

## MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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## IN THE COURT OF APPEALS OF INDIANA

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Cody Joel Miller,  
*Appellant-Defendant*

v.

State of Indiana,  
*Appellee-Plaintiff*

February 18, 2022

Court of Appeals Case No.  
21A-CR-1779

Appeal from the Tippecanoe  
Superior Court

The Honorable Steven Meyer,  
Judge

Trial Court Cause No.  
79D02-2103-F4-5

**Pyle, Judge.**

## Statement of the Case

[1] Cody Miller (“Miller”) appeals, following his guilty plea, his sentence for Level 4 felony child molesting.<sup>1</sup> Miller argues that his sentence, which includes time suspended to probation and community corrections, is inappropriate.

Concluding that Miller has failed to show that his sentence is inappropriate, we affirm his sentence.

[2] We affirm.

## Issue

Whether Miller’s sentence is inappropriate.

## Facts

[3] In August 2020, nineteen-year-old Miller was in a relationship with thirteen-year-old C.W. (“C.W.”), who was a sister of his friend. On August 12, 2020, Miller kissed, touched, and fondled C.W. Specifically, Miller touched and fondled C.W.’s “breast, butt and/or vagina, outside of her clothing” with the “intent to arouse or satisfy [his] sexual desires[.]” (Tr. Vol. 2 at 14, 15). Miller was at C.W.’s house when the offense occurred, and C.W.’s mother (“C.W.’s mother”) saw Miller touching C.W. C.W.’s mother contacted the police.

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<sup>1</sup> IND. CODE § 35-42-4-3.

- [4] When C.W.'s mother looked at C.W.'s Instagram account, C.W.'s mother saw multiple messages between Miller and C.W. that had occurred between June and August 2020. C.W.'s mother showed the messages to the police. During a subsequent forensic interview, C.W. stated that she had been in a relationship with Miller and that they had both known that it was not an age-appropriate relationship. C.W. also stated that Miller had previously asked her to have sexual intercourse but that she had refused.
- [5] The State charged Miller with two counts of Level 4 felony child molesting. In July 2021, Miller entered a guilty plea to one count of Level 4 felony child molesting in exchange for the State's dismissal of the remaining charge and agreement not to file an additional charge of Level 5 felony child solicitation. His plea agreement left sentencing open to the trial court's discretion.
- [6] At the beginning of the sentencing hearing, the trial court stated that the parties had filed various documents for consideration in sentencing. Specifically, both the State and Miller had submitted a confidential sentencing memorandum. The trial court noted that Miller's sentencing memorandum included a psycho-sexual risk assessment and several character letters and that the State's sentencing memorandum included two police reports that had been prepared in relation to Miller's offense.<sup>2</sup> The trial court also confirmed that Miller had

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<sup>2</sup> The first police report summarized and quoted the Instagram messages between Miller and C.W., and the second police report summarized C.W.'s forensic interview and Miller's police interview, in which Miller stated that he had dated C.W. and admitted that he and C.W. had kissed and touched each other.

reviewed all of the submitted documents. Neither party objected to consideration of these filed documents.

[7] During Miller’s sentencing hearing, the State presented the presentence investigation report (“PSI”), which showed that Miller had a 2018 juvenile adjudication on two counts of sexual battery of a victim compelled to submit by force or threat. Miller had been placed on two years of formal probation with requirements to participate in sex offender treatment, refrain from viewing or possessing child pornography, attend school, and complete community service. Miller’s probation was closed unsuccessfully in 2019 after Miller had violated his supervision and had failed to attend sex offender treatment and counseling.

[8] C.W. and her mother submitted written victim impact statements. In C.W.’s written statement, she indicated that Miller had threatened her if she were to tell anyone what he had done. Specifically, Miller told C.W. that “everyone [she] loved would be killed in front of [her].” (App. Vol. 2 at 137). C.W. also indicated that Miller’s offense against her had caused her to have recurring nightmares. In C.W.’s mother’s written impact statement, she reported that C.W. had been having sleepless nights and nightmares. C.W.’s mother also stated that C.W.’s grades had “slipped” and that C.W. had been “scared to go out in public for fear of running into [Miller].” (App. Vol. 2 at 137).

[9] C.W. and her father (“C.W.’s father”) appeared at the sentencing hearing to give an in-person victim impact statement. During C.W.’s in-person impact statement, C.W. explained that “what [Miller] [had done] to [her] ha[d] really

affected [her] life.” (Tr. Vol. 2 at 25). She stated that she had “trust issues” with her brothers and any males and that she would not go out anywhere with a male because she was “scared of what [Miller] [had] d[one] to [her]” and was afraid that any male would also “do it to [her].” (Tr. Vol. 2 at 25). C.W. also explained that she had “night terrors” where she would “w[a]ke up multiple times, chok[e] [her]self, scream[], [and] cry[].” (Tr. Vol. 2 at 26).

[10] C.W.’s father stated that Miller had previously lived with them and that the family had “[m]ade him one of [their] own” and had “entrusted” him. (Tr. Vol. 2 at 22). C.W.’s father also stated that he had worked second shift and that he had “entrusted [Miller] to help . . . with [C.W.]” and to “keep an eye on her while [the father] was at work.” (Tr. Vol. 2 at 22). Additionally, C.W.’s father stated that Miller had “busted [the father’s] trust by going behind [his] back [and] attempting to have a relationship with [C.W.]” and by stealing C.W.’s innocence. (Tr. Vol. 2 at 22). C.W.’s father commented that Miller had acted “[v]ery inappropriate[ly]” by being a nineteen-year-old in a relationship with a thirteen-year-old girl and by making threats to kill the family if C.W. told anyone what Miller had done to her. (Tr. Vol. 2 at 22).

