MEMORANDUM DECISION

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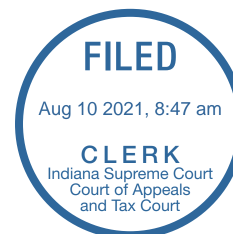

ATTORNEYS FOR APPELLANT

Jeffrey W. Elftman
Justin K. Clouser
Bolinger Law Firm
Kokomo, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Justin F. Roebel
Supervising Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Corey R. Rhoton,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

August 10, 2021

Court of Appeals Case No. 21A-CR-458

Appeal from the Clinton Circuit Court

The Honorable Bradley K. Mohler, Judge

Trial Court Cause No. 12C01-1711-F1-1226

Vaidik, Judge.

Case Summary

[1] Following a jury trial, Corey R. Rhoton was convicted of two counts of Class A felony child molesting, two counts of Class C felony child molesting, and four counts of Level 4 felony child molesting. He now appeals, arguing his sentence is inappropriate. We affirm.

Facts and Procedural History

[2] The following facts are taken largely from this Court's prior opinion in this matter, *Rhoton v. State*, No. 19A-CR-2851, 2020 WL 3117647 (Ind. Ct. App. June 12, 2020), *reh'g denied*. In August 2012, Rhoton began living in Clinton County with his girlfriend (later wife), N.H., and her three children, including H.C., born in 2003, and M.C., born in 2005. Rhoton's daughter, born in 2011 or 2012, of whom he had sole custody, also lived in the home, as did Rhoton and N.H.'s child, born in 2014.

[3] In 2013, Rhoton began molesting nine-year-old H.C. and seven-year-old M.C. Rhoton framed the molestations as "games." In the first "game," Rhoton would cover his penis with a condiment, blindfold the children, and place his penis in their mouths while they attempted to guess the condiment. Rhoton played this "game" with the children "multiple times" between 2013 and 2014. Appellant's App. Vol. II p. 222. Although Rhoton told the children the object he was inserting in their mouths was a toy bowling pin, both children described occasions where their blindfolds shifted or were removed and they saw that the

object was his penis. Around this time, Rhoton had H.C. play another "game" wherein he blindfolded her, placed his penis in her mouth, and pushed it toward the back of her throat.

[4] In 2014, Rhoton introduced a new "game" in which one child would stand on one side of a curtain or door and Rhoton would stand on the other. Rhoton would have the child reach around the door or curtain and place his penis in their hand. He would often have the first child he molested get the other, who would then be molested next. The molestations continued until 2017, when the children told N.H. and she called the police.

[5] In November 2017, the State charged Rhoton with ten counts of child molesting, five for each victim: two counts of Class A felony child molesting (Counts 1 and 2), two counts of Class C felony child molesting (Counts 3 and 4), two counts of Level 1 felony child molesting (Counts 5 and 6), and four counts of Level 4 felony child molesting (Counts 7-10). At the jury trial, H.C. and M.C. testified and "immediately started crying" upon seeing Rhoton in the courtroom. Tr. Vol. II p. 28. M.C. "could not stop crying so much [that] in order to be sworn in [] she had to be taken out of the courtroom." *Id.* The jury found Rhoton guilty of all charges.

[6] At the sentencing hearing, H.C. and M.C. again testified about the effect Rhoton's molestations had on them. Both children were in counseling and had been diagnosed with post-traumatic stress disorder (PTSD). H.C. had also been diagnosed with anxiety. Both children spoke on the "constant fear" Rhoton

inflicted on them and the "helpless[ness]" they felt for not being able to protect each other. *Id.* at 7, 9. Rhoton testified and asked the court to consider placing him on community corrections, noting these were his first criminal convictions, he was employed for several years before his convictions, and he had sole custody of his minor daughter. Several family members and friends of Rhoton testified in support of his character.

[7] The trial court identified two mitigating factors: (1) Rhoton had no criminal history and (2) his incarceration would cause hardship to his dependents, particularly his minor daughter of whom he had sole custody. The court identified three aggravators: (1) Rhoton was in a position of care, custody, and control over the victims as their stepfather; (2) both victims were under twelve at the time of the offenses; and (3) the harm suffered by the victims was significant and greater than necessary to prove the elements of the offense based on the victims' PTSD diagnoses, the fact that the abuse was "ongoing," and the court's "personal observations of the girls while they testified." *Id.* at 32, 43.

