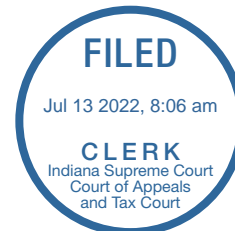


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT

Kelly Starling
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Robert M. Yoke
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Rafael Pouriet-Gannett,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff.

July 13, 2022

Court of Appeals Case No.
21A-CR-2640

Appeal from the Marion Superior
Court

The Honorable Cynthia Oetjen,
Judge

Trial Court Cause No.
49D30-2005-F1-16814

Pyle, Judge.

Statement of the Case

[1] Rafael Pouriet-Gannett (“Pouriet-Gannett”) appeals the one hundred (100) year sentence imposed after he pleaded guilty to three counts of Level 1 felony child molesting¹ and one count of Level 3 felony vicarious sexual gratification.² Pouriet-Gannett specifically argues that the trial court abused its discretion in sentencing him and that his sentence is inappropriate. Concluding that the trial court did not abuse its discretion in sentencing Pouriet-Gannett and that his sentence is not inappropriate, we affirm the trial court’s judgment.

[2] We affirm.

Issues

1. Whether the trial court abused its discretion in sentencing Pouriet-Gannett.
2. Whether Pouriet-Gannett’s sentence is inappropriate.

Facts

[3] In May 2020, S.G. (“Mother”) reported to an Indianapolis Metropolitan Police Department (“IMPD”) officer that she had just learned that her husband, thirty-six-year-old Pouriet-Gannett, had been sexually abusing his thirteen-year-old biological daughter, A.G. (“A.G.”) and his fourteen-year-old stepdaughter, B.F. (“B.F.”). After an IMPD police officer spoke with Pouriet-Gannett’s two

¹ IND. CODE § 35-42-4-3.

² I.C. § 35-42-4-5.

daughters, the State charged Pouriet-Gannett with nine felony counts relating to his sexual abuse of A.G., four felony counts relating to his sexual abuse of B.F., and one general count relating to his possession of child pornography.

Specifically, the State charged Pouriet-Gannett with: Count 1 - Level 1 felony child molesting for submitting to other sexual conduct with A.G., a child under the age of fourteen years; Count 2 - Level 4 felony vicarious sexual gratification for knowingly directing, inducing, or causing A.G., a child under the age of fourteen years, to fondle or touch herself with the intent to arouse Pouriet-Gannett's desires; Count 3 – Level 6 felony possession of child pornography for possessing with intent to view a digitized image that depicted or described sexual conduct by a child whom Pouriet-Gannett knew to be less than eighteen years of age that lacked serious literary, artistic, political, or scientific value.

Count 4 – Level 1 felony child molesting for performing sexual intercourse with A.G., a child under the age of fourteen years; Count 5 – Level 1 felony child molesting for performing sexual intercourse with A.G., a child under the age of fourteen years; Count 6 – Level 1 felony child molesting for performing other sexual conduct with A.G., a child under the age of fourteen years; Count 7 - Level 5 felony child exploitation for videotaping or creating a digitized image of a performance or incident that included sexual conduct by A.G., a child under the age of eighteen years, said sexual conduct being described as a person engaging in intercourse or other sexual conduct with A.G.; Count 8 - Level 5 felony child solicitation for knowingly or intentionally soliciting A.G., a child under the age of fourteen years, to engage in other sexual conduct; Count 9 - Level 3 felony vicarious sexual gratification for directing, inducing, or causing

A.G., a child under the age of fourteen years, to engage in other sexual conduct with B.F., with the intent to arouse or satisfy Pouriet-Gannett's sexual desires; Count 10 - Level 4 felony incest for engaging in sexual intercourse with A.G, knowing that A.G. was related to him biologically as a child and was under the age of sixteen years; Count 11 – Level 1 felony child molesting for performing sexual intercourse with B.F., a child under the age of fourteen years; Count 12 – Level 4 felony sexual misconduct with a minor for submitting to other sexual conduct with B.F., a child at least fourteen years of age but less than sixteen years of age; Count 13 – Level 4 felony sexual misconduct with a minor for performing sexual intercourse with B.F., a child at least fourteen years of age but less than sixteen years of age; and Count 14 – Level 5 felony child exploitation for knowingly or intentionally videotaping or creating a digitized image of a performance or incident that included sexual conduct by B.F., a child under the age of eighteen, said sexual conduct being described as a person engaging in sexual intercourse or other sexual conduct with B.F.