[11] During Miller’s statement, Miller denied that he had threatened to hurt anyone. He stated that he was “truly sorry for everything” and that he “kn[e]w that that w[ould] never be enough but [that he was] very sorry.” (Tr. Vol. 2 at 27). When arguing for aggravating and mitigating circumstances, Miller’s counsel referenced material from the police reports in the State’s sentencing

memorandum to argue that Miller was young and had “very immature conversations” with C.W. (Tr. Vol. 2 at 27-28).

[12] When sentencing Miller, the trial court noted that Miller’s actions were “very troubling[,]” especially the fact that, at nineteen years old, Miller would think “that it would be appropriate [to be] in some kind of a romantic relationship with a [thirteen-year-old] girl[.]” (Tr. Vol. 2 at 34). The trial court stated that “calling it a relationship sort of cheapen[ed] what[] happened” and “sound[ed] like it justifie[d] what[] [had] happened[.]” (Tr. Vol. 2 at 37-38). The trial court noted that, instead, “it was more [of] an abusive situation” and that “the repetitive nature of this [wa]s concerning to the Court.” (Tr. Vol. 2 at 38). The trial court noted that Miller “knew it was wrong” and had told C.W. not to tell anyone about it. (Tr. Vol. 2 at 35). The trial court also discussed Miller’s prior juvenile offense for a similar sex-related offense and Miller’s failure to comply with the sex offender counseling in that juvenile case. Specifically, the trial court noted that Miller had “had an opportunity to correct this kind of behavior when [he] [had been] sentenced for this similar behavior as a juvenile” and that Miller’s failure to complete the sex offender program “sp[o]k[e] something of [his] character and . . . [his] willingness to rehabilitate [him]self.” (Tr. Vol. 2 at 36, 37).

[13] The trial court found aggravating circumstances in Miller’s juvenile history, his failure to complete sex offender counseling, the repetitive nature of the offense, the impact on the victim, and the fact that Miller had threatened harm against the victim’s family. The trial court found Miller’s guilty plea, young age, family

support, expression of remorse, employment history, and difficult childhood to be mitigating circumstances. Thereafter, the trial court determined that the aggravating circumstances outweighed the mitigating circumstances. The trial court imposed a nine (9) year sentence, with six (6) years executed and three (3) years suspended to supervised probation. The trial court also ordered that the first year of probation be served in community corrections as a condition of probation. Miller now appeals.

## Decision

[14] Miller argues that his nine-year sentence with six years executed and three years suspended to probation with community corrections is inappropriate. Miller asks this Court to “revise [his] sentence to the advisory term of six (6) years, with the remaining term of his sentence to be served on probation.” (Miller’s Br. 14).

[15] We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). The defendant has the burden of persuading us that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). The principal role of a Rule 7(B) review “should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “Appellate Rule 7(B) analysis is not to determine whether another sentence is more appropriate but rather whether the sentence imposed is inappropriate.” *Conley v. State*, 972

N.E.2d 864, 876 (Ind. 2012) (internal quotation marks and citation omitted), *reh'g denied*. Appellate review of a defendant's sentence under Rule 7(B) will include consideration of the length of the sentence as well as consideration of "whether a portion of the sentence is ordered suspended or otherwise crafted using any of the variety of sentencing tools available to the trial judge," such as probation or placement in community corrections. *Davidson v. State*, 926 N.E.2d 1023, 1025 (Ind. 2010).

[16] When determining whether a sentence is inappropriate, we acknowledge that the advisory sentence "is the starting point the Legislature has selected as an appropriate sentence for the crime committed." *Childress*, 848 N.E.2d at 1081. Miller pled guilty and was convicted of Level 4 felony child molesting. A person who commits a Level 4 felony "shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years." I.C. § 35-50-2-5.5. Here, the trial court imposed a nine-year sentence but used some of the "sentencing tools" available to it when it ordered six years to be executed and three years to be suspended to probation, which included a one-year placement in community corrections. *See Davidson*, 926 N.E.2d at 1025.

[17] Turning first to the nature of Miller's offense, we note that Miller, who had previously been welcomed into C.W.'s family, touched and fondled thirteen-year-old C.W.'s breast, buttocks, and vagina on the outside of her clothing with the intent to arouse or satisfy his sexual desires. We echo the trial court's comment that Miller's offense was "very troubling" because nineteen-year-old



Miller had thought “that it would be appropriate [to be] in some kind of a romantic relationship with a [thirteen-year-old] girl[.]” (Tr. Vol. 2 at 34).

[18] In reviewing Miller’s character, we note that he has a juvenile adjudication that is similar in nature and close in time to the current offense. Specifically, Miller had a 2018 juvenile adjudication on two counts of sexual battery. Miller had been placed on probation with a requirement to participate in sexual offender counseling. Miller, however, failed to complete that counseling, and his probation was closed unsuccessfully in 2019. As the trial court noted, Miller’s failure to complete the sex offender treatment program reflected poorly on his character and showed his unwillingness to rehabilitate himself. Miller points to his guilty plea, young age, family support, expression of remorse, and employment history as warranting a reduced sentence. The trial court considered these factors as mitigating circumstances when imposing Miller’s sentence in which it suspended a portion of his sentence and placed him on probation, including community corrections.

[19] After a full review of the record on appeal, we conclude that Miller has not persuaded us that his nine-year sentence with six years executed and three years suspended to probation with community corrections for his Level 4 felony child molesting conviction is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[20] **Affirmed.**

**May, J., and Brown, J., concur.**