

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Nicholas A. Robinson,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

October 31, 2023

Court of Appeals Case No.
23A-CR-400

Appeal from the DeKalb Superior
Court

The Honorable Adam C. Squiller,
Judge

Trial Court Cause No.
17D01-2110-F1-7

Memorandum Decision by Judge Mathias
Judges Riley and Crone concur.

Mathias, Judge.

[1] Nicholas A. Robinson appeals his conviction for Level 1 felony child molesting, the trial court’s finding that he is a repeat sexual offender, and his fifty-year sentence. Robinson raises four issues for our review, which we restate as follows:

1. Whether the trial court abused its discretion in the admission of evidence during Robinson’s jury trial on the Level 1 felony allegation.
2. Whether any error in the trial court’s admission of testimony during the bench trial on the repeat sexual offender enhancement was harmless.
3. Whether any error in the trial court’s admission of testimony during sentencing was harmless.
4. Whether Robinson’s aggregate sentence of fifty years in the Department of Correction is inappropriate in light of the nature of the offense and Robinson’s character.

[2] We affirm.

Facts and Procedural History

[3] In the summer and fall of 2020, L.M., who was thirteen years old at the time, lived with her maternal grandparents in Dekalb but frequently visited her stepmother in Garrett. L.M. also spent time with her mother and stepfather. Robinson, whom L.M. called “Uncle Nick” because he was “very close and felt like a family member,” was a friend of L.M.’s stepfather and lived near L.M.’s

stepmother. Tr. Vol. 2, pp. 196-97. Robinson was about thirty-one years old at the time.

- [4] While L.M. was in Garrett visiting her stepmother, Robinson gave her his cell phone number as well as his Snapchat contact information. Snapchat is an app that allows people to communicate with text, photos, and videos, and Snapchat's default setting is to delete all communications between users. A user "actually ha[s] to do something to save" those communications. *Id.* at 198.
- [5] Robinson and L.M. began communicating via Snapchat. Robinson sent her a photo of him holding money, and he sent her a text saying he thought she was "hot." *Id.* at 208. Robinson then told L.M., again, over Snapchat, that "he would make an account" on a specified pornography website so that L.M. "could watch" Robinson "masturbating." *Id.* at 209. Robinson later informed L.M. of his account name on the pornography site so she could find him on the site. L.M. accessed the site and observed videos of Robinson masturbating and pictures of his penis. In addition to the account name, L.M. also recognized Robinson's tattoos in those videos and pictures.
- [6] After viewing Robinson's account on the pornography site, L.M. and Robinson again communicated via Snapchat, and L.M. "me[t] up with him" at his house. *Id.* at 214. After L.M. entered Robinson's house, she locked the door behind her. Robinson then engaged L.M. in sexual intercourse on the couch in his living room. On a different and later occasion, L.M. went to Robinson's house

to watch a movie, and he touched her vagina over her clothes. On two further occasions, Robinson engaged L.M. in sexual intercourse in his bedroom.

[7] On November 3, 2020, a few days after her last sexual encounter with Robinson, L.M. went to her middle school's nurse because her "stomach was hurting . . . pretty bad." *Id.* at 227. L.M.'s period was ten days late, and she was worried that she "could possibly be pregnant." *Id.* L.M. told the nurse of her concern; the nurse informed the guidance counselor; and the guidance counselor informed L.M.'s mother and stepfather. After taking L.M. to the hospital, L.M.'s mother and stepfather then took her to the local police department.

[8] The State charged Robinson with Level 1 felony child molesting and with being a repeat sexual offender. At his ensuing jury trial on the child molesting allegation, L.M. testified about her communications with Robinson via Snapchat and her several encounters with him thereafter. Over Robinson's objections, the trial court admitted evidence of Robinson's Snapchat account; photographs of Robinson that L.M. had saved from her Snapchat account; a photograph of Robinson's penis from the pornography website; and L.M.'s internet browser history. The court also permitted the jury to view Robinson's tattoos. And the court admitted DNA evidence collected from both L.M.'s underwear and from her external genitalia. The underwear evidence was 4,048 times more likely to be Robinson's DNA than another male's; the other evidence was eleven times more likely to be Robinson's DNA than another male's. The jury found Robinson guilty of the Level 1 felony allegation.