[4] After the State had filed the criminal charges, in May 2020, the trial court issued a no-contact order prohibiting Pouriet-Gannett from having contact with A.G., B.F., Mother, and Pouriet-Gannett's other children, S.C., L.G., and E.P. The no-contact order specifically provided that Pouriet-Gannett was not to contact the above-listed family members in person, by telephone or letter, through an intermediary, or in any other way.

[5] Despite the no-contact order, in May and June 2020, Pouriet-Gannett, who was incarcerated at the Marion County Jail, sent letters to Mother, S.C., L.G., and

E.P. In the letters to Mother, Pouriet-Gannett acknowledged that A.G. and B.F. “deserve[d] justice” and explained that he was planning to plead guilty so that A.G. and B.F. would not have to relive their experiences. (Ex. Vol. at 6). In addition, Pouriet-Gannett begged Mother to forgive him. According to Pouriet-Gannett, if Mother could find a place in her heart to forgive him, Pouriet-Gannett would “dedicate [his] mind and body and [soul] to make [her] happy for the rest of [his] life.” (Ex. Vol. at 6). In his letter to S.C., Pouriet-Gannett acknowledged that he was not allowed to contact Mother. Pouriet-Gannett further told S.G. that if the prosecutor had mercy, Pouriet-Gannett would only have to spend a few years in prison.

[6] In August 2021, the State dismissed the following four counts: (1) Count 3 - Level 6 felony possession of child pornography; (2) Count 7 – Level 5 felony child exploitation; (3) Count 8 – Level 5 felony child solicitation; and (4) Count 14 – Level 5 felony child exploitation. The State dismissed these counts in favor of potential federal prosecution.

[7] In September 2021, Pouriet-Gannett entered into a plea agreement with the State. Pursuant to the terms of the plea agreement, Pouriet-Gannett agreed to plead guilty to the following counts: Count 1 – Level 1 felony child molesting; Count 4 – Level 1 felony child molesting; Count 9 – Level 3 felony vicarious sexual conduct; and Count 11 – Level 1 felony child molesting. In exchange for Pouriet-Gannett’s guilty plea, the State agreed to dismiss the following counts: Count 2 – Level 4 felony vicarious sexual gratification; Count 5 – Level 1 felony child molesting; Count 10 – Level 4 felony incest; Count 12 -Level 4

felony sexual misconduct with a minor; and Count 13 – Level 4 felony sexual misconduct with a minor.³ The plea agreement further provided that Pouriet-Gannett had agreed to the following sentence: “Open Sentencing, except Count [9]: Vicarious Sexual Conduct a Level 3 Felony shall run concurrently with any other count under this cause.” (App. Vol. 2 at 97). In addition, the plea agreement provided that Pouriet-Gannett should not be considered a credit restricted felon.

[8] Also in September 2021, a Marion County Public Defender’s Office social worker completed a six-page sentencing memorandum wherein the social worker stated that the trial court might consider as mitigating factors that Pouriet-Gannett had: (1) pleaded guilty; (2) been the victim of sexual abuse; (3) endured significant trauma during his lifetime; and (4) suffered from significant mental health issues. In October 2021, Pouriet-Gannett completed a pre-sentence investigation report (“the PSI”), which revealed that he had a prior misdemeanor conviction for possession of paraphernalia. Also, in the PSI, Pouriet-Gannett reported that he had suffered a traumatic childhood, which had included physical, mental, and sexual abuse. Pouriet-Gannett further reported in the PSI that he suffered from depression, anxiety, and bi-polar disorder and that he was taking medication for these diagnoses.

³ We note that although the trial court’s sentencing order and the abstract of judgment both indicate that Count 6 – Level 1 felony child molesting - was dismissed, this count was not included in the list of offenses dismissed in favor of federal prosecution or in the list of offenses dismissed pursuant to the plea agreement.

