MEMORANDUM DECISION

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IN THE

COURT OF APPEALS OF INDIANA

Justin L. Doughty,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 21, 2023

Court of Appeals Case No. 22A-CR-1971

Appeal from the LaGrange Superior Court

The Honorable Lisa M. Bowen-Slaven, Judge

Trial Court Cause No. 44D01-2008-F4-13

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

[1] In the summer of 2019, D.G. was fifteen years old when her mother, Dana, ("Mother") began a romantic relationship with Justin Doughty. That November, Mother and D.G. moved in with Doughty. Around that time, Doughty began complimenting D.G. on her body and her physical beauty. Later that month, Doughty had intercourse with D.G. for the first time. From November of 2019 until July of 2020, Doughty and D.G. engaged in sex acts multiple times. Eventually, the State charged Doughty with two counts of Level 4 felony sexual misconduct with a minor. A jury found Doughty guilty as charged, and the trial court sentenced him to an aggregate twenty-four-year sentence, with twenty-two years executed and two years suspended to probation. Doughty challenges his sentence, alleging that the trial court abused its discretion in sentencing him and that his sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

Facts and Procedural History

[2] D.G. was born in August of 2004. D.G.'s biological father left Mother, D.G., and her siblings when they were young, which led to "a very troubled" and "very hard life" for D.G. Tr. Vol. II p. 89. During the summer of 2019, Mother began dating Doughty, who was born in 1986. In November of 2019, Mother and D.G. moved in with Doughty to Doughty's friend's residence. Doughty then began complimenting D.G.'s figure and appearance, telling her that she has "a nice body" and is "beautiful." Tr. Vol. II p. 112. These

comments made D.G. "uncomfortable at first" but then "made [her] feel confident after a while." Tr. Vol. II p. 112. Later that month, D.G. "let [Doughty] have sex with [her]" after she had kissed him. Tr. Vol. II p. 112. Thereafter, sexual encounters between Doughty and D.G. were "pretty frequent," occurring "whenever [they] were alone[.]" Tr. Vol. II p. 114.

[3] In April or May of 2020, D.G. moved with Mother and Doughty to an apartment in LaGrange. The sexual relationship between Doughty and D.G. continued after the move. At some point, Doughty and Mother got into an argument and Doughty kicked her out of the apartment. D.G., however, "chose to stay." Tr. Vol. II p. 115. After Mother had left, the sexual encounters between Doughty and D.G. "escalated to about […] twice a week." Tr. Vol. II p. 117. Doughty also "would ask [D.G.] to […] give him a blowjob sometimes." Tr. Vol. II p. 116. During this period, D.G. was fifteen years old.

[4] In July of 2020, Jennifer Doughty, Doughty's sister-in-law, reported Doughty and D.G.'s sexual relationship to the Indiana State Police after D.G. had disclosed the encounters to her. The Department of Child Services became involved and removed D.G. from Mother's care. Later that month, D.G. spoke with Detective Juan Arroyo of the LaGrange County Sheriff's Department about her relationship with Doughty. During that interview, D.G. admitted that she and Doughty had had sex; however, she lied and said "it only happened twice over a span of two months" because she "didn't think [Doughty] would get in as much trouble. Or anybody would get in trouble if I lied about it." Tr. Vol. II p. 117.

[5] In August of 2020, the State charged Doughty with two counts of Level 4 felony sexual misconduct with a minor. The case proceeded to a jury trial in June of 2022, after which the jury found Doughty guilty as charged. The trial court sentenced Doughty to an aggregate twenty-four-year sentence, with consecutive sentences of eleven years executed and one year suspended to probation for each conviction.

Discussion and Decision

[6] Doughty raises two issues on appeal: First, he argues that the trial court abused its discretion in sentencing him by considering inappropriate aggravators to enhance his sentence and ordering that his sentences be served consecutively. Second, he argues that his sentence is inappropriate in light of the nature of his offenses and his character.

I. Abuse of Discretion

[7] Doughty claims that the trial court abused its discretion by considering inappropriate aggravators to enhance his sentences and order that they be served consecutively. Sentencing decisions, including the application of aggravating or mitigating factors, rest within the trial court's discretion and are reviewed on appeal only for an abuse of that discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh'g*, 875 N.E.2d 218 (Ind. 2007); *see also Baumholser v. State*, 62 N.E.3d 411, 416 (Ind. Ct. App. 2016), *trans. denied*. "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." *Anglemyer*, 868 N.E.2d at 490. (quotation omitted).