[9] Robinson then waived his right to have the jury determine his status as a repeat sexual offender. At the ensuing bench trial for that allegation, the State introduced, without objection, certified records that showed Robinson had a prior Level 4 child molesting conviction in 2015. The State then called the victim of that prior offense, A.R., to testify to the facts underlying that conviction, which testimony the trial court permitted over Robinson's objection. The court then found Robinson to be a repeat sexual offender.

[10] At his ensuing sentencing hearing, the State again called A.R. to testify, which the court again permitted over Robinson's objection. The court then sentenced Robinson as follows:

The Court would observe that the evidence of [Robinson's] guilt at trial . . . was strong. [L.M.] testified credibly and her testimony was corroborated by other evidence. The Court considers [Robinson's] criminal history as a substantial aggravating circumstance . . . , specifically, that this is [his] second child molesting conviction. The Court also considers the fact that[,] both times [Robinson's] actions resulted in convictions, he was on community supervision. And unfortunately, despite Mr. Robinson having been on probation, being ordered to complete sex offender treatment, going to the Department of Correction[], getting treatment there and then later being on parole, his behavior continued to get worse And this leads the Court to the conclusion that Mr. Robinson is unlikely to respond positively to attempts to rehabilitate him through community-based services and treatment. And the Court does also observe that the evidence at trial would support the conclusion that . . . Robinson was in violation of his conditions of parole in multiple different ways. . . . Based upon the evidence before the Court, the Court does find that Mr. Robinson is a child predator[] who is a danger to any underage female[] with whom

he is able to have contact. And[,] . . . for those reasons, it is necessary for Mr. Robinson to be subject to a lengthy sentence in the Department of Correction[]

Tr. Vol. 3, pp. 247-48. The court ordered Robinson to serve a sentence of forty years in the Department of Correction for the Level 1 felony conviction, which sentence the court enhanced by an additional ten years based on the court finding Robinson to be a repeat sexual offender. This appeal ensued.

1. The court did not abuse its discretion in the admission of evidence at Robinson’s trial on the Level 1 felony allegation.

[11] During Robinson’s trial on the Level 1 felony child molesting allegation, the State introduced, over Robinson’s objections, numerous exhibits and testimony relating to Robinson’s communications with L.M. and evidence corroborating the same. On appeal, Robinson asserts that the trial court abused its discretion in the admission of that evidence under [Indiana Evidence Rules 401 and 404\(b\)](#).¹

[12] We review the trial court’s rulings on the admissibility of evidence for an abuse of discretion. [Snow v. State](#), 77 N.E.3d 173, 176 (Ind. 2017). An abuse of discretion occurs only when the ruling is clearly against the logic and effect of the facts and circumstances before the court. *Id.* In our review, we look to the

¹ At trial, Robinson lodged additional grounds in his objections to the evidence at issue, but he does not present argument supported by cogent reasoning on appeal that the trial court abused its discretion in denying his objections on those additional grounds. We therefore do not consider those possible arguments. See [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#).

totality of those circumstances and consider any conflicting evidence in the light most favorable to the trial court’s ruling. *Id.*

[13] We first address Robinson’s argument under [Indiana Evidence Rule 401](#). That Rule provides that “[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.” [Ind. Evidence Rule 401](#). “This liberal standard for relevancy sets a low bar, and the trial court enjoys wide discretion in deciding whether that bar is cleared.” [Snow, 77 N.E.3d at 177](#) (cleaned up).

