MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Dionel Juan Mateo,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

September 23, 2021

Court of Appeals Case No. 21A-CR-800

Appeal from the Vigo Superior Court

The Honorable John T. Roach, Judge

Trial Court Cause No. 84D01-1907-F1-2893

Tavitas, Judge.

Case Summary

[1] Dionel Juan Mateo appeals his forty-year sentence for child molesting, a Level 1 felony. Mateo contends that his sentence is inappropriate in light of the nature of the offense and the character of the offender. We disagree and conclude that Mateo's forty-year sentence is not inappropriate. Accordingly, we affirm.

Issue

[2] Mateo raises one issue, which we restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender.

Facts

[3] Mateo was born in 1990. P.R. was born in October 2007, and Mateo is her uncle. Officers received information from the National Center for Missing and Exploited Children based on a tip from a social media company regarding P.R. Officers located P.R. and seized Mateo's cell phone. On Mateo's phone, Officers found a video of Mateo having sexual intercourse with eleven-year-old P.R. on June 5, 2019. The video also depicted a small child "standing next to the bed, with her hands on the bed, facing the bed" during the assault. Tr. Vol. II p. 26.

[4] In July 2019, the State charged Mateo with three counts of child molesting, as Level 1 felonies, and one count of possession of child pornography, a Level 5

felony. Mateo pleaded guilty to Count III, child molesting, a Level 1 felony, and the State agreed to dismiss the remaining charges.

[5] At the sentencing hearing, the trial court found the following aggravators: (1) the harm suffered by P.R. is significant and greater than the elements necessary to prove the commission of the offense; (2) P.R. was less than twelve years old; (3) although "minimal," Mateo does have a criminal history; and (4) the offense against P.R. was conducted in the presence of a different minor child. Appellant's App. Vol. II p. 107. The trial court found Mateo's guilty plea to be a mitigator, but noted that Mateo received a significant benefit from the plea agreement and showed "very little remorse." Tr. Vol. II p. 42. The trial court found that an aggravated sentence was appropriate and sentenced Mateo to forty years in the Department of Correction ("DOC"). Mateo now appeals.

Analysis

[6] Mateo challenges his sentence pursuant to Indiana Appellate Rule 7(B). The Indiana Constitution authorizes independent appellate review and revision of a trial court's sentencing decision. *See* Ind. Const. art. 7, §§ 4, 6; *Jackson v. State*, 145 N.E.3d 783, 784 (Ind. 2020). Our Supreme Court has implemented this authority through Indiana Appellate Rule 7(B), which allows this Court to revise a sentence when the sentence is "inappropriate in light of the nature of the offense and the character of the offender." Our review of a sentence under Appellate Rule 7(B) is not an act of second guessing the trial court's sentence; rather, "[o]ur posture on appeal is [ ] deferential" to the trial court. *Bowman v. State*, 51 N.E.3d 1174, 1181 (Ind. 2016) (citing *Rice v. State*, 6 N.E.3d 940, 946

(Ind. 2014)). We exercise our authority under Appellate Rule 7(B) only in "exceptional cases, and its exercise 'boils down to our collective sense of what is appropriate.'" *Mullins v. State*, 148 N.E.3d 986, 987 (Ind. 2020) (quoting *Faith v. State*, 131 N.E.3d 158, 160 (Ind. 2019)).

[7] "'The principal role of appellate review is to attempt to leaven the outliers.'" *McCain v. State*, 148 N.E.3d 977, 985 (Ind. 2020) (quoting *Cardwell v. State*, 895 N.E.2d 1219, 1225 (Ind. 2008)). The point is "not to achieve a perceived correct sentence." *Id*. "Whether a sentence should be deemed inappropriate '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.'" *Id*. (quoting *Cardwell*, 895 N.E.2d at 1224). Deference to the trial court's sentence "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).

[8] 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. *Fuller v. State*, 9 N.E.3d 653, 657 (Ind. 2014). In the case at bar, Indiana Code Section 35-50-2-4(c) provides: "A person who commits a Level 1 felony child molesting offense described in: (1) IC 35-31.5-2-72(1); or (2) IC 35-31.5-2-72(2); shall be imprisoned for a fixed term of between twenty

(20) and fifty (50) years, with the advisory sentence being thirty (30) years." Indiana Code Section 35-31.5-2-72 provides:

> (1) Child molesting involving sexual intercourse, deviate sexual conduct (IC 35-42-4-3(a), before its amendment on July 1, 2014) for a crime committed before July 1, 2014, or other sexual conduct (as defined in IC 35-31.5-2-221.5) for a crime committed after June 30, 2014, if:
>
> > (A) the offense is committed by a person at least twenty-one (21) years of age; and
> >
> > (B) the victim is less than twelve (12) years of age.
>
> (2) Child molesting (IC 35-42-4-3) resulting in serious bodily injury or death.

P.R. was less than twelve years of age when Mateo, who was at least twenty-one years of age, engaged in sexual intercourse with her. Accordingly, Mateo was subject to a sentence ranging from twenty to fifty years with an advisory sentence of thirty years. The trial court imposed an enhanced, but not maximum, sentence of forty years.

[9] Our analysis of the "nature of the offense" requires us to look at the nature, extent, and depravity of the offense. *Sorenson v. State*, 133 N.E.3d 717, 729 (Ind. Ct. App. 2019), *trans. denied*. Mateo had sexual intercourse with his eleven-year-old niece, P.R., and filmed the encounter. Moreover, a small child was in the room at the time, witnessed the assault, and is seen on the video. P.R. has

been traumatized by the incidents, has engaged in therapy as a result, and has been diagnosed with post-traumatic stress disorder.

[10] Our analysis of the character of the offender involves a "broad consideration of a defendant's qualities," *Adams v. State*, 120 N.E.3d 1058, 1065 (Ind. Ct. App. 2019), including the defendant's age, criminal history, background, and remorse. *James v. State*, 868 N.E.2d 543, 548-59 (Ind. Ct. App. 2007). Mateo was born in Guatemala into extreme poverty. He stopped attending school after sixth grade in order to work to support his family. Mateo came to the United States illegally when he was fifteen years old. He is now married and has two small children, one of whom was a witness to the assault at issue here. Mateo, however, expressed little remorse for his actions. When asked if he was sorry for what he did to P.R., Mateo responded, "Well, yes. What's done is done, that's it." Tr. Vol. p. 33. Mateo was then asked, "You wish it hadn't happened?", and he responded, "Well, I'm sure, I don't know, sometimes things happen . . . ." *Id.*

[11] "The significance of a criminal history in assessing a defendant's character and an appropriate sentence varies based on the gravity, nature, proximity, and number of prior offenses in relation to the current offense." *Sandleben v. State*, 29 N.E.3d 126, 137 (Ind. Ct. App. 2015) (citing *Bryant v. State*, 841 N.E.2d 1154, 1156 (Ind. 2006)), *trans. denied*. "Even a minor criminal history is a poor reflection of a defendant's character." *Prince v. State*, 148 N.E.3d 1171, 1174 (Ind. Ct. App. 2020) (citing *Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App.

2014), *trans. denied*). Mateo has one prior conviction for operating a vehicle while intoxicated, a Class C misdemeanor, in 2014.

[12] We acknowledge Mateo's difficult childhood and lack of a significant criminal history. Given the depraved nature of his offense, the impact on P.R., and Mateo's lack of remorse, however, we cannot say that the forty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

Conclusion

[13] Mateo's sentence is not inappropriate in light of the nature of the offense and the character of the offender. We affirm.

[14] Affirmed.

Mathias, J., and Weissmann, J., concur.