

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Johnny Andrew Levin,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 13, 2021

Court of Appeals Case No.
20A-CR-2217

Appeal from the Lake Superior
Court

The Honorable Diane Ross
Boswell, Judge

Trial Court Cause No.
45G03-1906-F4-76

Pyle, Judge.

Statement of the Case

[1] Johnny Levin (“Levin”) appeals the aggregate twenty-year sentence imposed after he pleaded guilty, pursuant to a plea agreement, to two counts of Level 4 felony child molesting.¹ His sole argument is that his sentence is inappropriate in light of the nature of his offenses and his character. Concluding that the twenty-year sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issue

Whether Levin’s sentence is inappropriate.

Facts

[3] In June 2019, the State charged thirty-five-year-old Levin with two counts of Level 4 felony child molesting and one count of Level 6 felony sexual misconduct with a minor. The victims of the offenses were his daughters, fourteen-year-old A.L. and eleven-year-old M.L.

[4] At an August 2020 guilty plea hearing, Levin pleaded guilty, pursuant to a plea agreement, to the two Level 4 felonies. Pursuant to a stipulated factual basis, Levin admitted that, when A.L. had overnight visits at his home, he “rub[bed] A.L.’s vagina through her pants, pinched her buttocks, and grab[bed] her

¹ IND. CODE § 35-42-4-3.

breasts in order to arouse his own sexual desires.” (App. Vol. 2 at 30). He also admitted that he “love[d] A.L. more than a father but ha[d] never admitted his feelings to her.” (App. Vol. 2 at 30). Levin further admitted that, when M.L. had overnight visits at his home, he had “touched M.L.’s vagina, underneath her underwear, when he believed her to be sleeping.” (App. Vol. 2 at 31).

[5] Pursuant to the terms of the stipulated plea agreement, the parties agreed that they were “free to fully argue their respective positions as to the sentence to be imposed by the Court, but that there w[ould] be a floor of six (6) years on each count and a cap of ten (10) years on each count.” (App. Vol. 2 at 28). The parties also agreed that “they m[ight] argue as to whether the sentences sh[ould] be concurrent or consecutive.” (App. Vol. 2 at 28). In addition, the State agreed to dismiss the Level 6 felony. At the end of the guilty plea hearing, the trial court took the matter under advisement and ordered the preparation of a Presentence Investigation Report (“PSI”).

[6] The PSI revealed that Levin has a ten-year criminal history that includes seven misdemeanor convictions for the following offenses: (1) public intoxication; (2) operating a vehicle while intoxicated endangering a person; (3) operating a vehicle with a .15 BAC or above; (4) operating a vehicle while intoxicated; (5) leaving the scene of an accident; (6) battery; and (7) operating a vehicle after being adjudged to be an habitual offender. Levin has also violated probation four times.

[7] At Levin's November 2020 sentencing hearing, Levin's former wife and the mother of both A.L. and M.L. ("Mother") gave a victim impact statement, which revealed that Levin had begun molesting A.L. when the child was five years old. Mother further stated as follows:

You accused her of making up lies at the young age of five years old when she first came forward, and for that, she kept her silence until she was 14. For almost ten years, she felt alone, uncomfortable, embarrassed and ashamed. And at 14, she finally said enough. She had to grow up to find courage within herself and on her own to say enough. And even still, she feels like she failed. She spoke up, and feels like it wasn't enough because she didn't do it in time to prevent this from happening to one of her sisters. At 14, she is blaming herself for your actions. She blames herself for her younger sister becoming a victim, and for that, she has grown resentment in her heart.

(Tr. Vol. 2 at 20-21).

[8] After Mother had given her statement, the State argued as follows:

The victim in Count I was the victim that the abuse started at age five, when he would pull her pants down and start licking her. Almost every night that she was there, according to her interview, he would abuse her and touch her. In the relevant time period, the victim was in seventh grade. He would shut the door, turn her on the side with the bottom facing him until he got wet stuff on her. She stated that she started her period in seventh grade and at that point she was worried about getting pregnant by her father. The defendant told the detective and admitted in the stipulated factual basis that he loves his daughter, victim one, as more than a father[.] As to Count II, victim number two, the . . . victim was age 10 when this occurred. The victim told the detective that she fell asleep on the couch and woke up in her

father's bed with his hand beneath her underwear. The State believes that these counts should be consecutive because we have two different victims, both that were significantly impacted by the defendant for the rest of their life.

(Tr. Vol. 2 at 26-27).

[9] At the end of the hearing, the trial court accepted Levin's guilty plea. The trial court found Levin's position of trust with the victims and the "ongoing situation" that had lasted for approximately ten years to be aggravating factors. (Tr. Vol. 2 at 42). The trial court further found Levin's remorse and guilty plea to be mitigating factors. Thereafter, the trial court sentenced Levin to ten years for each of the Level 4 felony convictions. The trial court further ordered the sentences to run consecutive to each other because there were "two victims and the Court believe[d] that each one of those victims deserve[d] a separate and individual disposition of their matter." (Tr. Vol. 2 at 43-44).

[10] Levin now appeals his aggregate twenty (20) year sentence.

Decision

[11] Levin argues that his sentence is inappropriate. Indiana Appellate Rule 7(B) provides that we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find that the sentence is inappropriate in light of the nature of the offense and the character of the offender. The defendant bears the burden of persuading this Court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006). Whether we regard a sentence as inappropriate turns on 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).

[12] The Indiana Supreme Court has further explained that “[s]entencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Id.* at 1222. “Such deference should prevail unless overcome by 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).

[13] When determining whether a sentence is inappropriate, 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. Here, Levin was convicted of two Level 4 felonies. The sentencing range for a Level 4 felony is between two (2) to twelve (12) years, and the advisory sentence is six (6) years. IND. CODE § 35-50-2-5.5. The plea agreement in this case further provided that the parties had agreed that the sentence would be between six and ten years on each count. The trial court sentenced Levin to ten years for each conviction, the maximum sentence to which the parties had agreed. The trial court further ordered the sentences to run consecutive to each other, for an aggregate sentence of twenty years.

- [1] Regarding the nature of the offenses, Levin violated his position of trust with his two daughters when he molested them. According to Mother's victim impact statement, although A.L. reported the abuse when she was five years old, Levin stated that she was lying. Levin then continued to molest A.L. for an additional nine years. During that time, Levin also began molesting M.L. This Court has previously stated that there is no greater position of trust than that of a parent to his own child. *Hart v. State*, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005).
- [2] Regarding Levin's character, we note that Levin has a ten-year criminal history that includes seven misdemeanor convictions and four probation violations. Levin's former contacts with the law have not caused him to reform himself. *See Jenkins v. State*, 909 N.E.2d 1080, 1086 (Ind. Ct. App. 2009), *trans. denied*. Levin has failed to persuade this Court that his twenty-year aggregate sentence for the molestation of his two daughters is inappropriate.
- [3] Affirmed.

Najam, J., and Tavitas, J., concur.