[14] Robinson’s [Rule 401](#) argument consists of one sentence that addresses sixteen pieces of evidence:

The existence or nonexistence of a Snapchat account of Robinson’s, a photo of Robinson sitting in a chair, a photo of Robinson holding money, a photo of Robinson’s penis not taken by L.M., the existence or nonexistence of a[n account of Robinson’s on the specified pornography website], and L.M.’s phone browser history have no tendency to make it more or less probable that Robinson molested L.M., and [they] are of no consequence in determining this action

Appellant’s Br. at 15.

[15] We first conclude that Robinson’s one-sentence assertion is not argument supported by cogent reasoning, and, therefore, it is waived. [Ind. Appellate Rule 46\(A\)\(8\)\(a\)](#). Waiver notwithstanding, Robinson’s conclusory assertion that the complained-of evidence had no tendency to make a fact of consequence more

or less probable is without merit. The central issue at trial was L.M.'s credibility, and the evidence at issue, at a minimum, all went to corroborating L.M.'s testimony with respect specifically to her relationship with Robinson. The evidence was therefore relevant and admissible.

[16] We thus turn to Robinson's argument under [Evidence Rule 404\(b\)](#). That Rule provides that "[e]vidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with that character." [Evid. R. 404\(b\)\(1\)](#). However, the "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake or lack of accident." [Evid. R. 404\(b\)\(2\)](#).

[17] Robinson's [Rule 404\(b\)](#) argument is again a one-sentence conclusory assertion: "This evidence has no probative value on the issue of whether Robinson molested L.M., and its prejudicial effect is significant" Appellant's Br. at 16. We again conclude that such an assertion is not argument supported by cogent reasoning, and, therefore, it is waived. [App. R. 46\(A\)\(8\)\(a\)](#). Further, Robinson's assertion is not even clearly a [Rule 404\(b\)](#) argument; it appears to be a [Rule 403](#) argument. *See* [Evid. R. 403](#). That is also waived for lack of cogency. Robinson's waivers notwithstanding, we agree with the State that the complained-of evidence was admissible under [Rule 404\(b\)](#) to show Robinson's "intent, preparation, plan, knowledge, . . . absence of mistake or lack of accident" in the commission of his offenses against L.M.

[18] We therefore affirm the trial court’s admission of the evidence during Robinson’s jury trial.

2. Any error in the trial court’s admission of A.R.’s testimony during the bench trial on the repeat-sexual-offender enhancement was harmless.

[19] Robinson next argues that the trial court erred when it permitted A.R. to testify during the bench trial on his repeat-sexual-offender enhancement. The State’s purported need for A.R.’s testimony at this phase of the proceedings is not clear. But, assuming for the sake of argument that the trial court erred on this question, not all errors are reversible. As our Supreme Court has recently clarified:

When an appellate court must determine whether a non-constitutional error is harmless, [Appellate] [Rule 66\(A\)](#)’s “probable impact test” controls. Under this test, the party seeking relief bears the burden of demonstrating how, in light of all the evidence in the case, the error’s probable impact undermines confidence in the outcome of the proceeding below. Importantly, this is not a review for the sufficiency of the remaining evidence; it is a review of what was presented to the trier of fact compared to what should have been presented. And when conducting that review, we consider the likely impact of the improperly admitted or excluded evidence on a reasonable, average jury in light of all the evidence in the case. Ultimately, the error’s probable impact is sufficiently minor when—considering the entire record—our confidence in the outcome is not undermined.

Hayko v. State, 211 N.E.3d 483, 492 (Ind. 2023) (citations omitted).

[20] We conclude that A.R.'s testimony during the enhancement phase of Robinson's proceedings had no probable impact on the outcome of that phase. The State had admitted, without objection, certified records of Robinson's prior child molesting conviction. Those records established that Robinson was a repeat sexual offender. *See Ind. Code § 35-50-2-14(e) (2020)*. No reasonable fact-finder would have disregarded those records and instead found Robinson to be a repeat sexual offender based on A.R.'s testimony.

