MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jeremy W. Davidson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 6, 2023

Court of Appeals Case No.
22A-CR-1788

Appeal from the
Carroll Circuit Court

The Honorable
Benjamin A. Diener, Judge

Trial Court Cause Nos.
08C01-2009-F1-1
08C01-2012-F1-2

Memorandum Decision by Senior Judge Najam
Judges Robb and Tavitas concur.

Najam, Senior Judge.

Statement of the Case

[1] Jeremy W. Davidson appeals the 220-year sentence imposed after he was charged and convicted of five counts of Level 1 felony child molesting[1] committed against his biological daughters and an habitual offender enhancement. Although he challenges the appropriateness of his sentence under Indiana Appellate Rule 7(B), he also claims there are mitigating factors the trial court should have considered, which suggests a claim that the trial court also abused its discretion in sentencing. We affirm.

Facts and Procedural History

[2] Davidson is the biological father of A.D., born in 2006, and M.D., born in 2011. M.D. lived with her mother, Brianna, her sister, S., and her brothers, J. and T., in Davidson's home in Flora, Indiana. Davidson and Brianna began dating when she was sixteen years old and married when she was twenty-three years old.

[3] Per A.D.'s previously established visitation schedule, she visited Davidson and Brianna's house every other weekend during the more than a year charged,

[1] Ind. Code 35-42-4-3(a)(1) (2021).

from 6:00 p.m. on Friday until 6:00 p.m. on Sunday. M.D., who was seven and eight years old, and A.D., who was twelve and thirteen years old at the time, shared an upstairs bedroom when A.D. visited.

[4] Davidson devised ways to isolate M.D. and A.D. from everyone else during those visits. Davidson would keep Brianna preoccupied with other things, arrive home from work before Brianna did, or would remove the others from the house or from a specific room. He would then demand that the girls "come here," and after they obeyed, he would sexually abuse them. Tr. Vol. 2, p. 193. The girls asked for a lock to the door of the room they shared, but the lock was a sliding one that Davidson could easily unlock to enter their room. According to M.D., he also would enter the attic through an entrance in the boys' adjacent room, crawl through the attic, and enter their bedroom to get to them.

[5] The pattern of sexual abuse that developed every time A.D. visited was that Davidson would force M.D. to perform oral sex on him, and then he would engage in sexual intercourse with A.D. until he ejaculated. A.D. testified that after Davidson ejaculated inside her, he "would just push me off" and "would, like, get a napkin or anything," "wipe himself off, and then he would just tell me to wipe myself off." *Id.* at 191. He would then "throw it out the window." *Id.*

[6] According to A.D., Davidson had sex with A.D. every weekend that she visited him at his house in Flora, which was every other weekend for approximately one year during the year charged. This sexual abuse would occur in various

rooms in the house, which included Davidson and Brianna's bedroom, or he would drive both girls to a secluded wooded area, a cornfield, or Bachelor Run, a nearby golf course, to molest them.

[7] When Davidson planned to take the girls outside the house, they would ask if they could stay home or if they could bring someone else with them. Davidson would tell them "you're going." *Id.* at 207. And as for the molestations inside the home, although the girls locked the door to keep their father out of their bedroom, Davidson would enter their bedroom anyway. They would hide and sleep behind the living room couch to avoid Davidson's abuse so frequently that Brianna thought their behavior "was just normal," and did not suspect what was occurring. Tr. Vol. 3, p. 17. Davidson administered sleeping pills to the girls and would on occasion molest them when they were barely awake. On one such occasion, A.D. awoke when she felt Davidson place his penis inside her vagina. As for Davidson's sexual intercourse with A.D., when they were in his vehicle, she was on top of him, and when they were at home, he was on top of her.

[8] The girls were scared about what their father would do to them. M.D. testified that after the sexual abuse in the woods, he told her and A.D. that they "were the best daughters." *Id.* at 15. However, he also told A.D. that "he would make it hurt more if [she], like, did anything he didn't want [her] to." Tr. Vol. 2, p. 192. And he told the girls, "dads did that," so A.D. "believed him" and "didn't know what to do because he was my dad." *Id.* at 196. He told A.D.

"I'm going to go to jail. I'm going to be gone for a long time. You're not going to see your sisters or your brother." *Id.*

[9] As for birthdays, A.D. visited Davidson a week after her thirteenth birthday and asked if she could "not have sex with him, or can I not do, like anything." *Id.* at 195. Davidson responded, "[O]h, really? Come on." *Id.* The next day he made A.D. have sexual intercourse with him. The day after M.D.'s ninth birthday was the first time her father threw her on the bed, took off her pants and underwear, and digitally penetrated her vagina.