[8] The trial court sentenced Rhoton to the following: thirty-two years, with thirty years executed and two suspended to probation, for each Class A felony (Counts 1 and 2); four years for each Class C felony (Counts 3 and 4); thirty-two years for each Level 1 felony (Counts 5 and 6), with thirty years executed and two suspended to probation; and four years for each Level 4 felony (Counts 7-10). The court ordered the sentences for H.C. (Counts 1, 3, 5, 7, and 9) to be served concurrently, for a total of thirty-two years, with thirty years executed and two suspended to probation. In addition, the court ordered the sentences

for M.C. (Counts 2, 4, 6, 8, and 10) to be served concurrently, again for a total of thirty-two years, with thirty years executed and two suspended to probation. The court then ordered the sentences for H.C. and the sentences for M.C. to be served consecutively, for an aggregate sentence of sixty-four years, with sixty years executed and four suspended to probation.

[9] On direct appeal, we vacated Rhoton's Level 1 felony convictions (Counts 5 and 6) based on insufficiency of evidence. At resentencing, the trial court identified the same aggravating and mitigating factors and imposed the same sentence for each remaining conviction—for an aggregate sentence of sixty-four years, with sixty years executed and four suspended to probation.

[10] Rhoton now appeals.

Discussion and Decision

[11] Rhoton argues his sentence is inappropriate and asks us to revise it. Under Indiana Appellate Rule 7(B), 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 appellate 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, 159-60 (Ind. 2019) (quotation omitted). "Ultimately, our constitutional authority to review and revise sentences boils

down to our collective sense of what is appropriate." *Id*. at 160 (quotation omitted).

[12] A person who commits a Class A felony shall be imprisoned for a fixed term of between twenty and fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4(a). A person who commits a Class C felony shall be imprisoned for a fixed term of between two and eight years, with an advisory sentence of four years. I.C. § 35-50-2-6(a). A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two and twelve years, with an advisory sentence of six years. I.C. § 35-50-2-5.5.

[13] For each victim, the trial court sentenced Rhoton to the following: an above-advisory sentence of thirty-two years for the Class A felony, with two years suspended to probation; an advisory sentence of four years for the Class C felony; and a below-advisory sentence of four years for the two Level 4 felonies, to be served concurrently, for a total of thirty-two years, with thirty years executed and two suspended to probation. The trial court then ordered the sentences for H.C. to be served consecutively to the sentences for M.C., for an aggregate sentence of sixty-four years, with sixty years executed and four suspended to probation.

[14] This is not an exceptional case that warrants the use of our 7(B) authority. Rhoton argues his character supports a sentence reduction, specifically, that these are his first criminal convictions, he held a job until he was convicted, and he provided for his minor daughter. However, the nature of the offenses

supports the sentence. Rhoton repeatedly molested his stepdaughters for over five years, starting when they were as young as seven and nine years old. He disguised his molestations as "games" to ensure the children's participation and then placed his penis in their mouths or hands. Rhoton would also have the first child he molested get the other, who would then be molested next. Although Rhoton argues the State failed to present evidence "regarding the damage that had allegedly been inflicted," Appellant's Br. p. 9, both children gave emotional testimony as to the harm he caused and stated they continue to suffer from PTSD and constant fear. Furthermore, we note Rhoton's sentence is far from the maximum he could have received. For each Class A felony, he essentially received the advisory sentence—as the years over the advisory were all suspended to probation. As such, Rhoton has failed to persuade us his sentence is inappropriate.[1]

[15] Affirmed.

Kirsch, J., and May, J., concur.

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[1] Within his 7(B) argument, Rhoton contends—without citation to the record or authority—that the trial court "abused its discretion" in its failure to find certain mitigators. Appellant's Br. p. 10. However, he fails to develop this argument beyond these conclusory statements. As such, he has waived the issue for our review. S*ee* Ind. Appellate Rule 46(A)(8)(a) ("The argument must contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on, in accordance with Rule 22."); *see also Lyles v. State*, 834 N.E.2d 1035, 1050 (Ind. Ct. App. 2005) (holding appellant had waived argument due to his failure to develop the argument and support it with citations to authority and the record), *reh'g denied*, *trans. denied*.