

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Lester M. Dillon,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

August 15, 2022

Court of Appeals Case No.
21A-CR-2244

Appeal from the Elkhart Superior
Court

The Honorable Teresa L. Cataldo,
Judge

Trial Court Cause No.
20D03-1909-F4-61

Altice, Judge.

Case Summary

- [1] Lester Dillon appeals his convictions for three counts of Level 4 felony child molesting, challenging the sufficiency of the evidence. Dillon also claims that the thirty-year aggregate sentence imposed on those convictions was inappropriate when considering the nature of the offenses and his character.
- [2] We affirm.

Facts and Procedural History

- [3] Elizabeth Polhemus and Randall Dillon (collectively, the Couple) have two daughters together, A.D. and K.D. In 2018, when A.D. was three years old, Randall's parents—Dillon and Kandice—moved to a residence near the Couple in Goshen. The Couple worked opposite shifts, and there was an overlap of approximately three hours when they could not be home to care for their daughters. Dillon and Kandice regularly babysat the girls to cover that three-hour gap.
- [4] The Couple noticed that Dillon was particularly close to A.D. When Elizabeth returned home from work, she would typically find Dillon and A.D. together in the kitchen or in the upstairs playroom with the door closed. K.D. and Kandice were usually in another room watching television.

- [5] Elizabeth became concerned that something was “going on” between A.D. and Dillon, and the Couple noticed that A.D. was exhibiting strange new behaviors, including episodes of “emotional outbursts.” *Transcript Vol. II* at 111, 121-22, 159. For instance, if something “small happened,” A.D. would have a “very big reaction to it” and she would cry, scream, hit, kick, and have a “meltdown.” *Id.* at 122, 174. A.D.’s sleep pattern also changed, in that she did not want to sleep alone. In addition to the emotional outbursts, A.D. started touching her vagina in a sexual manner and she expressed interest in K.D.’s “private areas” during bath time. *Id.* at 122-23, 172. On one occasion, when A.D. saw a picture of Dillon, she went to another room and began touching herself.
- [6] At some point, Elizabeth told Kandice that it was inappropriate for “an older man to be with a little girl alone in a room with a closed door” and asked Kandice to set boundaries for Dillon. *Id.* at 113. Although Dillon was told not to go upstairs with A.D., Dillon responded that he was “Grandpa [and he will do] what he wants.” *Id.* at 167.
- [7] Elizabeth continued to suspect that Dillon might be doing something inappropriate with A.D. That suspicion increased one day when Elizabeth saw Dillon take A.D. into the “fish tank room” while the rest of the family watched television in the living room. *Id.* at 114. Elizabeth went to check on them a short time later and noticed that Dillon was sitting on the floor with A.D. on his lap. They were not looking at the fish but were facing the opposite direction.

- [8] On another occasion, Elizabeth walked upstairs to check on A.D. and found the door to the playroom closed. When she opened it, she saw A.D. lying in a tent with a blanket covering most of her body. Dillon was sitting outside the tent with his hand underneath the blanket. As a result of that incident, Elizabeth became alarmed, quit her job, and told Kandice and Dillon that they were no longer permitted to babysit the children.
- [9] Approximately nine months later, Randall started attending trucking school and Elizabeth returned to work to support the family. The Couple again asked Dillon and Kandice to watch their daughters while they were away. Before agreeing to permit them to watch the children, Elizabeth spoke with Dillon and demanded that he not spend time alone with A.D.
- [10] Sometime in August 2019, A.D. told Randall about the molestations. Shortly thereafter, Elizabeth called the Department of Child Services (DCS), made a report, and took A.D. to a child advocacy center for an interview. After A.D. provided her statement and made accusations against Dillon, Detective Josh Havens of the Goshen Police Department spoke with Dillon. Dillon was advised of his *Miranda*¹ rights and agreed to speak with Detective Havens about A.D.'s accusations. While Dillon initially denied inappropriately touching A.D., he later admitted to Detective Havens that he had touched A.D.'s vagina on one occasion. Dillon claimed that A.D. had taken his hand and placed it on

¹ *Miranda v. Arizona*, 384 U.S. 436 (1966).

her vagina and that he told her “no” and she needed to “stop.” *Transcript Vol. III* at 96. As the interview progressed, Dillon told Detective Havens that he had put his hand on A.D.’s vagina while they were watching television together and admitted that he had touched A.D.’s vagina outside of her clothing “maybe three times.” *Id.* at 96-97. Dillon said that he was not sure why he touched A.D.’s vagina and he told her to keep it a secret.