[9] At the beginning of the November 2021 change of plea/sentencing hearing, the trial court asked Pouriet-Gannett if he had been treated for any mental illness. Pouriet-Gannett responded that he had been treated for bi-polar disorder and was taking medication for this disorder.

[10] Thereafter, the State presented the following factual basis:

As to Count 1, on or about May 18th, 2020, Rafael Pouriet-Gannett, a person at least 21 years of age, did submit to other sexual conduct as defined by Indiana Code § 35-31.5-2-221.5 with A.G., a child under that age of 14 years.

As to Count 4, on or about or between January 1st, 2020, and May 17, 2020, Rafael Pouriet-Gannett, a person of at least 21 years of age, did perform sexual intercourse with A.G., a child under the age of 14 years.

As to Count 9, on or about or between January 1st, 2018, and May 18th, 2020, Rafael Pouriet-Gannett, being at least 18 years of age, did knowingly direct or induce or cause A.G., a child under the age of 14, to engage in other sexual conduct as defined in Indiana Code 35-31.5-2-221.5 with B.F., another person, with the intent to arouse or satisfy the sexual desires of Rafael Pouriet-Gannett.

As to Count 11, on or about or between August 1st, 2017, and September 1st, 2018, Rafael Pouriet-Gannett, a person of at least 21 years of age, did perform sexual intercourse with B.F., a child under the age of 14 years.

More specifically, on May 19th, 2020, Officer Kevin Zarko Flores (phonetic) with the Indianapolis Metropolitan Police Department was dispatched to a residence in Marion County [in] reference [to] a child molest. Upon arrival, Officer Zarko Flores spoke with [Mother], a person who said that her two daughters, 13 year old A.G., and 14 year old B.F. had been sexually abused

by their father, Rafael [Pouriet-]Gannett, white male, 36 years old[.] [Pouriet-Gannett] is the biological father of A.G. and stepfather of B.F.

Subsequent investigation revealed the following. [Mother] and her family moved to Indianapolis, Indiana in 2016 where they lived until this case was filed[.] On May 19th, 2020, A.G. disclosed to IMPD Detective Jonathan Schultz that on May 18th, 2020, [Pouriet-Gannett] had sent her a message to her from his cellphone telling her to come into his bedroom. A.G. said her mother was at work and her siblings were asleep. Upon entering the bedroom [Pouriet-Gannett] locked the door, locked the bedroom door. [Pouriet-Gannett] had A.G. take her clothes off. A.G. said while in the bedroom she put her mouth on [Pouriet-Gannett]'s penis. She said they were both lying on the bed. A.G. said white stuff came out of his penis and she used a blue towel with a fish on it to wipe her mouth off. A.G. also stated that within two weeks before May 19th, 2020, that [Pouriet-Gannett] had sexual intercourse with her.

Both of those incidents had at the Gannett[']s['] residen[ce][.] [Pouriet-Gannett] acknowledged that he [had] instructed A.G. to perform oral sex on him and he has had sexual intercourse with his biological daughter, A.G.

On May 19th, 2020, IMPD Detective Jonathan Schultz spoke with then-14 year old B.F. who disclosed that her stepfather, [Pouriet-Gannett], took her virginity by having sexual intercourse with her when she was 12 years old. This happened while at B.F.'s family [home] . . . in [Pouriet-Gannett]'s bedroom.

On another occasion, B.F. stated that [Pouriet-Gannett] instructed both A.G. and B.F. to go into his bedroom, . . . had them both get naked, and required A.G. to give B.F. oral sex, which she did. This occurred sometime between the dates of January 1st, 2018, and May 17th, 2020. [Pouriet-Gannett] acknowledged that he has had sexual intercourse with his stepdaughter, B.F.

(Tr. Vol. 2 at 21-23). When the trial court asked Pouriet-Gannett if those facts were true, Pouriet-Gannett responded, “[y]es, ma’am.” (Tr. Vol. 2 at 24).

[11] After the State had established the factual basis, the trial court moved to the sentencing portion of the hearing. The trial court asked Pouriet-Gannett if he had any corrections to the PSI. Pouriet-Gannett responded that he did not. The trial court also told Pouriet-Gannett that she had reviewed the sentencing memorandum prepared by the social worker at the public defender’s office.