[8] When it comes to aggravating and mitigating factors,

> [a] single aggravating circumstance may be sufficient to enhance a sentence. When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. The question we must decide is whether we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator.

Baumholser, 62 N.E.3d at 417 (internal quotation omitted). However, "a single aggravating circumstance should not be used both to impose an enhanced sentence and consecutive sentences" unless it is particularly egregious. *Lockhart v. State*, 671 N.E.2d 893, 903 (Ind. Ct. App. 1996) (citing *Stewart v. State*, 531 N.E.2d 1146, 1150 (Ind. 1988)).

[9] Indiana Code section 35-50-2-5.5 provides that a "person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years." Thus, in sentencing Doughty to eleven years of incarceration and one year of probation on each of his Level 4 felony convictions to be served consecutively, the trial court imposed a sentence within the statutorily-permitted range. Doughty, however, argues that the trial court considered improper aggravators in crafting his sentence.

[10] More specifically, Doughty alleges that the trial court impermissibly considered his multiple instances of sexual activity with D.G. and D.G.'s age as aggravating factors. In making his argument, Doughty directs our attention to *Grimes v. State*, 84 N.E.3d 635 (Ind. Ct. App. 2017), *trans. denied*. In that case, the thirty-five-year-old Grimes showed pornography to his ten-year-old and fourteen-year-old daughters allegedly to teach them about sex, sent the fourteen-year-old pictures of his penis, punished her by having her touch his penis, engaged in sex acts with her at least eighteen times over nine weeks, and videotaped himself having intercourse with her on at least one occasion. *Id*. at 645. The trial court sentenced Grimes to the advisory sentence on each count of conviction and sentenced him to an aggregate period of 111 years, which we affirmed. *Id*. The *Grimes* Court clarified that the trial court abuses its discretion when it considers a material element of the offense as an aggravating factor. *Id*. at 644. Consequently, Doughty contends that the trial court abused its discretion in considering D.G.'s age and the number of sex acts as inappropriate aggravators because those factors make up material elements of the crimes.

[11] Even assuming, without concluding, that the trial court abused its discretion in finding the aggravating factors that Doughty challenged, we cannot say that the trial court abused its discretion by imposing enhanced sentences. As we have already explained, "[w]hen a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld." *Baumholser*, 62 N.E.3d at 417. Here, we are confident that the trial

court would have imposed the same sentence even if it had not considered D.G.'s age and the number of sexual encounters as aggravating factors. *See id*. For example, the trial court found a "litany of aggravating factors" outside of those, including Doughty's considerable criminal history. Tr. p. 172; *see* Indiana Code section 35-38-1-7.1(a)(2) (stating that a trial court may consider a defendant's "history of criminal or delinquent conduct" as an aggravating factor). Moreover, Doughty abused his "position of trust" as a father-figure to D.G. Tr. p. 172; *see Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011). As a result, we cannot say that the trial court abused its discretion in imposing enhanced sentences.

[12] Likewise, the trial court did not abuse its discretion in ordering that Doughty's sentences be served consecutively. Notably, a trial court may impose consecutive sentences for separate and distinct crimes, even if those crimes arose out of a single occurrence. *Vermillion v. State*, 978 N.E.2d 459, 466 (Ind. Ct. App. 2012). Here, we are dealing with a string of sexual misconduct between Doughty and D.G. stretching from April or May of 2020 to July of 2020. Doughty's convictions arose from multiple acts of sexual misconduct; therefore, we cannot say that the trial court abused its discretion in ordering that Doughty serve consecutive sentences.

II. Appropriateness

[13] Doughty also argues that his sentence is inappropriate in light of the nature of his offenses and his character. We "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 light of the nature of the offense and the character of the offender." Ind. Appellate Rule 7(B). "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006) (citations and quotation marks omitted), *trans. denied*. However, our review of sentencing decisions is "very deferential[,]" and we "refrain from merely substituting our judgment for that of the trial court." *Golden v. State*, 862 N.E.2d 1212, 1218 (Ind. Ct. App. 2007), *trans. denied*.

[14] In reviewing sentencing decisions, we aim to "leaven the outliers," not "to achieve a perceived 'correct' result in each case." *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). Therefore, we ask "not whether another sentence is more appropriate[,]" but "whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008). To succeed on an Appellate Rule 7(B) challenge, the defendant must persuade us that his sentence is inappropriate both in light of the nature of the offense and his character. *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008).