[11] On September 6, 2019, the State charged Dillon with three counts of Level 4 felony child molesting. The charging informations alleged that the incidents occurred between August 26, 2018, and August 26, 2019, and that Dillon “with [A.D.] . . . did knowingly perform or submit to any fondling or touching of either [A.D.] or [Dillon], with intent to arouse or to satisfy the sexual desires of either [A.D.] or [Dillon] . . . contrary to I.C. § 35-42-4-3(b).” *Appellant’s Appendix Vol. II* at 7.

[12] Prior to trial, Elizabeth took A.D. to Julia Patcheak, a social worker at Oaklawn Psychiatric Center, in November 2019. During one of the counseling sessions, A.D. disclosed to Patcheak that Dillon had “touched [her] vagina” and “made her want to touch her vagina a lot.” *Transcript Vol. II* at 219, 222, 246. A.D. also told Patcheak that she was “embarrassed about [Dillon’s] abuse.” *Id.* at 221. Patcheak noted that A.D. often “would shut down” when Patcheak attempted to talk with A.D. about the molestations. *State’s Exhibit* 100.

- [13] Following a jury trial on August 10, 2021, the jury found Dillon guilty on all counts. On September 13, 2021, the trial court imposed a ten-year sentence on each conviction and ordered them to run consecutively for an aggregate sentence of thirty years with twenty-five years executed in the Department of Correction (DOC) and five years suspended to probation.
- [14] Dillon now appeals.

Discussion and Decision

I. Sufficiency of the Evidence

- [15] Dillon argues that his convictions must be reversed because the State failed to prove that he committed the offenses beyond a reasonable doubt. Specifically, Dillon maintains that the convictions cannot stand because the only evidence suggesting that he improperly touched A.D. on more than one occasion was his statement during the interview with Detective Havens that he had touched A.D. “maybe” three times. *Appellant’s Brief* at 5.
- [16] In addressing Dillon’s challenge to the sufficiency of the evidence, this court neither reweighs the evidence nor assesses the credibility of witnesses. *Sharp v. State*, 42 N.E.3d 512, 516 (Ind. 2015). We consider only the “evidence supporting the judgment and any reasonable inferences that can be drawn from that evidence,” and a “conviction may be based upon an inference if reasonably drawn from the evidence.” *Perkins v. State*, 57 N.E.3d 861, 864 (Ind. Ct. App. 2016). The conviction will be affirmed “if there is substantial evidence of

probative value supporting each element of the offense such that a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt.” *Willis v. State*, 27 N.E.3d 1065, 1066 (Ind. 2015). In determining the sufficiency of the evidence to support his conviction, Dillon’s confession may be considered along with independent evidence of his guilt. *See Seal v. State*, 105 N.E.3d 201, 211 (Ind. Ct. App. 2018), *trans. denied*.

[17] During the interview with Detective Havens, Dillon admitted that he had touched A.D.’s vagina over her clothing with his hand, and he specifically recalled touching A.D.’s vagina while watching television downstairs. In addition to Dillon’s confession, Elizabeth testified that on one occasion, she opened the closed door to the playroom and saw Dillon’s hand “under the blanket” that was “on top of A.D.” *Transcript Vol. II* at 116. In another instance, Elizabeth walked into the “fish tank room” and saw Dillon sitting on the floor with A.D. on his lap. *Id.* at 131. Elizabeth believed that Dillon had been inappropriately touching A.D. because the two were not looking at the fish and facing the opposite direction of the tank. This evidence corroborates Dillon’s own account that he touched A.D.’s vagina on at least three separate occasions—once while watching television, another while in the fish tank room, and the other while he and A.D. were in the playroom. Thus, it was reasonable for the jury to find Dillon guilty of the charged offenses after considering and evaluating Dillon’s statement along with the other evidence presented at trial. Dillon’s challenge to the sufficiency of the evidence fails.

