

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Jamie C. Egolf  
Bloom Gates Shipman & Whiteleather  
LLP  
Columbia City, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Attorney General of Indiana  
  
J.T. Whitehead  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Santos Salazar,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff.*

January 11, 2024

Court of Appeals Case No.  
23A-CR-551

Appeal from the  
Allen Superior Court

The Honorable  
David M. Zent, Judge

Trial Court Cause No.  
02D06-2103-F1-5

**Memorandum Decision by Senior Judge Baker**  
Judges Brown and Felix concur.

**Baker, Senior Judge.**

## Statement of the Case

- [1] Santos Salazar appeals his convictions for two counts of Level 4 felony child molesting and one count of Level 6 felony battery, asserting there was insufficient evidence to support his convictions. He also argues the court erred in sentencing him. Finding no error, we affirm.

## Facts and Procedural History

- [2] Salazar was alleged to have molested J.B. and C.B., his two young daughters. The State charged him with two counts of Level 1 felony child molesting, two counts of Level 4 felony child molesting, and one count of Level 6 felony battery. A jury found him guilty of the two counts of Level 4 felony child molesting and the battery. The court sentenced him to an aggregate term of sixteen years, and he now appeals.

## Discussion and Decision

### **I. Sufficiency of the Evidence**

- [3] Salazar first contends the State's evidence is insufficient to sustain his convictions.<sup>1</sup> In reviewing such challenges, we neither reweigh the evidence

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<sup>1</sup> Although in his Statement of Issues Salazar includes his battery conviction as one of his convictions that was not supported by sufficient evidence, he does not mention or present any argument whatsoever concerning his battery conviction in the Argument section of his brief. *See* Appellant's Br. pp. 4, 7-8. Accordingly, any argument regarding the sufficiency of the evidence supporting his battery conviction is

nor judge the credibility of witnesses. *Sandleben v. State*, 29 N.E.3d 126, 131 (Ind. Ct. App. 2015), *trans. denied*. Instead, we consider only the evidence most favorable to the verdict and any reasonable inferences drawn therefrom. *Id.* If there is substantial evidence of probative value from which a reasonable factfinder could have found the defendant guilty beyond a reasonable doubt, the verdict will not be disturbed. *Labarr v. State*, 36 N.E.3d 501, 502 (Ind. Ct. App. 2015).

[4] To obtain convictions for Level 4 felony child molesting, the State must have proved beyond a reasonable doubt that (1) Salazar (2) with J.B. and C.B. (3) who were both under the age of fourteen (4) performed or submitted to fondling or touching of either himself or J.B. and C.B. (5) with intent to arouse or to satisfy the sexual desires of himself or J.B. and C.B. *See* Appellant’s App. Vol. II, pp. 30, 32; *see also* Ind. Code § 35-42-4-3(b) (2015). Here, Salazar challenges the State’s evidence only as to the element of intent; specifically, he claims the State presented no evidence that he acted with the intent to arouse or satisfy his own sexual desires or that of J.B. or C.B.

[5] “An intent to arouse or to satisfy sexual desires may be inferred from evidence that the defendant intentionally touched the child’s genitals.” *Holden v. State*, 149 N.E.3d 612, 616 (Ind. Ct. App. 2020), *trans. denied*. Moreover, “[t]he

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waived. *See Sandleben v. State*, 29 N.E.3d 126, 136 (Ind. Ct. App. 2015) (failure to present cogent argument on issue waives that issue for appellate review), *trans. denied*.

testimony of a sole child witness is sufficient to sustain a conviction for molestation.” *Hoglund v. State*, 962 N.E.2d 1230, 1238 (Ind. 2012).

- [6] Here, J.B. testified at trial that Salazar inserted his finger into her vagina and her anus, inserted his penis into her vagina and her anus, and touched her breasts. Tr. Vol. 2, pp. 241, 243-45. J.B. further testified that Salazar repeatedly told her not to tell anyone what was happening. *Id.* at 240, 242. He told her he would hit her if she told anyone and asked her if she loved him and if she wanted him to go to jail. Tr. Vol. 3, p. 4.
- [7] C.B. testified that Salazar touched her vagina with his hand under her clothes. *Id.* at 63. This occurred in Salazar’s bedroom with both C.B. and J.B. present, and after touching C.B., Salazar then touched J.B. in the same manner. *Id.* at 63-64. C.B. also testified to a time when Salazar tricked her into putting his penis into her mouth by telling her it was candy. *Id.* at 66-67. Finally, C.B. testified to overhearing/seeing Salazar trying to grab J.B.’s vagina on the outside of her clothes and promising to buy her something and telling her not to tell anyone. *Id.* at 65-66.
- [8] The evidence shows Salazar’s intentional touching of both C.B.’s and J.B.’s genitals, and this testimony is sufficient by itself to support his convictions. Yet, the jury heard additional evidence of Salazar’s stern admonitions not to reveal the molestations, bribery, and trickery, which further demonstrate that his touching of the girls was intentional.

## II. Sentence

- [9] Although Salazar frames his second issue as one challenging his sentence as inappropriate, he presents no insight regarding the nature of the offenses or his character. Instead, he alleges the trial court abused its discretion by relying on a factor not supported by the record in crafting his sentence.
- [10] Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). As long as a defendant's sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court, or the reasonable, probable, and actual deductions drawn therefrom. *Id.*
- [11] As aggravating circumstances, the court found Salazar's criminal history, failure of prior attempts at rehabilitation, and violation of position of trust. Tr. Vol. 4, p. 52. Salazar asserts there is no evidence in the record to support a finding that prior attempts at rehabilitation have failed.
- [12] "A single aggravator is sufficient to support an enhanced sentence." *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008). Even assuming the court erred by considering Salazar's prior rehabilitation failure, it relied on two other valid aggravating factors and found no mitigating factors. In light of these two other valid and unchallenged factors that each, alone, support an enhanced sentence, we conclude the error, if any, was harmless. Moreover, we are confident the

trial court would have imposed the same sentence without the disputed aggravator.

## Conclusion

[13] Based on the foregoing, we conclude there was sufficient evidence to support Salazar's convictions of child molesting, and the court did not commit reversible error in sentencing him.

[14] Affirmed.

Brown, J., and Felix, J., concur.