[10] Davidson's sexual abuse of his daughters was discovered on September 7, 2020. On that evening, the family was watching a program on Netflix together in the living room. Brianna wanted ice cream, tried to persuade Davidson to go with her to the store, but she could not, and left the home alone. M.D. wanted to listen to music but had difficulty because her siblings were arguing. Davidson told M.D. that she could use her mother's headphones. Because M.D. did not know how to connect them to her phone, Davidson told her to follow him. He led her to the bathroom and once there Davidson locked the door, pulled his pants down, and told M.D. to "lick it." Tr. Vol. 3, p. 6. Davidson pulled down M.D.'s pants and "stuck his private in [her] private." *Id.*

[11] By that time, Brianna had returned from the store and made her way toward the bathroom. Davidson heard her and "pulled up his pants really quick." *Id.* at 7. Davidson then walked toward Brianna. Brianna saw Davidson leaving "the dark restroom . . . and he shut the door behind him." Tr. Vol. 2, p. 216.

She observed that while he never wore his shirt tucked into his pants, it was tucked in at that time. He then attempted to redirect Brianna from the bathroom area, even though she stated she needed to use the restroom.

[12] M.D., who had stayed in the bathroom at first, exited, and went into a corner of the bedroom. Brianna asked M.D. why she was in the bathroom. M.D., who was scared, lied to her mother that Davidson was helping her connect the headphones. Davidson kept talking over their conversation, and repeated the lie that he was helping M.D. Brianna looked at the counter and did not see the headphones there, but she found them on the kitchen counter by the sink.

[13] Brianna took M.D. out of the house to question her, but Davidson followed them. Brianna returned with M.D. inside the house and locked Davidson outside. When she asked again, M.D. disclosed what had happened. Brianna removed the children from the house and later learned about the pattern of sexual abuse that Davidson had committed against A.D. When Brianna confronted Davidson, he accused M.D. of lying, accused Brianna of being crazy, and later blamed A.D. for bringing M.D. into the sexual relationship.

[14] The girls underwent forensic interviews during which they disclosed the molestations. A.D. showed detectives the various locations where Davidson had sexually abused them, such as the house, the golf course, and the wooded areas. DNA analysis of M.D.'s underwear established that it was 18 billion times more likely that Davidson and M.D. contributed to the DNA found on

her underwear than if it had been contributed by an unknown contributor and M.D.

[15] Davidson, who fled from Indiana after the discovery of his crimes, was ultimately located and arrested in Florida and was returned to Indiana to stand trial. At the conclusion of Davidson's jury trial, the jury found him guilty as charged. During the habitual offender portion of the trial, the State established beyond a reasonable doubt that Davidson had been convicted of Class C felony burglary in 2002, Class D felony domestic battery against his first wife in 2011, and Level 5 felony neglect of a dependent in 2015. The trial court sentenced Davidson to forty years for each of the Level 1 felony child molesting convictions, enhanced the sentence for the first count by twenty years for the habitual offender determination, and ordered that the sentences for each child molestation be served consecutively, for an aggregate sentence of 220 years. The court also found that Davidson was a sexually violent predator by operation of law due to his convictions.

Discussion and Decision

Abuse of Discretion

[16] Davidson contends that the trial court abused its discretion when it sentenced him. Sentencing decisions lie within the sound discretion of the trial court. *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). 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 to be drawn therefrom." *Gross v. State*, 22 N.E.3d 863, 869 (Ind. Ct. App. 2014) (citation omitted), *trans. denied*.

[17] A trial court abuses its discretion in sentencing if it does any of the following:

> 1) fails "to enter a sentencing statement at all;" (2) enters "a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons;" (3) enters a sentencing statement that "omits reasons that are clearly supported by the record and advanced for consideration;" or (4) considers reasons that "are improper as a matter of law."

Id. (quoting *Anglemyer v. State*, 868 N.E.2d 482, 490-491 (Ind. 2007), *clarified on reh'g on other grounds*, 875 N.E.2d 218 (Ind. 2007)).