A. Nature of the Offenses

[15] To start, Doughty argues that his sentence is inappropriate considering the nature of his offenses because "[t]here is no evidence in the record of [Doughty]

imposing himself upon [D.G.] over her objection or by means of coaxing or cajoling" or "that [D.G.] ever felt fearful of" Doughty. Appellant's Br. p. 19. For its part, the State argues that the nature of Doughty's offense does not render his sentence inappropriate. We agree.

[16] The nature of Doughty's criminal behavior is disturbing. Doughty chose a vulnerable victim who had lived "a very troubled life[,]" spent time "in the foster system" after her biological father had left the family and Mother had been "in some trouble[,]" and who "had a lot of damage and trauma[.]" Tr. Vol. II pp. 89–90. In November of 2019, Doughty began grooming D.G. by complimenting D.G.'s physical appearance and "mak[ing] comments about [her] body[,]" which made her uncomfortable at first, but then "made [her] feel confident after a while." Tr. Vol. II p. 116; s*ee Murray v. State*, 74 N.E.3d 242, 246 (Ind. Ct. App. 2011) (reasoning, in part, that a defendant's "aggressive[] grooming" of a victim through his position as a teacher and church leader did not render his sentence inappropriate). Eventually, D.G. "let him have sex with" her. Tr. Vol. II p. 112. After that, D.G. testified that sex had become "pretty frequent[,]" occurring "whenever [she and Doughty] were alone[.]" Tr. Vol. II p. 114. From April or May of 2020 to July of 2020, Doughty had sex with D.G. "twice a week" and "would ask [her] to […] give him a blowjob sometimes." Tr. Vol. II p. 116. Notably, D.G. testified that she had underreported the number of sexual encounters to law enforcement because she "didn't think he would get in as much trouble […] if [she] lied about it." Tr. Vol. II p. 117.

[17] Moreover, Doughty's misconduct is even more troublesome because he committed it against the daughter of his romantic partner. Over the course of his relationship with Mother, Doughty became a "fatherly figure" to D.G. Tr. Vol. II p. 112. The trial court noted that, "by his own testimony, I believe [Doughty] said he was basically a de facto father for" D.G. Tr. Vol. II p. 172. As the Indiana Supreme Court has recognized, "[a] harsher sentence is […] more appropriate when the defendant has violated a position of trust that arises from a particularly close relationship between the defendant and the victim, such as a parent-child or stepparent-child relationship." *Hamilton*, 955 N.E.2d at 727. Here, Doughty repeatedly abused his position of trust as a father-figure to a vulnerable victim over the course of several months. As a result, we cannot say that the nature of his offense renders his sentence inappropriate.

B. Doughty's Character

[18] We also cannot say that Doughty's sentence is inappropriate considering his character. "The character of the offender is found in what we learn of the offender's life and conduct." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011). We consider several circumstances when evaluating whether a defendant's character warrants a sentence reduction, including whether the defendant has expressed remorse for his crimes, *Gibson v. State*, 51 N.E.3d 204, 216 (Ind. 2016); whether he has obtained treatment or rehabilitation for past illegal behaviors, *id*.; whether he is likely to be deterred from committing new crimes, *Cotto v. State*, 829 N.E.2d 520, 526 (Ind. 2005); whether he was on probation, parole, or pretrial release in another case at the time he committed

the underlying offense, *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006); and whether he has a criminal history, *Anglemyer*, 868 N.E.2d at 494.

[19] Since 2003, Doughty has amassed a significant criminal history, including convictions for nine misdemeanors and three felonies. These include driving with a suspended license, battery resulting in bodily injury, illegal possession of paraphernalia, possession of methamphetamine, possession of marijuana, invasion of privacy, visiting a common nuisance, auto theft, reckless driving, and fleeing a police officer. Moreover, Doughty has been placed on probation twice, but had it revoked both times. At the sentencing hearing, the trial court also noted that Doughty's failure to take advantage of treatment opportunities in the past, the fact that he was determined to be "a high risk to re-offend," and was "not likely to respond affirmatively to short term imprisonment" reflected poorly on Doughty's character. Tr. Vol. II p. 171. Doughty has failed to convince us that his sentence is inappropriate.

[20] The judgment of the trial court is affirmed.

May, J., and Mathias, J., concur.