

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Christopher French,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

September 6, 2022

Court of Appeals Case No.  
22A-CR-510

Appeal from the  
Blackford Circuit Court

The Honorable  
Brian W. Bade, Judge

Trial Court Cause No.  
05C01-2005-F4-149

**Vaidik, Judge.**

## Case Summary

- [1] Christopher French appeals his sentence of twelve years, with ten years to serve and two years suspended to probation, for Level 4 felony sexual misconduct with a minor, arguing it is inappropriate. We disagree and affirm.

## Facts and Procedural History

- [2] On May 20, 2020, French, who at the time was twenty-one years old, used Snapchat to make arrangements to meet up with a fourteen-year-old girl in Hartford City.<sup>1</sup> They met, took a walk, and then stopped by some railroad tracks, where the girl performed oral sex on French and the two had sexual intercourse. After learning what had happened, the girl's father called police. In a subsequent forensic interview, the girl reported that she had told French "no" and that "he kept going." Appellant's App. Vol. II p. 68.
- [3] The State charged French with Level 3 felony rape and Level 4 felony sexual misconduct with a minor. In November 2021, the parties entered into a plea agreement under which French pled guilty to the sexual-misconduct charge, the State dismissed the rape charge, and sentencing was left to the trial court's discretion.

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<sup>1</sup> French says he was only twenty, but he was born on May 13, 1999. He also says the girl was fifteen, but the charging information and the probable-cause affidavit both show she was fourteen.

[4] The trial court imposed a sentence of twelve years, with ten years to serve in the Department of Correction (DOC) and two years suspended to probation. The court found one aggravating circumstance: “the significant impact and continued impact to the victim.” *Id.* at 77. The court also found two mitigating circumstances: French “has no prior criminal convictions in his past and has some developmental delays.” *Id.* The court concluded that the aggravator “significantly outweighs” the mitigators and that “a lesser sentence would significantly undermine the seriousness of this offense and the impact it has had on the victim, as well as the entire Blackford County community.” *Id.* However, the court recommended French for the Sex Offender Management and Monitoring (SOMM) Program through the DOC and noted that it would “favorably consider any modification request made in this cause after one-half of the executed sentence has been served and the SOMM Program has been completed.” *Id.* at 78.

[5] French now appeals.

## Discussion and Decision

[6] French contends his sentence is inappropriate and asks us to reduce it. Indiana Appellate Rule 7(B) provides that an appellate 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 light of the nature of the offense and the character of the offender.” The court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.”

*Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). “Whether a sentence is inappropriate ultimately turns on the culpability of the defendant, the severity of the crime, the damage done to others, and a myriad of other factors that come to light in a given case.” *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014) (citing *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008)). Because we generally defer to the judgment of trial courts in sentencing matters, defendants must persuade us that their sentences are inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1044-45 (Ind. Ct. App. 2016).

[7] The sentencing range for a Level 4 felony is two to twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Here, the trial court imposed the maximum sentence of twelve years but suspended two years to probation, leaving ten years to be served in the DOC. In addition, the court recommended French for the SOMM Program and said it would “favorably consider” a request to modify the sentence after five years if French completes that program.

[8] Regarding the nature of the offense, French notes that a psychiatrist who evaluated him after he was charged concluded he “has low average intelligence and is functioning at a developmental level several years younger than his chronological age.” Appellant’s App. Vol. II p. 47. But French acknowledges that, at the time of the encounter, he knew his victim was less than sixteen and that he was breaking the law. Moreover, French does not dispute the trial court’s finding that this incident has had a “significant impact and continued impact to the victim.” At the sentencing hearing, the victim’s father testified

that she “used to be more loving,” is now “more guarded,” and “has withdrawn from her social network a little bit.” Tr. p. 26.

[9] As for his character, French cites his lack of criminal history and claims that he “expressed remorse for his conduct and apologized to the victim and her family[.]” Appellant’s Br. p. 11. The absence of a prior record is an important consideration, but French’s expression of remorse and apology consisted of answering “yes” when his attorney asked him if he regrets what happened and if he wanted to apologize to the victim and her father. *See* Tr. p. 21. In addition, the probable-cause affidavit indicates that French lied about the extent of the sexual contact the first time police spoke to him, claiming it was limited to oral sex. And in his interview for the presentence investigation report, French stated that he had “several write-ups while in jail” and was “locked down” for “trafficking, being in someone else’s cell and having contraband.” Appellant’s App. Vol. II p. 60.

[10] French rests most of his argument on *James v. State*, 868 N.E.2d 543 (Ind. Ct. App. 2007), asserting it is “difficult to imagine a case more on point.” Appellant’s Br. p. 11. We disagree. In *James*, we reduced the sentence of a defendant who was convicted of various non-violent offenses (burglary, escape, theft, and fraud) and who was only sixteen years old when he committed those offenses. French, on the other hand, sexually abused a minor when he was twenty-one years old.

[11] French has not persuaded us his sentence is inappropriate.

[12] Affirmed.

Riley, J., and Bailey, J., concur.