[18] The sentencing range for a Level 1 felony child molesting offense is twenty to fifty years, with an advisory sentence of thirty years. Ind. Code §35-50-2-4(c) (2014). Here, the trial court identified the following five aggravating factors:

> (1) The harm, injury, loss, or damage suffered by the victim of an offense was significant and greater [than] the elements necessary to prove the commission of the offense.
> (2) Defendant has a substantial history of criminal or delinquent behavior.
> (3) Defendant committed crimes of violence, and knowingly committed the offense in the presence of his other child or children, who [were] under eighteen (18) years of age at the time of the offense.
> (4) Defendant has recently violated the condition of probation, parole, pardon, community corrections, and pre-trial release.
> (5) Defendant was in a position of having care, custody, or control of the victim of the offense.

Appellant's App. Vol. 2, p. 56. The court found no mitigating factors.

[19] The State accurately sets forth caselaw holding that it "is a defendant's duty to present an adequate record clearly showing the alleged error, and where he fails to do so, the issue is waived." *Davis v. State*, 935 N.E.2d 1215, 1217 (Ind. Ct. App. 2010). Here, Davidson has failed to present us with a transcript of the sentencing hearing and thus subjects himself to waiver. The State further observes that a "defendant is precluded from advancing [a mitigating factor] for the first time on appeal." *Spears v. State*, 735 N.E.2d 1161, 1167 (Ind. 2000). This means that Davidson's arguments are not available for our review because we do not have an adequate record with which to determine if they were first presented to the trial court. Nonetheless, we address his two main arguments along these lines.

[20] First, Davidson argues that the court gave too much weight to his admittedly "significant criminal history extending from 2001 to present" because "none of those crimes involve convictions of child molestation." Appellant's Br. p. 19.

[21] "Our Supreme Court has previously explained that under our advisory sentencing scheme, trial courts no longer have any obligation to weigh aggravating and mitigating factors against each other when imposing a sentence." *Ramon v. State*, 888 N.E.2d 244, 255 (Ind. Ct. App. 2008). And the "weight the trial court gives to any aggravating circumstances is not subject to appellate review." *Id.*

[22] Davidson's criminal history does not contain *convictions* for child molestations. However, the record reflects that Davidson repeatedly committed child molestation against his daughters over more than a year, stopping only when his criminal behavior was discovered. Davidson's criminal history does include one conviction for domestic battery and one conviction of neglect of a dependent, which was the product of plea negotiations in exchange for the dismissal of a charge for committing battery on a victim less than fourteen years of age. This history illustrates his continued pattern of harming those in his household. Thus, even if this argument were available for appellate review, we cannot agree that the court abused its discretion in its consideration of Davidson's criminal history.

[23] His second claim is that the court should have considered his GED, work history, and mental health issues. "The trial court is not obligated to accept the defendant's argument as to what constitutes a mitigating factor, and a trial court is not required to give the same weight to proffered mitigating factors as does a defendant." *Healey v. State*, 969 N.E.2d 607, 616 (Ind. Ct. App. 2012), *trans. denied*. "A trial court does not err in failing to find a mitigating factor where that claim is highly disputable in nature, weight, or significance." *Id.* "An allegation that a trial court abused its discretion by failing to identify or find a mitigating factor requires the defendant on appeal to establish that the mitigating evidence is significant and clearly supported by the record." *Id.*

[24] First, as we have acknowledged before, "[m]any people are gainfully employed such that this would not require the trial court to note it as a mitigating factor. .

. ." *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. And although Davidson achieved his G.E.D., which is commendable, this accomplishment is insignificant when compared to the particular and unique aggravating circumstances of this case. We cannot agree that the trial court abused its discretion regarding these proffered mitigating circumstances.

[25] As for Davidson's mental health claims, he stated in his pre-sentence investigation report that he suffers from "anxiety, panic attacks, depression, attempts/thoughts of suicide, anger problems, sleep disturbance, feelings of hopelessness, and un-planned weight change." Appellant's App. Vol. 2, p. 50. The only indication that Davidson has made any effort to address these problems, however, is found in his pre-sentence investigation report statement that he "was ordered to complete anger management as part of a CHINS case in 2015," and that he "was treated at Four County as a child." *Id.* Thus, it appears he has only sought help when required to do so. We find no abuse of discretion in the trial court's decision not to find his mental health claims a significant mitigating circumstance.