[12] During the sentencing portion of the hearing, Mother testified that Pouriet-Gannett had violated the trial court’s initial no-contact order by sending her letters and telephoning her while she was at work. In addition, Mother read to the trial court a letter she had written, which detailed how Pouriet-Gannett’s crimes had affected both her and her family. That letter provides, in relevant part, as follows:

Having had to sit in a room and hear the awful stories of torment, of sexual abuse my two girls went through is a feeling that I wish on no one. I have spent many, many endless nights staying awake, wondering if this nightmare would ever end, and I hope that one day I can find peace in my life instead of constant fear, frustration, confusion, and pain[.]

Moving on to A.G. and B.F. A.G. has struggled throughout this whole situation. She has random fits of frustration, outbursts of emotions leading to sobbing. She doesn't like to speak about the situation and/or him. She struggled all last year as we had to relocate, causing her to transfer schools. Her grades dropped and her attitude took a punch downward to a very dark and lonely place. With the suggestions from her therapist and her psychiatrist, A.G. has temporarily been put on antidepressants.

She tends to have flashbacks and trouble sleeping. She has nightmares causing her to stay awake and/or be woken up from sleep. She tends to stay to herself in her room as she wants to be left alone. She is also struggling with self-confidence in herself and trust in other people.

B.F. since birth has had developmental delays. While she has overcome many of them, she still struggles with social and emotional place, in the situations. She struggles with how to put her feelings into words. She is very vocal with what has happened. She is working with a therapist with moving forward and accepting what has happened[.]

Knowing what I know now, [Pouriet-Gannett] is a very deceptive and manipulative individual. He will say and do whatever it takes to get his desired outcome. I don't believe his actions is from mental illness. Decisions were made and children were hurt. I don't want to see any adult and/or child hurt by this man ever again.

I am asking, pleading, and begging this Court to not have mercy on him, as he has shown no mercy on me or my children[.] He should be held accountable for his actions and the years he has taken joy from my children's lives. He should be held accountable for the physical pain he has caused my children, and he should be held accountable for all the upcoming years it's going to have to take my children to heal and trust again.

I am asking for the maximum amount of time for each crime he has committed. I am asking that they run consecutive[.]

(Tr. Vol. 2 at 32-34).

[13] In addition, the State read a letter from then-fourteen-year-old A.G., who was present in the courtroom. That letter provides, in relevant part, as follows:

I am A.G. I am 14 years old. [Pouriet-Gannett] sexually assaulted me from the age of 7 to 13. I've been impacted in many ways by what happened[.]

At school, I struggle to focus because I'm distracted by my memories of what happened. My grades go down because I can't remain focused on school. I'm always so on edge that when I'm at school, the noises, the demands of teachers and peers can send me over the edge and I act out, creating behavioral issues for myself. I used to be a good student with A's and B's mostly, and now I'm not doing well. The grades are all over the place with D's and F's.

At first when this happened[,] I would sit in my room and cry at night, blaming myself for everything that happened. Now I know that he is a grown man and knew everything he was doing, and it wasn't my fault. I get aggravated that he took my childhood away from me. This started when I was 7 and I lost those years of being a child. I lost my ability to choose what I want, my ability to consent to things, my own innocence. Now when I look back on that, I am angry that he took those things away from me. I blame him because it was his fault. I am angry.

(Tr. Vol. 2 at 36-38).

[14] The State also read a letter written by then-sixteen-year-old B.F., who was also present in the courtroom. B.F.'s letter provides, in relevant part, as follows:

My trauma first started when I was around 10 years old. It started with making me look at his private part. [Later,] [h]e would want me to get naked in front of him. I felt embarrassed and did not know why he wanted that.

After I got naked[,] he would start touching. After that, I asked him why he wanted to do that and why he wanted to move forward with it. He said a group told him that he had to do a list, and they sent him a video of what would happen if he didn't do

it. He showed me that video and it made me feel scared for my family, so I agreed. It was a video where a woman had a baby who was upside down, and she cut the baby's throat. It made me feel scared for my family, and it still sometimes comes back and scares me. He used the video to convince me and threaten me to continue what we were doing.

