MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David W. Eades,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 11, 2022

Court of Appeals Case No. 21A-CR-847

Appeal from the Fountain Circuit Court

The Honorable Stephanie S. Campbell, Judge

Trial Court Cause No. 23C01-1909-F1-374

Najam, Judge.

Statement of the Case

[1] David W. Eades appeals his sentence after he pleaded guilty to one count of child molesting, as a Class A felony; two counts of child molesting, as Level 1 felonies; two counts of child molesting, as Class C felonies; two counts of sexual misconduct with a minor, as Level 4 felonies; and five counts of incest, as Level 5 felonies. Eades raises two issues for our review:

1. Whether the trial court abused its discretion when it sentenced him.

2. Whether his sentence is inappropriate in light of the nature of the offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] Eades has a minor daughter, A.E. When A.E. was four or five years old, Eades began to engage in "inappropriate sexual conduct" with her. Tr. at 34. Specifically, Eades would use his hands to touch A.E. under her clothing, and he would have A.E. touch him under his clothing. Eades also made A.E. perform oral sex on him. When A.E. was ten or eleven years old, Eades forced her to submit to sexual intercourse. Thereafter, Eades engaged in sexual intercourse with A.E. "[a]t least every week" until she was seventeen years old,

at which time A.E. reported Eades' conduct to her boss and spoke with law enforcement.[1]

[4] The State charged Eades with one count of child molesting, as a Class A felony (Count 1); two counts of child molesting, as Level 1 felonies (Counts 2 and 3); two counts of child molesting, as Class C felonies (Counts 4 and 5); two counts of sexual misconduct with a minor, as Level 4 felonies (Counts 6 and 7); and five counts of incest, as Level 5 felonies (Counts 8 through 12). Eades pleaded guilty as charged. In exchange, the State agreed that sentencing would be open to the trial court's discretion except that the sentences would run concurrently. The trial court accepted Eades' guilty plea and entered judgment of conviction accordingly.

[5] At a hearing, Eades presented evidence that he suffers from Tourette's Syndrome. And he testified that, in addition to being a "movement disorder," Tourette's Syndrome has a "mental side" that causes "impulsive sexual behavior." Tr. at 51. Eades then presented an article as evidence that describes Tourette's Syndrome as a neurological disorder that is frequently associated with "behavioral comorbidities," including "impulse control problems," exhibition of obscene language or gestures, and inappropriate obsessions. Ex.

[1] There was a period of approximately one month when A.E. was sixteen years old during which Eades temporarily stopped his behavior.

at 5. Eades then asserted that his Tourette's Syndrome is a mental illness and neurological disorder that should be given weight as a mitigator.

[6] At sentencing, the court identified several aggravators and mitigators and sentenced Eades to fifty years each for Counts 1 and 2, forty years for Count 3, eight years each for Counts 4 and 5, twelve years each for Counts 6 and 7, and six years each for Counts 8 through 12. The court then ordered the sentences to run concurrently for an aggregate sentence of fifty years, with forty-five years executed in the Department of Correction and five years suspended. This appeal ensued.

Discussion and Decision

Issue One: Abuse of Discretion in Sentencing

[7] Eades first contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). An abuse of discretion occurs if the decision 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. *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted).

[8] A trial court abuses its discretion in sentencing if it does any of the following:

> (1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3)

> enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-91 (Ind.), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007).

[9] Here, at sentencing, the trial court identified as aggravating the fact that the harm suffered by A.E. was greater than the elements necessary to prove the commission of the offense; that Eades committed the offenses over a "prolonged" period of time; that Eades had the care, custody, and control over A.E.; the "severe" physical and emotional harm to A.E.; the "efforts" by Eades to avoid detection of his behavior; and that Eades' behavior continued until A.E. reported it. Tr. at 81-82. And the court identified as mitigating the fact that Eades accepted responsibility by pleading guilty, that he cooperated with law enforcement during the investigation, Eades' limited criminal history, and his diagnosis of Tourette's Syndrome. The court then sentenced Eades to an aggregate term of fifty years, with forty-five years executed and five years suspended.

[10] On appeal, Eades concedes that the trial court "acknowledge[d] his mental illness and disease[.]" Appellant's Br. at 7. However, Eades asserts that the court "failed to apply any discernable criteria to measure the impact of his mental illness and neurological disorder." *Id*. at 8. To support his contention, Eades relies on our Supreme Court's opinion in *Smith v. State*, 770 N.E.2d 818 (Ind. 2002). In that case, Smith pleaded guilty but mentally ill to murder and

guilty to several other crimes. *Id*. at 820. Smith then presented reports to the trial court discussing his history of mental illness in support of his plea of guilty but mentally ill. In sentencing Smith, the court considered his mental illness but ultimately declined to identify any mitigators.

