MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Corey D. Frank,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

June 15, 2022

Court of Appeals Case No. 21A-CR-2125

Appeal from the Dearborn Superior Court

The Honorable Jonathan N. Cleary, Judge

Trial Court Cause No. 15D01-2004-F1-1

Vaidik, Judge.

Case Summary

[1] Corey D. Frank appeals his sentence and probation conditions for two counts of Level 3 felony child molesting. We affirm his sentence but reverse and remand as to the probation conditions.

Facts and Procedural History

[2] In March 2020, Frank became Snapchat friends with A.H., a teenage girl. A.H. was thirteen but said she was seventeen, and Frank was thirty-six but said he was eighteen. Frank lived in Fishers and A.H. lived in West Harrison, and the two arranged to meet at a community center in Harrison, Ohio, just across the border from West Harrison. On March 26, Frank picked A.H. up at the community center and started driving to a hotel in Greendale, Indiana, about twenty minutes away. During the drive, A.H. told Frank she was only thirteen. Undeterred, Frank continued to the hotel. Frank and A.H. stayed at the hotel for two nights and had sex multiple times. While A.H. was away from home, her family filed a missing-person report. On March 28, Frank drove A.H. back to Harrison and dropped her off at the community center. A.H. then reported to family what had happened.

[3] The State charged Frank with three counts of Level 1 felony child molesting (sexual intercourse with a child under fourteen by a defendant who is at least twenty-one) and one count of Level 4 felony child solicitation. The parties entered into a plea agreement under which Frank pled guilty to two counts of

Level 3 felony child molesting (sexual intercourse with a child under fourteen), leaving sentencing to the discretion of the trial court.

[4] In sentencing Frank, the trial court found several aggravating circumstances: the nature of the offenses, including that "the crimes were clearly committed at different times," with "significant breaks in the sexual intercourse"; Frank's criminal history (a 2016 conviction for Level 6 felony cocaine possession, a 2018 conviction for Class A misdemeanor public indecency, and additional misdemeanor convictions in 2006, 2012, and 2018); Frank's previous violations of community corrections; and Frank was on pretrial release in a separate misdemeanor case, with an active warrant, when he committed these offenses. Tr. pp. 75-81. The court also found several mitigating circumstances: Frank pled guilty; Frank himself was the victim of sexual abuse twice in his life; Frank's "significant mental health history"; and Frank's "significant substance abuse history." *Id.*

[5] Finding that the facts "are so horrendous and horrific that justice requires a significant sentence," *id.* at 81, the trial court sentenced Frank to the maximum sentence of sixteen years in the Department of Correction (DOC) for each of the two counts, with fifteen years to serve and one year suspended to probation. The court ordered the sentences to run consecutively, resulting in a total sentence of thirty-two years, with thirty years to serve and two years suspended to probation.

[6] The trial court imposed standard and sex-offender conditions of probation. The sex-offender conditions prohibit Frank from, among other things, having contact with any person under sixteen years old. Frank asked the court to make an exception to allow him to have contact with his daughter, nephews, and nieces during his time in the DOC. The children's parents all provided letters approving such contact. *See* Appellant's App. Vol. III pp. 7, 9, 11, 17. The State did not object to Frank's request. Nonetheless, the court denied the request, finding it "ha[d]n't really been given any reasons why this contact would be necessary between these children and a person serving a lengthy sentence at [the DOC.]" Tr. p. 85.

[7] Frank now appeals.

Discussion and Decision

I. Inappropriate Sentence

[8] Frank first 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).

[9] Frank pled guilty to two counts of Level 3 felony child molesting. The sentencing range for a Level 3 felony is three to sixteen years, with an advisory sentence of nine years. Ind. Code § 35-50-2-5(b). The trial court imposed consecutive, maximum terms of sixteen years for the two counts, for a total of thirty-two years, but suspended two years to probation, leaving thirty years to serve.

[10] Frank argues the nature of his offenses supports a sentence reduction because (1) A.H. initiated the Snapchat contact and said she was seventeen, (2) he was not in a position of trust with A.H., and (3) the molestation here did not continue for months or years, as it does in other cases. But as the trial court found, other aspects of Frank's crimes are disturbing. Frank, after learning that A.H.'s actual age was thirteen, drove her to a hotel in a town twenty minutes away, kept her there for two days, prompting her family to file a missing-person report, and had sex with her at least twice, on different days. We also note that Frank was originally charged with, and may well have been convicted of, three counts of Level 1 felony child molesting, since he was at least twenty-one years old when he had sex with A.H. *See* I.C. § 35-42-4-3(a)(1) (elevating child molesting from a Level 3 felony to a Level 1 felony when the defendant was at

least twenty-one). Frank would have faced twenty to forty years in prison for each Level 1 felony. *See* I.C. § 35-50-2-4(b).

[11] Regarding his character, Frank emphasizes all the things the trial court found to be mitigating circumstances: his guilty plea, his own history as a sex-abuse victim, and his "significant" history of mental-health and substance-abuse issues. He also states that at the time of his offenses he had recently lost his house and "a romantic partner" and learned his mother had Stage 4 lung cancer. Appellant's Br. p. 13. He notes that risk assessments placed his likelihood of reoffending in the low to moderate range. However, other parts of the record reflect poorly on Frank's character. He has five prior criminal convictions, including a felony conviction for cocaine possession and a misdemeanor conviction for public indecency, a crime that is sexual in nature. *See* I.C. § 35-45-4-1. He failed on community corrections in earlier cases. And when he committed the present offenses, he was on pretrial release in a separate misdemeanor case, with an active warrant.

[12] Frank has failed to persuade us that his sentence is inappropriate.

II. Probation Conditions

[13] Frank also challenges the probation conditions prohibiting him from having contact with any person under sixteen years old, arguing the trial court should have allowed him to have contact with his daughter, nephews, and nieces while he is in the DOC. Trial courts generally have broad discretion in imposing probation conditions, and we review such decisions only for an abuse of that

discretion. *Weida v. State*, 94 N.E.3d 682, 687 (Ind. 2018). "A court abuses its discretion when the probation conditions imposed are not reasonably related to rehabilitating the defendant and protecting the public." *Id.*

[14] Frank does not dispute that trial courts have the statutory authority to impose the conditions at issue here. *See* I.C. §§ 35-38-2-2.2(b), -2.4 (both providing that trial courts "may" impose conditions restricting contact with children under sixteen). Rather, he contends the trial court should have declined to do so here because prohibiting him from having contact with his daughter, nephews, and nieces while he is in the DOC is not reasonably related to his rehabilitation or protecting the public. For two reasons, we agree. First, any contact between Frank and the children **while he is in the DOC** will necessarily be limited and supervised. Second, the parents of the children have expressly agreed to allow the contact, and their letters suggest that they believe such contact would be beneficial to both Frank and the children. We therefore reverse the challenged probation conditions and remand this matter to the trial court with instructions to make an exception for contact between Frank and his daughter, nephews, and nieces while Frank is in the DOC. The exception will expire when the last of the children turns sixteen, which will be before Frank is released from the DOC. *See* Tr. p. 84. If circumstances change in the meantime, the parents of the children and/or the trial court can limit or cut off the contact, and the probation conditions can be amended as appropriate.

[15] Affirmed in part and reversed and remanded in part.

Crone, J., and Altice, J., concur.