After he did that, he forced me and somebody else to do sexual activities together and with him.⁴ I was quite disgusted at that time, and I still feel awful whenever it reappears in my mind[.]

He continued to rape me until I was 14, and timed it based on my period. He even had a help app on his iPhone to track my period.

Then when we moved, I would not fall for the word, kind of -- kind of manipulation of it, he started to bribe me with money or anything. It was either that or get nothing at all. I feel guilty and shamed that I took it, even though he would have continued it either way. It's not fair that I have to feel this way. After the bribery, he would manipulate me by saying if I wanted it to stop so bad, he would jump off a cliff and kill himself. I feel pissed off because he wanted to kill himself so that he could not feel bad at all, and because he did not want me to hate him.

The sexual abuse affected me in lots of ways, from having flashbacks to having a sense of dread that he is even there when he's not. At times, I slept next to my mom because I was too scared of going upstairs because of the sense of dread that I had[.]

⁴ Pouriet-Gannett admitted to an IMPD officer that he had met a registered sex offender online and that, at different times, he had taken both A.G. and B.F. to the sex offender's home in Whiteland. On one occasion, A.G. performed oral sex on the sex offender and had sexual intercourse with him while Pouriet-Gannett watched. Afterwards, Pouriet-Gannett had sexual intercourse with the A.G. while the sex offender sat on the end of the bed and masturbated. On another occasion, while the sex offender was in his bedroom with B.F., A.G. performed oral sex on Pouriet-Gannett in the sex offender's living room.

The reason I want him to be locked away for a long time is because I know he will not change. An example of how I know he will not change is that one time he was baptized and he said that he would become a different man entirely, but he stayed the same. I think he would either try to come back here to hurt us again, or try to manipulate a new family. That is why I think he should have 60 years back to back, or the maximum sentence provided.

(Tr. Vol. 2 at 39-41)

- [15] Also at the hearing, Pouriet-Gannett stated that he took “full responsibility” and expressed remorse for his actions. (Tr. Vol. 2 at 47). Thereafter, Pouriet-Gannett’s counsel asked the trial court to consider the following mitigating factors: (1) Pouriet-Gannett had taken responsibility for his actions; (2) he had expressed remorse; (3) he had suffered a traumatic childhood; (4) he suffered from physical health issues; and (5) he had a minimal criminal history.
- [16] At the end of the change of plea/sentencing hearing, the trial court found the following aggravating factors: (1) the harm, injury, loss, or damage suffered by A.G. and B.F. was both significant and significantly greater than the elements necessary to prove the offenses; (2) the offenses took place over a long period of time; (3) there were two victims; (4) Pouriet-Gannett violated a position of trust with A.G. and B.F.; (5) Pouriet-Gannett used threats and bribery to silence B.F.; (6) the offenses were likely to recur because Pouriet-Gannett would have continued to sexually abuse his daughters if they had not told Mother about the abuse; and (7) Pouriet-Gannett violated the trial court’s initial no-contact order. In addition, the trial court found as mitigating factors that Pouriet-Gannett had:

(1) demonstrated remorse; (2) pleaded guilty; and (3) suffered abuse as a child. The trial court specifically stated that it understood that Pouriet-Gannett had suffered terrible abuse as a child. However, the trial court further advised Pouriet-Gannett that he could not “use the abuse that [he] suffered as a child as [his] backup to abuse [A.G. and B.F.]” (Tr. Vol. 2 at 56).

[17] Thereafter, the trial court concluded that “the aggravators in this case significantly outweigh[ed] the mitigators” and sentenced Pouriet-Gannett to thirty-five (35) years for each of the three Level 1 felony child molesting convictions. (Tr. Vol. 2 at 57). The trial court further ordered the three thirty-five-year sentences to run consecutively to each other. In addition, the trial court sentenced Pouriet-Gannett to twelve (12) years for the Level 3 felony conviction, and, pursuant to the plea agreement, the trial court ordered the twelve-year sentence to run concurrently with the three thirty-five-year sentences. Lastly, the trial court suspended five years of one of the thirty-five-year sentences to probation, for a total executed sentence of one hundred (100) years.

[18] Pouriet-Gannett now appeals his sentence.

Decision

[19] Pouriet-Gannett argues that the trial court abused its discretion in sentencing him and that his sentence is inappropriate. We address each of his contentions in turn.