[21] We therefore affirm the trial court's finding that Robinson is a repeat sexual offender.

3. Any error in the trial court's admission of A.R.'s testimony at the sentencing hearing was harmless.

[22] Robinson likewise argues that the trial court erred when it permitted A.R. to testify during his sentencing hearing. But we again conclude that any error in the admission of A.R.'s testimony was harmless. In pronouncing Robinson's sentence, the trial court made explicit the evidence it found significant, namely, the weight and credibility of the State's case during the jury-trial phase, Robinson's criminal history, and the repeated failures of lesser placements to rehabilitate Robinson. Tr. Vol. 3, pp. 247-48.

[23] Thus, A.R.'s testimony had no impact on the outcome of Robinson's sentence hearing. *See Hayko*, 211 N.E.3d at 492; *cf. Lewis v. State*, 759 N.E.2d 1077, 1086 (Ind. Ct. App. 2001) ("The error in allowing [a nonvictim] to testify was further compounded when the trial court obviously relied upon [the testimony], as

evidenced by the court’s sentencing statement.”), *trans. denied*. We therefore conclude that any error in the admission of A.R.’s testimony at sentencing was harmless.

4. Robinson’s sentence is not inappropriate.

[24] Last, Robinson contends that his fifty-year aggregate sentence is inappropriate in light of the nature of the offense and his character. Pursuant to [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this determination “turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case.” [Cardwell v. State](#), 895 N.E.2d 1219, 1224 (Ind. 2008). Sentence modification under [Rule 7\(B\)](#), however, is reserved for “a rare and exceptional case.” [Livingston v. State](#), 113 N.E.3d 611, 612 (Ind. 2018) (*per curiam*).

[25] When conducting this review, we generally defer to the sentence imposed by the trial court. [Conley v. State](#), 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing “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 defendant bears the burden of persuading us that his sentence is inappropriate. *Schaaf v. State*, 54 N.E.3d 1041, 1045 (Ind. Ct. App. 2016).

- [26] The sentencing range for Robinson’s Level 1 felony is twenty to forty years, with an advisory term of thirty years. I.C. § 35-50-2-4(b) (2020). Further, “[t]he court may sentence a person found to be a repeat sexual offender to an additional fixed term that is the advisory sentence for the underlying offense. However, the additional sentence may not exceed ten (10) years.” I.C. § 35-50-2-14(f) (2020). Here, the court imposed the maximum term of forty years on Robinson’s Level 1 felony conviction, enhanced by ten years due to Robinson’s status as a repeat sexual offender.
- [27] Robinson’s essential argument on this issue is that there is nothing out of the ordinary about his offense of child molesting against L.M.; that she was not physically injured by his acts; and that he has maintained the same residence for two years. But we cannot say that Robinson’s aggregate sentence of fifty years is an outlier that demands our intervention.
- [28] Regarding the nature of the offense, L.M. knew Robinson as “Uncle Nick” due to his closeness to her family, which proximity Robinson abused to molest her. Robinson used the Snapchat app to communicate with L.M., and Snapchat automatically deletes communications between its users as its default setting. Robinson also directed L.M. to a pornography website to view him performing sexual acts in a clear attempt to groom her for later, in-person acts. Further,

Robinson molested L.M. on numerous occasions. As for Robinson's character, his criminal history includes a prior conviction for child molesting and repeated, failed attempts at lesser placements. He was also on parole at the time he committed the instant offense.

[29] Accordingly, we cannot say that Robinson's aggregate term of fifty years in the Department of Correction is inappropriate in light of the nature of the offense and Robinson's character. We therefore affirm Robinson's sentence.

Conclusion

[30] For all of the above-stated reasons, we affirm Robinson's conviction for Level 1 felony child molesting, the trial court's finding that he is a repeat sexual offender, and his fifty-year sentence.

[31] Affirmed.

Riley, J., and Crone, J., concur.