[11] On appeal, Smith asserted that the trial court had abused its discretion when it sentenced him. Our Supreme Court acknowledged that "the trial court is not required to find the presence of mitigating factors" or "explain why it has found that a factor does not exist." *Id*. at 822-23. But the Court went on to explain:

> Nonetheless, we have held that *in sentencing a guilty but mentally ill defendant*, trial courts "should at a minimum carefully consider on the record what mitigating weight, if any, to accord to any evidence of mental illness, even though there is no obligation to give the evidence the same weight the defendant does." *Weeks v. State*, 697 N.E.2d 28, 30 (Ind.1998). As we have explained, there are several factors that bear on this determination, including: (1) the extent of the defendant's inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime. *Id*.; *Archer* [*v. State*, 689 N.E.2d 684, 685 (Ind. 1997)].

Id. at 823 (emphasis added). The Court then concluded that there was "no indication" that the trial court had applied any of the *Weeks* criteria before finding Smith's mental illness to have no mitigating weight and remanded for a new sentencing order. *Id*.

[12] As in *Smith*, Eades claims that the trial court abused its discretion by failing to carefully explain why it did not find his mental illness to be a significant mitigating circumstance. However, Eades' reliance on *Smith* is misplaced. That case, as well as *Weeks*, involve defendants who were found guilty but mentally ill. Because Eades pleaded guilty—not guilty but mentally ill—those cases are easily distinguishable.

[13] Here, the trial court acknowledged Eades' diagnosis of Tourette's Syndrome at sentencing and identified it as a mitigator. But Eades contends that the court "showed absolutely no consideration" to it. Appellant's Br. at 8. To the extent Eades contends that the court should have given that mitigator more weight, that claim is not subject to appellate review. *Anglemyer*, 868 N.E.2d at 491. We cannot say that the trial court abused its discretion when it sentenced Eades.[2]

Issue Two: Inappropriateness of Sentence

[14] Eades also contends that his sentence is inappropriate in light of the nature of the offenses and his character. Indiana Appellate Rule 7(B) provides that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in

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[2] In his Statement of the Facts, Eades briefly mentions that he also suffers from obsessive-compulsive disorder. However, Eades does not specifically discuss that disorder in his Argument. To the extent he asserts that the court failed to identify that as a mitigating factor, he has not demonstrated that that proffered mitigator is significant in light of the fact that he repeatedly molested his daughter for several years beginning when she was just four or five years old. Nor does he explain why that factor is significant in light of the fact that it did not in interfere with his ability to graduate from trade school, serve in the military, or work for the Marion County Jail.

light of the nature of the offense and the character of the offender." This court has recently held that "[t]he advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed." *Sanders v. State*, 71 N.E.3d 839, 844 (Ind. Ct. App. 2017). And the Indiana Supreme Court has recently explained that:

> The principal role of appellate review should be to attempt to leaven the outliers . . . but not achieve a perceived "correct" result in each case. *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Defendant has the burden to persuade us that the sentence imposed by the trial court is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.), as amended (July 10, 2007), *decision clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007).

Shoun v. State, 67 N.E.3d 635, 642 (Ind. 2017) (omission in original).

[15] Indiana's flexible sentencing scheme allows trial courts to tailor an appropriate sentence to the circumstances presented, and the trial court's judgment "should receive considerable deference." *Cardwell*, 895 N.E.2d at 1222. Whether we regard a sentence as inappropriate at the end of the day turns on "our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other facts that come to light in a given case." *Id*. at 1224. The question is not whether another sentence is more appropriate, but rather whether the sentence imposed is inappropriate. *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). Deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the

defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[16] Eades contends that his sentence is inappropriate in light of the nature of the offenses because his acts "were clearly the product of a mental illness and neurological disorder" and because he accepted responsibility and "plead[ed] guilty to every single charge." Appellant's Br. at 10-11. Eades also contends that his sentence is inappropriate in light of his character because the "critical component" of his behavior was his mental illness and because he does not have a prior criminal history. *Id*. at 11.

[17] But Eades has not met his burden on appeal to demonstrate that his sentence is inappropriate. With respect to the nature of the offenses, Eades repeatedly sexually molested his daughter from the time she was four or five years old. Then, beginning when A.E. was ten or eleven years old, Eades forced her to submit to sexual intercourse on a weekly basis. As a result of the years of abuse by her own father, A.E. now suffers from "major depression" and post-traumatic stress disorder, she has "trust issues," and she is "scared to go to [her] own home[.]" Appellant's App. Vol. 2 at 60. Eades has not presented compelling evidence portraying the nature of the offenses in a positive light. *See Stephenson*, 29 N.E.2d at 122.

[18] As to his character, we acknowledge that Eades does not have a prior criminal history. However, again, beginning when A.E. was four or five years old, Eades touched A.E. under her clothing and forced A.E. to touch him under his

clothing. Eades' behavior then escalated, and he forced A.E. to perform oral sex on him. Then, when A.E. was ten or eleven years old, Eades forced her to submit to sexual intercourse on a weekly basis. In other words, while Eades does not have a criminal record, he committed these crimes for a period of twelve or thirteen years. In addition, he violated his position of trust over his daughter, which reflects poorly on his character. As such, we cannot say that his sentence is inappropriate.

[19] In sum, the trial court did not abuse its discretion when it sentenced Eades. And Eades' sentence is not inappropriate in light of the nature of the offenses and his character. We therefore affirm Eades' sentence.

[20] Affirmed.

Vaidik, J., and Weissmann, J., concur.