1. Abuse of Discretion

[20] Pouriet-Gannett first argues that the trial court abused its discretion in sentencing him. Sentencing decisions rest within the sound discretion of the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). So long as the sentence is in the statutory range, it is subject to review only for an abuse of discretion. *Id.* An abuse of discretion occurs if the decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable, probable, and actual deductions to be drawn therefrom. *Id.* at 491. A trial court may abuse its discretion in a number of ways, including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that includes aggravating and mitigating factors that are unsupported by the record; (3) entering a sentencing statement that omits reasons that are clearly supported by the record; or (4) entering a sentencing statement that includes reasons that are improper as a matter of law. *Id.* at 490-91.

[21] Here, Pouriet-Gannett argues that the trial court abused its discretion when it failed to consider two mitigating factors. A finding of a mitigating factor is not mandatory but is within the discretion of the trial court. *Page v. State*, 878 N.E.2d 404, 408 (Ind. Ct. App. 2007), *trans. denied*. In order to show that the trial court abused its discretion in failing to find a mitigating factor, the defendant must establish that the mitigating evidence is both significant and clearly supported by the record. *Rogers v. State*, 958 N.E.2d 4, 9 (Ind. Ct. App. 2011).

[22] Pouriet-Gannett first argues that the trial court abused its discretion when it did not find his childhood trauma to be a mitigating factor. However, our review of the record reveals that the trial court considered Pouriet-Gannett’s “abuse as a child” to be a mitigating factor. (Tr. Vol. 2 at 56). To the extent Pouriet-Gannett argues that there was additional childhood trauma that the trial court failed to consider, our supreme court has “consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight.” *Ritchie v. State*, 875 N.E.2d 706, 725 (Ind. 2007). Accordingly, Pouriet-Gannett has not established that the trial court overlooked a significant mitigating factor, and we find no abuse of the trial court’s discretion.

[23] Pouriet-Gannett also argues that the trial court abused its discretion when it did not find his mental health issues to be a mitigating factor. However, because Pouriet-Gannett did not argue at the sentencing hearing that his alleged mental health issues constituted a mitigating factor, Pouriet-Gannett has waived appellate review of this issue.⁵ *See Bryant v. State*, 984 N.E.2d 240, 252 (Ind. Ct. App. 2013) (explaining that failure to present a mitigating factor to the trial court waives consideration of that factor on appeal), *trans. denied*.

⁵ Further, to the extent that Pouriet-Gannett argues that “[e]vidence of [his] mental health issues, specifically bi-polar disorder, was thoroughly presented at sentencing through the sentencing memorandum and presentence investigation report[,]” (Pouriet-Gannett’s Br. 14), we note that this Court has previously explained that “[a]lthough the trial court is obligated to review the presentence investigation report and consider all aggravating and mitigating circumstances presented in that document, the court is not required to comb through it and present mitigating arguments on behalf of the defendant when the defendant fails to act.” *Bryant*, 984 N.E.2d at 251-52.

[24] Waiver notwithstanding, even if the trial court had abused its discretion by not finding Pouriet-Gannett's mental health to be a mitigating factor, any error was harmless. When the trial court abuses its discretion in sentencing, we will remand if we cannot say with confidence that the trial court would have imposed the same sentence. *Webb v. State*, 941 N.E.2d 1082, 1090 (Ind. Ct. App. 2011), *trans. denied*. Here, the trial court found the following seven aggravating factors: (1) the harm, injury, loss, or damage suffered by A.G. and B.F. was both significant and significantly greater than the elements necessary to prove the offenses; (2) the offenses took place over a long period of time; (3) there were two victims; (4) Pouriet-Gannett violated a position of trust with A.G. and B.F.; (5) Pouriet-Gannett used threats and bribery to silence B.F.; (6) the offenses were likely to recur because Pouriet-Gannett would have continued to sexually abuse his daughters if they had not told Mother about the abuse; and (7) Pouriet-Gannett violated the trial court's initial no-contact order. Because of the presence of these significant aggravating factors, we conclude that the trial court would have imposed the same sentence even if it would have found Pouriet-Gannett's mental health to be a mitigating factor. *See Scott v. State*, 840 N.E.2d 376, 384 (Ind. Ct. App. 2006) (holding that although the trial court erred in failing to find the defendant's mental illness to be a mitigating factor, the error was harmless in light of multiple valid aggravating factors), *trans. denied*. The trial court did not abuse its discretion in sentencing Pouriet-Gannett.

