]oo many [times] to count." Tr. Vol. 4, p. 135. He touched her vagina with his hands and mouth. Wilmsen also touched her breasts. M.F. also testified to three specific incidents where Wilmsen attempted to insert his penis into M.F.'s vagina, but she managed to stop him by tensing up and telling him that it hurt. Wilmsen told M.F. to suck on his penis but she refused to do so. She also testified to one occasion where Wilmsen placed M.F.'s hand on his penis. Tr. Vol. 4, pp. 139–40. Wilmsen made M.F. watch pornography and touched her afterwards. Wilmsen told M.F. that she should not tell anyone he touched her.

[9] Wilmsen was found guilty as charged and admitted that he was a repeat sexual offender. Wilmsen's sentencing hearing was held on June 10, 2021. The trial court considered Wilmsen's criminal history as an aggravating circumstance; specifically, Wilmsen has a juvenile adjudication for child molesting and a 1998 felony child molesting conviction. The court also considered as an aggravating circumstance that the harm and injury suffered by the victims was significant and greater than the elements necessary to prove the offenses. Specifically, M.F. felt violated, unloved, and depressed as a result of being molested by Wilmsen. Appellant's Conf. App. pp. 170, 199. Both M.F. and K.F. do not "feel safe around anyone they don't know and are suffering emotionally as a result of" the molestation. *Id*. K.F. has become destructive and "very angry." *Id.* at 172; Tr. Vol. 4, p. 226. The court also found K.F.'s age at the time of the offenses, that Wilmsen had care, custody, or control over his victims, and his history of

drug and alcohol abuse as aggravating circumstances. The trial court considered Wilmsen's proposed mitigating circumstances but concluded that "the mitigating circumstances taken as a whole do not outweigh even one of the aggravating circumstances." Appellant's Conf. App. p. 200. Finally, the court noted that "the criminal conduct delineated in each of the counts in this case occurred on dates separate from the other counts." *Id*.

[10] For each Level 1 felony child molesting and attempted child molesting conviction, the trial court imposed thirty-five-year sentences. For each Level 4 felony sexual misconduct with a minor and attempted sexual misconduct with a minor conviction, the trial court imposed ten-year sentences. For each Level 5 felony sexual misconduct with a minor conviction, the trial court imposed five-year sentences. For his Level 6 felony dissemination of a matter harmful to a minor conviction, the court ordered Wilmsen to serve two years. All sentences imposed were ordered to be served consecutive to a sentence imposed on another conviction. Finally, the trial court imposed an additional consecutive eight-year term for the repeat sexual offender adjudication. In total, Wilmsen was ordered to serve a 190-year sentence.

Discussion and Decision

[11] Wilmsen argues that his 190-year aggregate sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). Under this rule, we may modify a sentence that we find is "inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B). Making this determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to

others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under Rule 7(B), however, is reserved for "a rare and exceptional case." *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam).

[12] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to "leaven the outliers," not to achieve what may be perceived as the "correct" result. *Id.* Thus, deference to the court's sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant's character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[13] For each of Wilmsen's convictions, the trial court imposed an enhanced, but less-than-maximum sentence. For the Level 1 felony child molesting convictions, which were also credit-restricted felonies, the trial court was authorized to impose a maximum sentence of fifty years. *See* I.C § 35-50-2-4(c). For each of Wilmsen's four Level 1 felony convictions, the trial court imposed a thirty-five-year sentence. The sentencing range for a Level 4 felony is two to twelve years. I.C. § 35-50-2-5.5. The trial court imposed ten-year sentences for each Level 4 felony conviction. The sentencing range for a Level 5 felony is one to six years, and Wilmsen was ordered to serve five years for each Level 5

felony conviction. *See* I.C. § 35-50-2-6. Finally, the trial court imposed a two-year sentence for Wilmsen's Level 6 felony conviction, which is six months less than the maximum sentence allowed. *See* I.C. § 35-50-2-7. And the court enhanced Wilmsen's sentence by eight years for the repeat sexual offender adjudication.

[14] The nature of Wilmsen's offenses was horrific. He repeatedly molested his girlfriend's daughters for months before K.F. disclosed the abuse. The State proved ten separate offenses, but both girls' testimonies established that Wilmsen committed offenses against them on nearly a daily basis. Wilmsen molested both children, engaged in sexual misconduct with both children, made them watch pornography, and inserted a sex toy into K.F.'s vagina and buttocks.

[15] We reject Wilmsen's argument that the nature of his offenses does not support the length of his aggregate sentence because the children did not suffer physical injuries requiring medical care. Both girls testified that they suffered pain when Wilmsen molested them. And we observe that the State presented evidence that both M.F. and K.F. have suffered trauma due to Wilmsen's repeated acts of molestation. They feel unsafe, unloved, angry, and suffer from depression.

[16] Wilmsen also failed to present any compelling evidence that would establish evidence of good character. Wilmsen was in a position of care, custody, or control over the children that he victimized repeatedly over a period of several months. He has a history of drug and alcohol abuse. Wilmsen also has a prior

conviction for sexual misconduct with a minor. The conviction is more than twenty-years-old and Wilmsen successfully completed his probation in that case, but those facts are not compelling evidence of good character when considered in light of the criminal conduct he committed in this case.

[17] For all of those reasons, we conclude that Wilmsen's 190-year aggregate sentence is not inappropriate in light of the nature of the offense and the character of the offender.[1] Quite simply, this is not "a rare and exceptional case" warranting sentence modification under Rule 7(B). *Livingston*, 113 N.E.3d at 612.

Conclusion

[18] Wilmsen has not persuaded us that his 190-year aggregate sentence is inappropriate in light of the nature of the offense and the character of the offender.

[19] Affirmed.

Bailey, J., and Altice, J., concur.

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[1] Our court has recently affirmed lengthy sentences in cases involving similar offenses. *See e.g.*, *Vasquez v. State*, 174 N.E.3d 623, 634–35 (Ind. Ct. App. 2021) (concluding that Vasquez's aggregate 288-year sentence for nine counts of child molesting is not inappropriate), *trans. denied*; *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019) (affirming the defendant's 570-year aggregate sentence for multiple counts of child molesting).