MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Brian A. Karle
Ball Eggleston, PC
Lafayette, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Samuel J. Dayton
Deputy Attorney General

Whitley Pannell
Certified Legal Intern
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Daniel P. Keck,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 31, 2021

Court of Appeals Case No. 21A-CR-502

Appeal from the Tippecanoe Superior Court

The Honorable Steven P. Meyer, Judge

Trial Court Cause No. 79D02-2004-F4-24

Crone, Judge.

Case Summary

[1] Daniel P. Keck appeals the sentence imposed by the trial court following his guilty plea to level 4 felony sexual misconduct with a minor, level 5 felony child exploitation, and being a habitual offender. He contends that his sentence is inappropriate in light of the nature of the offenses and his character. Finding that Keck has not met his burden to demonstrate that his sentence is inappropriate, we affirm.

Facts and Procedural History

[2] In May 2019, thirty-two-year-old Keck began "dating" fifteen-year-old B.D. Appellant's App. Vol. 2 at 162. Keck and B.D. had a sexual relationship and communicated frequently via text messaging and various other types of social media. Those communications often included sexually explicit photographs and videos. The photographs and videos included images of Keck's and B.D.'s exposed genitals, images of them fondling themselves or one another, masturbation, and videos of Keck performing oral sex on or having sexual intercourse with B.D.

[3] On April 14, 2020, the State charged Keck with level 4 felony sexual misconduct with a minor, level 5 felony sexual misconduct with a minor, level 5 felony child solicitation, level 5 felony child exploitation, level 6 felony possession of child pornography, and level 6 felony dissemination of matter harmful to minors. The State also alleged that Keck was a habitual offender. On

that same date, a no-contact order was issued to prevent Keck from communicating with B.D.

[4] On May 5, July 7, and July 15, 2020, Keck sent letters in an attempt to communicate with B.D. In one of those letters, Keck requested that B.D. send him pictures of herself, and in another he instructed her to set up new social media accounts on his behalf so he could store all the photographs and videos of the two of them together. Jail phone records also revealed that Keck tried to communicate with B.D. by telephone on at least two occasions in violation of the no-contact order. Accordingly, the State filed motions to add additional charges that included two counts of class A misdemeanor invasion of privacy.

[5] On February 22, 2021, Keck entered into a plea agreement with the State wherein he agreed to plead guilty to one count of level 4 felony sexual misconduct with a minor and one count of level 5 felony child exploitation, and to being a habitual offender, in exchange for dismissal of the remaining charges. Further, the plea agreement provided that the executed portion of Keck's sentence would be "no less than twelve (12) years and no more than sixteen (16) years." *Id*. at 103. Following a hearing, the trial court imposed concurrent sentences of ten years for the level 4 felony and five years for the level 5 felony. The trial court enhanced the level 4 felony by eight years for the habitual offender enhancement, resulting in an aggregate sentence of eighteen years. The court suspended two years of the sentence to probation, for a total executed sentence of sixteen years. This appeal ensued.

Discussion and Decision

[6] Keck asks that we reduce his sentence pursuant to Indiana Appellate Rule 7(B), which states that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Sentencing is principally a discretionary function in which the trial court's judgment should receive considerable deference." *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). "Such deference should prevail 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). In conducting our review, our principal role is to leaven the outliers, focusing on the length of the sentence and how it is to be served. *Foutch v. State*, 53 N.E.3d 577, 580 (Ind. Ct. App. 2016). "We do not look to determine if the sentence was appropriate; instead we look to make sure the sentence was not inappropriate." *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Ultimately, whether a sentence should be deemed inappropriate "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*, 895 N.E.2d at 1224. Keck bears the burden of persuading this Court that his sentence meets the inappropriateness standard. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016).

[7] Regarding the nature of the offense, the advisory sentence is the starting point that the legislature has selected as an appropriate sentence for the crime committed. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). Keck pled guilty to one count of level 4 felony sexual misconduct with a minor and one count of level 5 felony child exploitation. The sentencing range for a level 4 felony is between two and twelve years, with the advisory sentence being six years. Ind. Code § 35-50-2-5.5. The sentencing range for a level 5 felony is between one and six years, with the advisory sentence being three years. Ind. Code § 35-50-2-6. In addition, Keck admitted to being a habitual offender which carries with it a fixed term between six and twenty years for a person convicted of a level 4 felony. Ind. Code § 35-50-2-8(i)(1). Thus, although Keck faced a maximum executed sentence well in excess of eighteen years, the executed portion of his sentence was capped at sixteen years pursuant to the plea agreement. Staying within that cap, the trial court imposed an eighteen-year aggregate sentence, with sixteen years executed and two years suspended to probation.

[8] At the outset, "we are compelled to emphasize that 'a defendant's conscious choice to enter a plea agreement that limits the trial court's discretion to a sentence less than the statutory maximum should usually be understood as strong and persuasive evidence of sentence reasonableness and appropriateness' and appellate relief should be granted 'only in the most rare, exceptional cases.'" *Merriweather v. State*, 151 N.E.3d 1281, 1286 n.2 (Ind. Ct. App. 2020) (quoting *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006) (Dickson, J., concurring)). While Keck contends that his sexual misconduct and child

exploitation offenses are "less egregious than the 'typical' offense contemplated by the legislature," Appellant's Br. at 9, he has cited us to nothing in the record to support that claim or to persuade us that this is a rare and exceptional case in which we should disregard his plea agreement as strong and persuasive evidence of the appropriateness of the sentence imposed.[1]

[9] Regardless, we need look no further than Keck's character to affirm the sentence imposed by the trial court. "The character of the offender is found in what we learn of the offender's life and conduct." *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). This assessment includes consideration of the defendant's criminal history. *Johnson v. State*, 986 N.E.2d 852 (Ind. Ct. App. 2013). The record reveals that Keck has a lengthy and troubling criminal history, which began with juvenile delinquency adjudications for sexual battery and child molesting and continued with at least five subsequent felony convictions, ten misdemeanor convictions, and countless arrests. It is evident that prior attempts at leniency have wholly failed, as Keck has had his probation revoked on multiple occasions. Moreover, Keck repeatedly attempted to contact the victim in this case from jail in blatant violation of the trial court's no-contact order. Keck clearly demonstrates a disdain for authority and the rule of law that reflects extremely negatively on his character.

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[1] We do not agree with Keck's attempt to downplay the seriousness of his offenses by characterizing them as nonviolent, but we decline to address the nature of his offenses further under the circumstances.

[10] While Keck insists that we should view his character in light of the mental health issues that he has struggled with since a young age, the record reveals that the trial court gave "some mitigating [weight] for [Keck's] mental health" when imposing a less-than-the-statutory-maximum sentence within the strictures of the plea agreement sentencing cap. Tr. Vol. 2 at 70. As we stated above, Keck has given us no reason to think this is an exceptional case that would cause us to question the appropriateness of the trial court's decision. Accordingly, we affirm.

[11] Affirmed.

Bailey, J., and Pyle, J., concur.