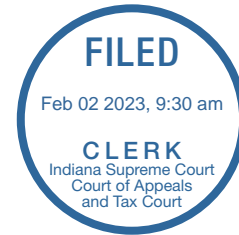


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Alexander Brian Porter,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 2, 2023

Court of Appeals Case No.
22A-CR-2072

Appeal from the Greene Superior
Court

The Honorable Dena A. Martin,
Judge

Trial Court Cause No.
28D01-2104-F1-1

Memorandum Decision by Judge Bradford
Judges May and Mathias concur.

Bradford, Judge.

Case Summary

- [1] Alexander Porter pled guilty to two counts of Level 4 felony child molestation and one count of Level 5 felony child solicitation for acts involving a then-thirteen-year-old victim. The trial court accepted Porter's guilty plea and sentenced him to an aggregate fifteen-year sentence, with ten years executed in the Department of Correction ("DOC") and five years suspended to probation. Porter challenges his sentence on appeal, arguing that the ten-year executed portion of his sentence is inappropriate given his autism diagnosis and because incarceration is not necessary to protect the community. We affirm.

Facts and Procedural History

- [2] Between November of 2020 and January of 2021, then-twenty-one-year-old Porter engaged in sexual conduct with then-thirteen-year-old A.M. Some of this conduct included rubbing his penis on A.M.'s thigh and touching A.M.'s "breasts or genitals." Tr. Vol. II p. 41. In committing these acts, Porter intended "to arouse [himself] or her." Tr. Vol. II p. 41. Porter also solicited A.M. to engage in "fondling or touching," again "with the intention to arou[se] or satisfy [his] sexual desires." Tr. Vol. II p. 42.
- [3] On April 27, 2021, the State charged Porter with two counts of Level 1 felony child molesting, two counts of Level 4 felony child molesting, Level 4 felony vicarious sexual gratification, and Level 5 felony child solicitation. On August 1, 2022, Porter pled guilty to two counts of Level 4 felony child molestation and

one count of Level 5 felony child solicitation. In exchange, the State agreed to dismiss the remaining charges. The trial court accepted Porter's guilty plea and sentenced him to an aggregate fifteen-year term, with ten years executed in the DOC and five years suspended to probation.

Discussion and Decision

[4] Indiana Appellate Rule 7(B) provides that “The 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 analyzing such claims, we “concentrate less on comparing the facts of [the case at issue] to others, whether real or hypothetical, and more on focusing on the nature, extent, and depravity of the offense for which the defendant is being sentenced, and what it reveals about the defendant’s character.” *Paul v. State*, 888 N.E.2d 818, 825 (Ind. Ct. App. 2008) (internal quotation omitted), *trans. denied*. 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] In challenging his sentence on appeal, Porter argues that that the ten-year executed portion of his sentence is inappropriate given his autism diagnosis and because “incarceration is not necessary to protect the community.” Appellant’s Br. p. 23. We disagree.

[6] The sentencing range for a Level 4 felony is “between two (2) and twelve (12) years, with the advisory sentence being six (6) years.” Ind. Code § 35-50-2-5.5. The sentencing range for a Level 5 felony is “between one (1) and six (6) years, with the advisory sentence being three (3) years.” Ind. Code § 35-50-2-6. In sentencing Porter, the trial court imposed the advisory sentence for each of Porter’s convictions, sentencing Porter to a term of six years for each of his Level 4 felony convictions and a term of three years for his Level 5 felony conviction. The trial court ordered that each of the sentences run consecutively, for an aggregate fifteen-year sentence, with five years suspended to probation.

[7] In reviewing the nature of Porter’s offenses, we observe that Porter has acknowledged that his actions would have been sufficient to prove that he committed Level 1 felony child molesting, had the case proceeded to trial. Those more serious charges were dismissed by the State in exchange for Porter’s guilty plea. Porter admitted to investigating officers that he had known that A.M. was “only thirteen years old when he had [a] sexual relationship with” her. Appellant’s App. Vol. II p. 70. He also

stated he knew the relationship was wrong however he was infatuated with [A.M.] and truly cared for her.... [Porter] confessed he did insert one finger inside [A.M.]’s vagina, he received oral sex from [her] twice, he placed his sperm on [her] tongue, placed his penis between [her] thighs, made skin to skin contact with [her] boobs and buttocks multiple times during their relationship, massaging [her] vagina with his fingers, sent videos of himself masturbating and pictures of his penis, receiving

videos of [A.M.] masturbating and nude pictures of [A.M.] over the internet after requesting videos of [her] masturbating.

Appellant's App. Vol. II pp. 70–71. While Porter claims he is not likely to reoffend and is not a threat to the community, we cannot discount the fact that he knowingly engaged in various sexual acts with a thirteen-year-old child.

[8] Porter does not have a significant criminal history, and he accepted some level of responsibility for his actions by pleading guilty. However, it must be noted that Porter received a substantial benefit from his guilty plea as the State agreed to dismiss two Level 1 felony charges and another Level 4 felony charge in exchange for his plea. Furthermore, although Porter initially admitted to committing the acts described above, he has since tried to justify his actions by blaming his victim for his behavior. We agree with the State that it does not reflect well on Porter's character that he has since attempted to blame his actions on his victim, claiming to a counselor and doctor that she had threatened to accuse him of rape if he had not engaged in sexual activity with her. By blaming his victim, Porter discounts the seriousness of his criminal actions. Blaming his victim also suggests that, despite his guilty plea, Porter has not fully accepted responsibility for his actions.

[9] We acknowledge that Porter has been diagnosed with autism. This diagnosis, however, does not excuse Porter's criminal acts, as the record does not indicate that his diagnosis rendered him unable to appreciate that engaging in various sexual acts with a thirteen-year-old child was not acceptable. Rather, it is clear from the record that Porter *did* appreciate the wrongfulness of his behavior,

telling the investigating officer that “he knew the relationship was wrong.” Appellant’s App. Vol. II p. 70. In addition, the trial court explicitly considered Porter’s diagnosis in sentencing Porter, finding his diagnosis to be a mitigating factor at sentencing and recommending that Porter receive “special treatment for that” while at the DOC.¹ Tr. Vol. II p. 97. While we acknowledge the testimony from Dr. Robin Kohli suggesting that, in light of his diagnosis, Porter could potentially be at risk for victimization while incarcerated in the DOC, we are not convinced that the ten-year executed portion of Porter’s sentence is inappropriate given the seriousness of Porter’s offenses and his failure to truly accept responsibility for his actions.

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

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

¹ In discussing the potential impact of Porter’s autism diagnosis on his sentence, the parties cite the Indiana Supreme Court’s decision in *Kremetz v. State*, 872 N.E.2d 605, 615 (Ind. 2007), in which the Court held that when considering whether a defendant’s mental illness warrants mitigating weight, the trial court should consider the following factors:

(1) the extent of the defendant’s inability to control his or her behavior due to the disorder or impairment; (2) overall limitations on functioning; (3) the duration of the mental illness; and (4) the extent of any nexus between the disorder or impairment and the commission of the crime.

While it is unclear whether the trial court specifically applied the *Kremetz* factors in sentencing Porter, it is undisputed that the trial court found Porter’s diagnosis to be a mitigating factor.