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IN THE
COURT OF APPEALS OF INDIANA

Harry Richard Wellings, Jr.,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

March 22, 2022

Court of Appeals Case No.
21A-CR-1874

Appeal from the Wayne Superior
Court

The Honorable Gregory A. Horn,
Judge

Trial Court Cause No.
89D02-2001-F3-1

Pyle, Judge.

Statement of the Case

[1] Harry Richard Wellings, Jr. (“Wellings”) appeals his aggregate sentence, following his guilty plea, for Level 3 felony attempted rape,¹ Level 4 felony criminal confinement,² Level 5 felony attempted incest,³ Level 6 felony sexual battery,⁴ and Level 6 felony strangulation.⁵ Wellings’ sole argument on appeal is that his aggregate twelve-year sentence is inappropriate. Concluding that Wellings has failed to show that his twelve-year sentence is inappropriate, we affirm his sentence.

[2] We affirm.

Issue

Whether Wellings’ sentence is inappropriate.

Facts

[3] In December 2019, sixty-three-year-old Wellings invited his forty-three-year-old biological daughter, E.W. (“E.W.”), to his motel room. Wellings told E.W. that he had holiday gifts for her children. When E.W. arrived at Wellings’ motel room, Wellings made sexual comments to her, including a comment

¹ IND. CODE § 35-42-4-1.

² IND. CODE § 35-42-3-3.

³ IND. CODE § 35-46-1-3.

⁴ IND. CODE § 35-42-4-8.

⁵ IND. CODE § 35-42-2-9.

about Wellings wishing that E.W. wore a dress without underwear. Wellings also offered E.W. money to perform sexual acts on him. When E.W. attempted to leave, Wellings pinned E.W. down on his bed by putting his body weight on her arms. He also covered E.W.'s mouth with his hand. While Wellings had E.W. pinned down, he reached under her clothes and made skin-to-skin contact with her breasts. Wellings also rubbed E.W.'s vagina through her clothing. While Wellings had E.W. pinned, he told her, "Okay, I'm gonna knock you out, take your pants off, take your top off, suck your tits, [and] eat your pussy[.]" (Tr. Vol. 2 at 13). E.W. attempted to escape, but Wellings would not let her leave. Wellings eventually moved away from E.W. and began masturbating while blocking E.W.'s escape from the room. Eventually, E.W. was able to escape Wellings' motel room. E.W. had bruising on her back and knees and red marks on her nose and mouth.

[4] The State charged Wellings with Level 3 felony attempted rape, Level 4 felony criminal confinement, Level 5 felony attempted incest, Level 6 felony sexual battery, and Level 6 felony strangulation. Thereafter, in May 2021, Wellings pled guilty to all counts.

[5] At the subsequent sentencing hearing, the trial court found the harm to the victim to be an aggravator. Additionally, the trial court found the facts of the crime to be "simply horrendous[.]" (Tr. Vol. 2 at 46). Also, the trial court found Wellings' criminal history, which includes a felony child molesting conviction and a probation violation, to be a significant aggravator. The trial court found Wellings' mental health struggles, substance abuse, and military

service to be mitigating factors. The trial court sentenced Wellings to twelve (12) years for his Level 3 felony attempted rape conviction. It also sentenced Wellings to an advisory term of six (6) years for his Level 4 felony criminal confinement conviction, an advisory term of three (3) years for his Level 5 felony attempted incest conviction, an advisory term of one (1) year for his Level 6 felony sexual battery conviction, and an advisory term of one (1) year for his Level 6 felony strangulation. The trial court ordered the sentences to be served concurrently with one another at the Indiana Department of Correction (“the DOC”), resulting in an aggregate executed sentence of twelve (12) years.

[6] Wellings now appeals.

Decision

[7] Wellings contends that his aggregate twelve-year sentence is inappropriate. He asks this Court to reduce his sentence to ten years, with six years executed and four years suspended.

[8] 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) (internal quotation marks

omitted). Whether a sentence is inappropriate ultimately turns on “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.” *Id.* at 1224. “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*.

[9] 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. Wellings pled guilty and was convicted of Level 3 felony attempted rape, Level 4 felony criminal confinement, Level 5 felony attempted incest, Level 6 felony sexual battery, and Level 6 felony strangulation. A person who commits a Level 3 felony “shall be imprisoned for a fixed term of between three (3) and sixteen (16) years, with the advisory sentence being nine (9) years.” I.C. § 35-50-2-5(b). 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. A person who commits a Level 5 felony “shall be imprisoned for a fixed term of between one (1) and six (6) years, with the advisory sentence being three (3) years.” I.C. § 35-50-2-6(b). A person who commits a Level 6 felony “shall be imprisoned for a fix term of between six (6) months and two and one-half (2½) years, with the advisory sentence being one (1) year.” I.C. § 35-50-2-7(b). Here, the trial court

sentenced Wellings to an aggregate sentence of twelve years for his five convictions, which is well below the maximum sentence. Specifically, the trial court imposed a twelve-year sentence for Wellings' Level 3 felony conviction and advisory sentences for his remaining four convictions, and it ordered these sentences to be served concurrently.

[10] Turning first to the nature of the offenses, we note that we agree with the trial court when it called the facts of the crimes “simply horrendous[.]” (Tr. Vol. 2 at 46). Wellings invited E.W., his adult biological daughter, to visit him and told her that he had gifts for her children. When E.W. arrived, Wellings made sexual comments to her and asked her for sexual favors. When E.W. attempted to leave, Wellings pinned her down, reached under her shirt, grabbed her breasts, rubbed her vagina, and covered her mouth with his hand. When she attempted to escape, Wellings blocked her path and began masturbating in front of her. Additionally, Wellings threatened E.W. with physical and sexual violence. The nature of the offenses in no way merits a reduction of Wellings' sentence.

[11] Turning to Wellings' character, we note his criminal history to be troubling. Wellings has a prior felony conviction for child molesting as well as a handful of misdemeanor convictions. Furthermore, Wellings had his probation revoked on his child molesting conviction, which shows a failure to respond to previous efforts at rehabilitation. Wellings also argues that his mental health problems and substance abuse merit a reduction of his sentence. However, the trial court

already noted these to be mitigating factors when it made its sentencing decision.

[12] It is also important to note that our authority to review sentences under Appellate Rule 7(B) authorizes us to affirm, reduce, or *increase* a sentence. *McCullough v. State*, 900 N.E.2d 745, 750 (Ind. 2009) (holding when exercising our constitutional authority to review and revise sentences, we may impose a sentence that is more severe than that imposed by the trial court); *Akard v. State*, 937 N.E.2d 811, 814 (Ind. 2010). While the nature of this offense and Wellings' character could justify a more severe sentence, we choose to defer to the good judgment of the trial judge who was present and considered all the evidence at the sentencing hearing.

[13] Wellings has not persuaded us that his aggregate twelve-year sentence for his Level 3 felony attempted rape, Level 4 felony criminal confinement, Level 5 felony attempted incest, Level 6 felony sexual battery, and Level 6 felony strangulation convictions is inappropriate. Therefore, we affirm the sentence imposed by the trial court.

[14] Affirmed.

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