

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Travis M. Downam,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 9, 2022

Court of Appeals Case No.
22A-CR-373

Appeal from the Tippecanoe
Superior Court

The Honorable Randy J. Williams,
Judge

Trial Court Cause No.
79D01-2103-F1-4

Altice, Judge.

Case Summary

- [1] Travis M. Downam pled guilty as charged to ten sex crimes involving his minor stepdaughter (Child): four counts of Level 1 felony child molesting, four counts of Level 4 felony child molesting, and two counts of Level 6 felony performing sexual conduct in the presence of a minor. The trial court imposed an aggregate sentence of sixty-two years, with six years suspended. Downam appeals and claims that his sentence is inappropriate under Indiana App. Rule 7(B).
- [2] We affirm.

Facts & Procedural History

- [3] In February 2021, Child, who was “under the age of seven,” disclosed to her mother (Mother) that Downam had been inappropriately touching her. *Appendix* at 94. Mother contacted and met with law enforcement, telling them that, upon confronting Downam, he admitted to touching Child. In a forensic interview that same day, Child described inappropriate sexual contact as having occurred on multiple occasions and included touching and licking Child’s bottom and genital areas and making Child touch Downam’s penis.
- [4] Downam agreed to an interview with a detective and admitted that, in the family’s residence, he touched and licked Child’s genitals and made her touch and lick his penis. He also rubbed his penis on her and masturbated in front of her.

- [5] On March 3, 2021, the State charged Downam with: Counts I – IV, Level 1 felony child molesting; Counts V – VIII, Level 4 felony child molesting, and Counts IX and X, Level 6 felony performing sexual conduct in the presence of a minor. Collectively, the various charged acts spanned from January 1, 2017 to February 25, 2021.
- [6] At a December 2, 2021 hearing, Downam, age forty, pled guilty as charged. The plea agreement contained no provision as to sentencing, leaving it open to the court’s discretion.
- [7] The court held a sentencing hearing on February 7, 2022. Neither party presented evidence, and the court indicated that it had reviewed the letters submitted on behalf of Downam, the victim impact statements, and the presentence investigation report. In argument, counsel for Downam asked the court to consider, among other things, that upon being confronted by Mother, Downam briefly stopped at his parents’ home and then promptly turned himself in at the Sherriff’s Department. Counsel offered, “[T]hat was the right way to respond,” as it reflected his acceptance of responsibility. *Transcript* at 21. Counsel also emphasized that Downam had “zero criminal history,” had a high school diploma, maintained employment, and provided financial support for his family, which included other children. *Id.* Counsel requested a sentence of twenty-one years.
- [8] The State focused on Downam’s actions of molesting his stepdaughter from around age three until she reported it sometime before she turned seven. The

prosecutor opined that the “harm, injury, loss or damage[] suffered by [Child] and frankly her family has been significant and greater than necessary to prove the elements of the offense.” *Id.* at 22. The State also noted that the offenses occurred at night “when [Mother] was asleep” or during the day when Downam was “tracking the [] family members via the [home’s security] cameras[.]” *Id.* at 23. Adopting the recommendation of the probation department, the State requested a sentence of seventy years.

[9] Downam made a statement in allocution, expressing that he was “truly very sorry” for his actions, and it was a “selfish decision I should never have made.” *Id.* at 26. He acknowledged that he betrayed his position of care and trust and let everyone down for which he felt “ashamed.” *Id.*

[10] In sentencing Downam, the court found as mitigating that Downam turned himself in and pled guilty, had no criminal history, had an employment history, was a provider for his family, and had the support of family members. The court found as aggravating that Downam was in a position of having the care and custody “of this little girl” and that he “preyed upon her.” *Id.* at 28. The court also found that the harm, injury or damage “was significant and greater than the elements necessary to prove the commission of” the offense and the repetitive nature of the offenses were aggravating circumstances. *Appendix* at 3.

