

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

R. Patrick Magrath
Madison, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Justin F. Roebel
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Charley Hollin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

February 25, 2022

Court of Appeals Case No.
21A-CR-2006

Appeal from the Jackson Circuit
Court

The Honorable Richard W.
Poynter, Judge

Trial Court Cause No.
36C01-0002-CF-8

Altice, Judge.

Case Summary

- [1] In January 1999, Charley Hollin, armed with a knife, forced a ten-year-old girl into his car and then molested her in various ways before leaving her naked on the side of the road. The investigation eventually led authorities to him, but he absconded from Indiana and began a new life using a stolen identity. Extraordinary FBI work and advances in technology resulted in Hollin's identification and apprehension in Oregon eighteen years later.
- [2] After being returned to Indiana, Hollin pled guilty to Class A felony child molesting pursuant to a negotiated plea agreement, which provided for a forty-year sentence with a cap of thirty years executed in the Indiana Department of Correction (the DOC) and the remainder to be served on home detention with GPS monitoring. The trial court ordered Hollin to serve thirty years in the DOC and ten years on home detention, as permitted by the plea agreement. The trial court also found Hollin to be a credit restricted felon such that he may receive only one day of good time credit for every six days served.
- [3] On appeal, Hollin claims that the trial court's designation of him as a credit restricted felon constituted an ex post facto violation. Additionally, Hollin contends that his sentence was inappropriate in light of the nature of his offense and his character.
- [4] We affirm in part, reverse in part, and remand.

Facts & Procedural History

- [5] On January 20, 1999, Hollin approached ten-year-old C.T. outside of the Girls Inc. facility in Seymour, Indiana. He asked her for help retrieving his keys from inside his locked car. As they neared the car, Hollin placed his hand over C.T.'s mouth and displayed a knife, threatening to harm her if she did not enter the car. He then drove her to another area in Jackson County.
- [6] During the drive, Hollin asked C.T. sexual questions while touching her breast area and genitals and inserting his finger into her vagina. Hollin also directed C.T. to remove her clothing. Eventually, Hollin stopped the car on a county road and began licking her vaginal area. When he was finished, he ordered C.T. out of the car and threatened that if she told anyone her entire family would be killed. He then threw C.T.'s clothing out of the car as he drove away, leaving her naked on the side of the road. Shortly thereafter, a passing motorist stopped and rendered assistance to C.T.
- [7] Hollin quickly became a suspect, and DNA evidence eventually linked him to the crime. On February 2, 2000, the State charged Hollin with three counts of Class A felony child molesting and one count of Class B felony criminal confinement. Hollin fled and did not appear at his initial hearing on April 7, 2000.
- [8] For the next seventeen years, Hollin avoided prosecution by living out of state using a stolen identity – that of Andrew David Hall, who had died as a child in 1975 in a tragic accident. Hollin started laying the groundwork of assuming

Hall's identity in 1988, by obtaining a false social security card, but did not "become" Hall until 2000. He moved to Wisconsin in 2000, Minnesota in 2001, and then Oregon in 2002, where he set roots with a new wife. Along the way, Hollin used Hall's identity to obtain a U.S. Passport and driver's licenses in Indiana, Minnesota, and Oregon.

[9] After years of investigation and with new technology available, the FBI was finally able to locate Hollin in Salem, Oregon by the end of 2016. On January 10, 2017, he was arrested by FBI Special Agents while working at Walmart. The agents approached and called him by his true name, which Hollin acknowledged. During transport, Hollin remarked, "Sometimes you do something stupid and it catches up to you." *Transcript* at 29. Pursuant to the arrest on federal charges for identity theft, Hollin's Oregon residence was searched. Hollin had a cell phone wrapped in aluminum foil and books related to his attempts to remain a fugitive.

[10] Hollin was transferred back to Indiana in March 2017 and held without bail to answer for the pending criminal charges. On January 8, 2018, the parties filed a negotiated plea agreement with the trial court. In exchange for Hollin pleading guilty to one count of Class A felony child molesting, the State agreed to dismiss the other three remaining counts and refrain from filing charges regarding another matter. The State also represented in the agreement that it had "binding authority" from U.S. Attorneys for the Southern District of Indiana and the District of Oregon-Portland Division that they would not proceed with prosecution of the federal identity theft cases. *Appendix* at 83.

Regarding sentencing, the agreement provided for a fully executed sentence of forty years but that not more than thirty years were to be ordered executed in the DOC with the remainder to be served on home detention with GPS monitoring.

[11] At the sentencing hearing on March 6, 2018, Special Agent Todd Prewitt testified regarding the FBI investigation, Hall's sister testified regarding her brother's tragic death in 1975 and how Hollin's theft of his identity traumatized her family all over again, and Hollin's daughter K.O. – now an adult in her forties – testified that he molested her as a child from the age of about seven or eight to eleven, when her mother came back in her life.¹ C.T. and her parents provided victim impact statements, emphasizing the lifelong scars and trauma that Hollin caused. C.T. also noted the additional fear triggered by the fact that Hollin was able to disappear for so many years, which caused her to constantly fear his reappearance.

