MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Daniel E. Franklin,
Appellant-Defendant,

v.

State of Indiana
Appellee-Plaintiff.

July 21, 2021

Court of Appeals Case No. 20A-CR-2073

Appeal from the Fountain Circuit Court

The Honorable Stephanie S. Campbell, Judge

Trial Court Cause No. 23C01-1810-F3-520

Bradford, Chief Judge.

Case Summary

[1] In 2018, Daniel Franklin, then fifty-seven years old, was dating and lived with fifteen-year-old C.B.'s grandmother. While alone with C.B. at her grandmother's house, Franklin forced himself on C.B. On October 30, 2018, Franklin was charged with three counts of Level 3 felony rape, one count of Level 4 felony sexual misconduct with a minor, and one count of Level 6 felony sexual battery. On August 12, 2020, Franklin pled guilty to Level 4 felony sexual misconduct with a minor and, in exchange, the State agreed to dismiss the remaining counts. On October 14, 2020, the trial court accepted Franklin's guilty plea and sentenced him to four years of incarceration in the Department of Correction ("DOC") and four years on formal probation, the maximum allowed under his plea agreement. Franklin argues that his sentence is inappropriate based on the nature of his offense and his character, specifically arguing that his crime did not involve force and that his minimal criminal history supports a reduced sentence. Because we disagree, we affirm.

Facts and Procedural History

[2] In 2018, Franklin, then fifty-seven years old, was dating and lived with fifteen-year-old C.B.'s grandmother. On September 29, 2018, C.B. visited her grandmother and wanted to go riding on a four-wheeler. Franklin sat behind C.B. while she drove the vehicle, and began to fondle C.B. as they were driving. C.B. stopped the four-wheeler near a creek where Franklin shoved her down, forced himself on top of her, pulled down her pants, and began sexual

intercourse with C.B. Despite C.B. telling Franklin "get off me," he ignored her, telling her to "keep f****** me you b****." Appellant's App. Vol. II p. 25. Three other incidents were alleged to have occurred on October 10, 2018; October 26, 2018; and October 27, 2018.

[3] On October 30, 2018, Franklin was charged with three counts of Level 3 felony rape, one count of Level 4 felony sexual misconduct with a minor, and one count of Level 6 felony sexual battery. On August 12, 2020, Franklin pled guilty to Level 4 felony sexual misconduct with a minor, a charge relating only to the September 29, 2018 incident and, in exchange, the State agreed to dismiss the remaining counts. On October 14, 2020, the trial court accepted Franklin's guilty plea and sentenced him to four years of incarceration in the DOC to be followed by four years of formal probation.

Discussion and Decision

[4] Franklin contends that his sentence is inappropriate. 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 light of the nature of the offense and the character of the offender." In reviewing such claims, "[t]he principal role should be to leaven the outliers, [. . .] but not to achieve a perceived 'correct' result in each case." *Cardwell v. State,* 895 N.E.2d 1219, 1225 (Ind 2008). Ultimately, we "do not look to see whether the defendant's sentence is appropriate or if another sentence might be more appropriate; rather, the test is whether the sentence is

inappropriate." *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013) (internal quotations omitted). The defendant bears the burden of persuading us that his sentence is inappropriate. *Sanchez v. State,* 891 N.E.2d 174, 176 (Ind. Ct. App. 2008).

[5] Franklin argues that the nature of his offense was not deserving of a sentence which includes incarceration, specifically asserting that the record shows no evidence of force. We cannot agree. The probable cause affidavit, to which Franklin cites, indicates that the interaction began with Franklin fondling the fifteen year-old victim, then "shov[ing] her down and [] forcing himself on her," pulling her pants down, and engaging in sexual intercourse with her. Appellant's App. Vol. II p. 25. We cannot read the above sentence without observing the forceful nature of Franklin's crime. Franklin also asserts that any consideration of the dropped charges is speculative, and that the remaining record supporting his conviction is too sparse to support his four-year executed sentence. We disagree. As the trial court noted when considering Franklin's crime:

> the Court finds that the relationship of [Franklin] and the victim was that of a grandparent, specifically that [Franklin] and the victim's grandmother had been in a relationship of several years continuing even to the date of sentencing. Further while [Franklin's] criminal history is limited, it does include convictions for Domestic Battery, Intimidation and Battery Resulting in Bodily Injury. [The] Court considers further as aggravating [Franklin's] belief that the victim consent[ed] to the conduct and that the age of the victim is between 14 and 16 years of age.

Appellant's App. Vol. II p. 51. In addition, throughout these proceedings Franklin has maintained that the sexual relationship with C.B. was "consensual." Appellant's App. Vol. II p. 44. Franklin also stated that C.B. initially approached him and that he wished C.B. would "just be honest" about the relationship. Appellant's App. Vol. II p. 47.

[6] C.B. has undergone counseling because of Franklin's actions. (Supp. App. Vol. II p. 3) C.B. experiences nightmares, cries herself to sleep, and some nights cannot sleep at all. (Supp. App. Vol. II p. 3) C.B. is afraid that Franklin will come to her house and "kill [her] and [her] family." Supp. App. Vol. II p. 3. C.B. now views herself as "gross," and does not "feel clean anymore after being raped by Daniel Franklin." Supp. App. Vol. II p. 3. C.B. can no longer be alone with any male, even family members. (Supp. App. Vol. II p. 3) Finally, C.B. also expressed concern that Franklin would harm others if given the opportunity. (Supp. App. Vol. II p. 4)

[7] With regard to his character, Franklin points to the fact that he was compliant with GPS monitoring, committed no untoward acts during his lengthy pre-trial release, was capable of supporting himself while still paying correction surveillance, and that his criminal history consists only of two Class A misdemeanor convictions for intimidation, one Class A misdemeanor conviction for battery resulting in bodily injury, and one charge of domestic battery. We are unconvinced that Franklin's character warrants a sentence reduction. Franklin's apparent disregard for the laws of this state, as evidenced by his criminal behavior, reflects poorly on his character. *See Rutherford v. State,*

866 N.E.2d 867, 874 (Ind. Ct. App. 2007) (providing that even a minor criminal history is a poor reflection on a defendant's character). Further, that his previous convictions were for intimidation and battery are ample cause for concern in a case such as this where the victim remains fearful of retaliation. We are unconvinced that Franklin's other proffered evidence of good behavior, *i.e.*, his compliance with GPS monitoring, good behavior before trial, and timeliness in paying his correction surveillance, warrant a sentence reduction. Franklin has failed to demonstrate that his sentence is inappropriate.

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

Mathias, J., and Brown, J., concur.