2. Inappropriate Sentence

- [25] Pouriet-Gannett also 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).
- [26] 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).
- [27] 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, Pouriet-Gannett

pleaded guilty to three counts of Level 1 felony child molesting and one count of Level 3 felony sexual gratification. The sentencing range for a Level 1 felony is from twenty (20) to forty (40) years, with an advisory sentence of thirty (30) years. I.C. § 35-50-2-4(b). The sentencing range for a Level 3 felony is between three (3) and sixteen (16) years with an advisory sentence of nine (9) years. *See* I.C. § 35-50-2-5(b). Here, the trial court sentenced Pouriet-Gannett to thirty-five years for each of the three Level 1 child molesting convictions. The trial court further ordered the three thirty-five-year sentences to run consecutively to each other. In addition, the trial court sentenced Pouriet-Gannett to twelve years for the Level 3 felony conviction, and, pursuant to the plea agreement, the trial court ordered the twelve-year sentence to run concurrently with the three thirty-five-year sentences. Lastly, the trial court suspended five years of one of the thirty-five-year sentences to probation, for a total executed sentence of one hundred years. This sentence is less than the 120-year maximum sentence.

[28] Regarding the nature of the offenses, Pouriet-Gannett began sexually abusing his daughter, A.G., when she was seven years old. The abuse, which included sexual intercourse and oral sex, continued until A.G. told Mother about it when A.G. was thirteen years old. In addition, Pouriet-Gannett induced A.G. to engage in sexual acts with her sister, B.F. Further Pouriet-Gannett met a registered sex offender online and then took A.G. to the sex offender's home, where Pouriet-Gannett forced A.G. to perform oral sex oral on the sex offender and to have sexual intercourse with him while Pouriet-Gannett watched. Afterwards, Pouriet-Gannett had sexual intercourse with A.G. while the sex

offender sat on the end of the bed and masturbated. On another occasion, while the sex offender was in his bedroom with B.F, Pouriet-Gannett made A.G. perform oral sex on Pouriet-Gannett in the sex offender's living room. As a result of suffering years of sexual abuse, A.G. has difficulty focusing on school, her grades have dropped from A's and B's to D's and F's, and she has behavioral difficulties. A.G. also has difficulty sleeping, and, at the time of the sentencing hearing, then-fourteen-year-old A.G. was seeing a therapist and taking an antidepressant.

[29] In addition, Pouriet-Gannett began sexually abusing his step-daughter, B.F., who had been born with developmental delays, when she was ten years old. The abuse, which included sexual intercourse and oral sex, continued until B.F. told Mother about it when B.F. was fourteen years old. Pouriet-Gannett induced B.F. to engage in sexual acts with A.G. and took B.F. to the registered sex offender's home, where Pouriet-Gannett forced B.F. to engage in sexual acts with the sex offender. In addition, Pouriet-Gannett used a video of a woman cutting a baby's throat to threaten B.F. and convince her to continue engaging in sexual acts with him. Pouriet-Gannett later manipulated B.F. by bribing her to continue engaging in sexual acts with him and by threatening to commit suicide if she stopped engaging in sexual acts with him. Further, Pouriet-Gannett timed his sexual abuse of B.F. based on when she was having her period and had an app on his phone to track B.F.'s period. As a result of suffering from years of sexual abuse, B.F. has flashbacks and has had to sleep with Mother. At the time of the sentencing hearing, B.F. was in therapy.

[30] Regarding Pouriet-Gannett's character, we note that Pouriet-Gannett violated the trust of his two daughters. In addition, Pouriet-Gannett's immediate and repeated violations of the trial court's initial no-contact order shows his disdain for the law.

[31] Based on the record before us, Pouriet-Gannett has failed to meet his burden to persuade this Court that his sentence is inappropriate.

[32] Affirmed.

Robb, J., and Weissmann, J., concur.