[12] The trial court sentenced Hollin to forty years with thirty to be served in the DOC and ten to be served on home detention with GPS monitoring. The trial court also sentenced Hollin as a credit restricted felon. Hollin now appeals.

¹ K.O. and her mother reported the abuse to authorities when K.O. was a child but the prosecutor at the time opted not to file charges.

Discussion & Decision

Credit Restricted Felon Designation

[13] Hollin initially argues that the trial court erred when it determined that he was a credit restricted felon, which substantially reduces the amount of good time credit that he earns. Specifically, he contends that application of the current credit time statutory scheme, which was substantially revised in 2008² to create a category of credit restricted felons, constitutes an unconstitutional ex post facto violation as applied to him. The State concedes this point.

[14] Indeed, this court has repeatedly held that the retroactive application of the credit restricted felon statutes to offenses that were committed prior to the effective date of the amendments – July 1, 2008 – is an ex post facto violation. *See, e.g., Sorenson v. State*, 133 N.E.3d 717, 726 (Ind. Ct. App. 2019) (observing that the amended statutes lengthened the period that the defendant was required to spend in prison and constricted the opportunity for early release, making the punishment for a crime committed before their enactment more onerous than it had been at the time of enactment). Because Hollin committed the instant offense in 1999, well before the 2008 amendments, the trial court erred when it designated him as a credit restricted felon and, thus, restricted his accumulation of good time credit against his sentence. Accordingly, we reverse the trial

² The statutory scheme was again revised in 2014 but those amendments are not relevant to our discussion in this appeal.

court's determination in this regard and remand with instructions for the trial court to apply the credit time statutes in effect at the time of his offense.

Inappropriate Sentence

[15] Next, Hollin challenges his sentence as inappropriate. Pursuant to Ind. Appellate Rule 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offense and the character of the offender. Indiana's flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court "prevail[s] unless overcome by compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality) and the defendant's character (such as substantial virtuous traits or persistent examples of good character)." *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). The question is not whether another sentence would be more appropriate; rather, the test is whether the sentence imposed is inappropriate. *Miller v. State*, 105 N.E.3d 194, 196 (Ind. Ct. App. 2018).

[16] In determining whether a sentence is inappropriate, we may consider all aspects of the penal consequences imposed by the trial court, including whether a portion of the sentence was suspended. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010). Our role is to "leaven the outliers," which means we exercise our authority in "exceptional cases." *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). Hollin bears the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

[17] The advisory sentence is the starting point to determine the appropriateness of a sentence. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). The sentencing range for a Class A felony is twenty to fifty years in prison, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4(a). Here, Hollin received a partially aggravated sentence of forty years with thirty years to be served in the DOC and ten to be served on home detention. Acknowledging that the plea agreement provided for a forty-year sentence, he challenges only the manner in which the trial court ordered his sentence to be served. Hollin asks that we revise his sentence by ordering a greater portion of it to be served on home detention. We refuse his request.

[18] Nothing about Hollin's crime suggests that being sentenced to thirty years in the DOC followed by ten years on home detention is inappropriately harsh. Hollin victimized a ten-year-old girl in a premeditated encounter. After forcing her into his car at knife point and terrorizing and molesting her as he drove, Hollin made the child undress and eventually pulled over to perform oral sex on her. When done, he dumped her naked, helpless, and afraid on the side of a county road in the middle of winter, but not before threatening the life of her entire family if she told anyone what had happened. Then, by stealing the identity of an individual who died as a child, Hollin evaded law enforcement. This caused added trauma to C.T., as she lived in fear for years that Hollin might return to hurt her or her family.

[19] Regarding his character, Hollin boldly suggests he has, otherwise, lived a productive, law-abiding life. True, Hollin had no prior criminal convictions;

but it is folly to suggest that his life involved no other illegal activity. His own daughter testified to years of being molested and manipulated by Hollin when she was a young, preteen girl in his care. Additionally, Hollin's identity deception began in 1988 and ramped up in 2000, allowing him to remain a fugitive for seventeen years and live a new life. Although Hollin expressed remorse at the sentencing hearing, the trial court found that he was not truly sorry and that he was not deserving of mercy from the court. We agree with the trial court. There is nothing exceptional about Hollin's character that would support revising his sentence.

[20] In sum, we reverse the trial court's application of the credit restricted felon statutes to Hollin's sentence and remand with instructions to apply the credit time statutes in effect at the time of his offense. We otherwise affirm the trial court's imposition of a forty-year sentence with thirty years to be served in the DOC and ten years to be served on home detention.

[21] Judgment affirmed in part, reversed in part, and remanded.

Bailey, J. and Mathias, J., concur.