[11] The court imposed a sentence of thirty years each on Counts I – IV, eight years each on Counts V – VIII, and two years each on Counts IX and X. The court ordered Count II to be served consecutive to Count I. It ordered Counts III –

VIII to be served concurrent to each other and concurrent to Counts I and II. And it ordered that Counts IX and X would be served concurrent to each other but consecutive to Count I, for a total sentence of sixty-two years, with fifty-six years executed in the Indiana Department of Correction and six years suspended to probation.

[12] Downam now appeals.

Discussion & Decision

[13] Pursuant to App. R. 7(B), we may revise a sentence authorized by statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offenses and the character of the offender. Indiana's flexible sentencing scheme allows trial courts to tailor a sentence to the circumstances presented, and deference to the trial court "prevail[s] 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). In reviewing the appropriateness of a sentence, our principal role is to attempt to leaven the outliers, not to achieve a perceived "correct" sentence. *Knapp v. State*, 9 N.E.3d 1274, 1292 (Ind. 2014). Downam bears the burden of persuading us that his sentence is inappropriate. *Barker v. State*, 994 N.E.2d 306, 315 (Ind. Ct. App. 2013), *trans. denied*.

[14] In assessing the appropriateness of a sentence, we first look to the statutory range established for that class of offense. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Downam pleaded guilty to four Level 1 felonies, four Level 4 felonies, and two Level 6 felonies. The sentencing range for a Level 1 felony is twenty to fifty years. Ind. Code § 35-50-2-4. It is two to twelve years for a Level 4 felony and six months to two and one-half years for a Level 6 felony. I.C. §§ 35-50-2-5.5, -7. The trial court sentenced Downam to two consecutive thirty-year terms on two of the Level 1 felonies (Counts I and II) and concurrent thirty-year terms for the other two Level 1 felonies (Counts III and IV). The court imposed concurrent eight-year terms for the four Level 4 felonies (Counts V – VIII), and sentenced Downam to two-year terms on each of the Level 6 felonies (Counts IX and X), which were concurrent to each other but consecutive to the sentences on Counts I and II. The result was a sixty-two-year sentence, with six years suspended to probation. Downam asks this court to revise his sentence to concurrent terms on all counts, for a total sentence of thirty years, with six years suspended.

[15] Because of his guilty plea, the record is limited in detail concerning the nature of the offense. What is reflected, however, is that Downam was Child's stepfather and that he repeatedly engaged in inappropriate sexual behaviors with her at the family's home for about half of her life. He touched her genitals and forced her to touch his penis, he licked her vagina and he forced her to lick his penis, he rubbed his penis on her genitals, and he masturbated in front of her. Ironically and tragically, Downam utilized the home's security cameras –

which were intended to keep the family safe – to find his opportunities to hurt Child. On some occasions, Downam would bribe Child to engage in the acts, by offering her candy or time with the family’s pet. Mother shared in her victim impact statement that Child suffers with nightmares and cannot go into certain parts of the home alone. In this case, the court found that the damage or harm suffered by Child “was significant” and the nature of Downam’s acts were “heinous.” *Appendix* at 19; *Transcript* at 28. There is nothing about the nature of the offense that warrants revision of his sentence.

[16] As to his character, Downam highlights that he has no criminal history, and “[a]s a general rule, the lack of a criminal record must be given substantial mitigating weight.” *Appellant’s Brief* at 8 (citing *Leone v. State*, 797 N.E.2d. 743, 748 (Ind. 2003)). Here, the trial court acknowledged this absence of a criminal history and recognized it as a mitigating circumstance. However, Downam’s character is also reflected by the fact that he engaged in these abhorrent acts with his young stepdaughter repetitively over the course of years, at times manipulating and bribing her. His decisions do not reflect positively on his character. Downam has not persuaded us that his sentence should be revised based on his character.

[17] Our Supreme Court has directed that revision of a defendant’s sentence under App. R. 7(B) is only for “exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019). This case does not qualify as such.

[18] Judgment affirmed.

Vaidik J. and Crone, J., concur.