II. Inappropriate Sentence

- [18] Dillon claims that his sentence was inappropriate because “the molest consisted of touching [A.D.] over her clothes” and “no threats were made of physical violence.” *Appellant’s Brief* at 14. Dillon also contends that his sentence should be revised because he was seventy-two-years-old at the time of sentencing and has no prior criminal convictions.
- [19] 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 App. R. 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. . . .” *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008). “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). Whether a sentence is inappropriate 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. *Cardwell*, 895 N.E.2d at 1224.
- [20] In this case, Dillon was convicted of three Level 4 felonies. The sentencing range for a Level 4 felony is between two and twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. Thus, Dillon could have been sentenced to a maximum sentence of thirty-six years. The trial court, however,

decided to impose an aggregate term of thirty years with twenty-five of those years to be served in the DOC.

[21] When reviewing the nature of the offense, we look to the details and circumstances of the offense and the defendant's participation therein. *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). The evidence showed that Dillon molested his three-year-old granddaughter. At that age, A.D. was eleven years younger than the statutorily significant age of fourteen included under the child molesting statute. See I.C. § 35-42-4-3(a)(1). That said, A.D.'s extreme youth supports a harsher sentence. See, e.g., *Hamilton v. State*, 955 N.E.2d 723, 727 (Ind. 2011) (observing that "the victim's age . . . suggests a sliding scale in sentencing as younger ages of victims tend to support harsher sentences"). Additionally, Dillon was in a position of power and trust over A.D. as her grandfather and he was entrusted with her care when the Couple could not be home to care for the children. The Couple trusted Dillon to protect the children and demanded that he distance himself from A.D. when they became concerned about his conduct. Dillon clearly abused his position of trust when he molested A.D. See *Hamilton*, 955 N.E.2d at 727 (recognizing that "a harsher sentence is also more appropriate when the defendant has violated a position of trust that arises from a particularly close relationship between the defendant and that victim").

[22] Dillon's actions have also had a lasting impact on A.D.'s mental health. The evidence showed—and the trial court stated in its sentencing order—that A.D. has "suffered severe emotional trauma that manifested itself in emotional

outbursts; screaming; sleeping disorders; and bedwetting.” *Appellant’s Appendix Vol. II* at 210. And while A.D. has undergone therapy to address her trauma, her counselor testified that A.D. has a difficult time discussing Dillon’s abuse and pointed out that A.D. felt embarrassed about what Dillon did to her.

[23] Although Dillon maintains that he is entitled to a reduced sentence because he never threatened A.D. with physical harm, such circumstances are not automatically deserving of mitigation. *See Neale v. State*, 826 N.E.2d 635, 638 (Ind. 2005) (holding that the mere “absence of physical harm is not an automatic mitigating circumstance such that it would require a lesser sentence than would otherwise be imposed.”). Moreover, had Dillon physically harmed A.D. while he was molesting her, he certainly would have been charged with additional or enhanced crimes.

[24] In sum, Dillon has not presented “compelling evidence portraying in a positive light the nature of the offense.” *See Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). Dillon’s breach of trust, A.D.’s tender age, and the lasting effects of the molestations, justify the sentence that the trial court imposed.

[25] When examining Dillon’s character, we note that character is found in what we learn of the offender’s life and conduct. *Perry v. State*, 78 N.E.3d 1, 13 (Ind. Ct. App. 2017). We conduct our review of a defendant’s character by engaging in a broad consideration of his qualities. *Madden*, 162 N.E.3d at 564.

[26] While we acknowledge Dillon’s lack of prior criminal history, it cannot be emphasized enough that Dillon abused his position of trust over three-year-old

A.D. The evidence also showed that Dillon initially lied to Detective Havens during the interview and denied touching A.D. in any way. Dillon changed his story later in the interview and attempted to portray A.D. as a confused three-year-old who probably mistook his random and innocent touches for acts of molestation. Finally, Dillon claimed that *he* was the victim of A.D.'s sexual behavior because A.D. had taken his hand and used it to masturbate herself against Dillon's will.

[27] Dillon's abuse of his position of trust, his deceit in initially denying the allegations against him, then claiming that he accidentally touched A.D., and finally trying to blame A.D. for his conduct, all reflect his poor character and do not warrant a reduction in his sentence. Thus, Dillon has failed to establish that his sentence is inappropriate in light of the nature of his offenses and his character.

[28] Judgment affirmed.

Vaidik, J. and Crone, J., concur.