Inappropriate Sentence

[26] Davidson also contends that his sentence is inappropriate in light of the nature of the offenses and his character. Article 7, sections 4 and 6 of the Indiana Constitution "authorize[ ] independent appellate review and revision of a sentence imposed by the trial court." *Roush v. State*, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007). This appellate authority is implemented through Indiana

Appellate Rule 7(B). *Id.* Revision of a sentence under Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. *See* Ind. Appellate Rule 7(B); *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). The question under Appellate Rule 7(B) analysis is "not whether another sentence is more appropriate" but rather "whether the sentence imposed is inappropriate." *King v. State*, 894 N.E.2d 265, 268 (Ind. Ct. App. 2008).

[27] Davidson's 220-year sentence is tantamount to a life sentence in prison. Nevertheless, Davidson did not receive the maximum sentence allowed by statute (fifty years times five convictions and a twenty-year habitual offender enhancement=270), nor the recommendation given by the probation department of 250 years. *See* Appellant's App. Vol. 2, p. 52. However, the sentence appropriately accounts for five Level 1 felony convictions and an habitual offender enhancement. And the consecutive sentences account for multiple offenses against multiple victims often committed in the presence of each other on many different dates.

[28] Next, we evaluate whether the sentence imposed is warranted given Davidson's character. On review, analysis of the character of the offender involves a "broad consideration of a defendant's qualities." *Aslinger v. State*, 2 N.E.3d 84, 95 (Ind. Ct. App. 2014). "The character of the offender is found in what we learn of the offender's life and conduct." *Croy v. State*, 953 N.E.2d 660, 664 (Ind. Ct. App. 2011).

[29] Davidson admits that his criminal history is "significant." Appellant's Br. p. 19. We agree with the State's assessment that Davidson's current convictions "are not the first examples of [Davidson's] disregard for the welfare of children." Appellee's Br. p. 18. In sum, Davidson's criminal history includes five felonies and four misdemeanors. He was on probation when he committed the offenses against A.D. and M.D. Other child molesting charges remain pending in another county, and a probation violation was pending at the time of Davidson's sentencing.

[30] Next, we turn to the nature of the offenses, which we have outlined in great detail above. "The nature of the offenses is found in the details and circumstances of the commission of the offenses and the defendant's participation." *Croy*, 953 N.E.2d at 664.

[31] Here, the molestations were the product of Davidson's abuse of trust against not one, but two victims—his young biological daughters. This is not a case where a horrific mistake was made on one occasion. Rather, Davidson's offenses manifests an ongoing pattern of predatory behavior and abuse lasting for the more than a year charged and longer. A.D. testified that she visited her father every other weekend during that year and that he forced her to have sexual intercourse with him every time she visited. Her testimony supports the inference that she was molested, at a minimum, twenty-six times during that year. Yet, Davidson was convicted of and sentenced for five acts of child molestation.

[32] Additionally, he committed these offenses many times where each daughter witnessed the sexual abuse of the other by their father, and the girls were so young they did not know to question their father's misrepresentation that "dads do this." Tr. Vol. 2, p. 196. A.D.'s testimony had to be confined to only those sexual molestations that had occurred in Carroll County, and also not about "other incidents that happened further in the past." *Id.* at 190.

[33] A "trial court may rely on the same reasons to impose a maximum sentence and also impose consecutive sentences." *Williams v. State*, 891 N.E.2d 621, 630 (Ind. Ct. App. 2008). "Abusing a position of trust is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting." *Singer v. State*, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996). And these crimes of violence were not an episode of criminal conduct such that the total consecutive terms of imprisonment shall be statutorily capped. *See* Ind. Code 35-50-1-2(d)(6) (2019) (forty-two years with most serious offense a Level 1 felony).

[34] The cases Davidson cites are not helpful here because Appellate Rule 7(B) analysis does not call for comparative review of sentences, but "'turns on our sense of 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*.'" *Wilson v. State*, 157 N.E.3d 1163, 1181 (Ind. 2020) (emphasis added) (quoting *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020)). Davidson has not been deterred from continuing his criminal behavior by his contacts with the

criminal justice system. And he did not receive the maximum sentence available in this situation.

[35] After taking into account, among other considerations, Davidson's brazen, deliberate, and habitual pattern of sexual molestations over many months, his abuse of trust when he inflicted these crimes upon his own young daughters under duress, his multiple victims who were not only abused but were abused in the presence of each other, and the very considerable uncharged misconduct, we do not hesitate to say that Davidson has not met his burden to persuade us that his sentence is inappropriate.

[36] We affirm.

Robb, J., and Tavitas, J., concur.