

MEMORANDUM DECISION

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ATTORNEY FOR APPELLANT

Kay A. Beehler
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Jodi K. Stein
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Jeremy Merle Caudill,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

May 9, 2022

Court of Appeals Case No.
22A-CR-123

Appeal from the Marshall Superior
Court

The Honorable Robert O. Bowen,
Judge

Trial Court Cause No.
50D01-1910-F3-28

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Defendant, Jeremy Caudill (Caudill), appeals his sentence following his conviction for rape, a Level 3 felony, Ind. Code § 35-42-4-1(a)(1); and incest, a Level 5 felony, I.C. § 35-46-1-3.

[2] We affirm.

ISSUE

[3] Caudill presents this court with two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion in sentencing Caudill to an aggravated sentence by relying on the aggravating circumstances of position of trust and failure to take responsibility.

FACTS AND PROCEDURAL HISTORY

[4] In June of 2019, seventeen-year-old A.C. lived with Caudill, who is her biological father, her step-mother, and a family friend in their home in Argos, Indiana. A.C. attended high school in Argos, worked part-time in a nursing home, and was required to help out by doing household chores. She earned good grades in school, dated fellow seventeen-year-old, G.M., intended to enlist in the Navy, and to study nursing. A.C.'s relationship with Caudill was unpredictable and it "depended on the day what [A.C.] got in trouble for." (Transcript Vol. II, p. 94).

[5] One of the rules of the residence was that A.C. was not allowed to have anyone at the house when she was home alone. However, on the morning of June 18,

2019, A.C. was home alone and invited G.M. to come over. G.M. arrived mid-morning and, after hanging out a bit, the two engaged in protected sexual intercourse in A.C.'s bedroom. Around noon, Caudill arrived home for lunch and ran up the stairs into A.C.'s bedroom, catching the teenagers in the act. Caudill kicked G.M. in the back of the leg and threatened to kill him. G.M. ran out of the house with only part of his clothing, retreated to the alley, removed the condom, and called a friend to pick him up.

[6] After G.M. ran out of the bedroom, Caudill sat down on A.C.'s bed and, "like a switch," his voice became very calm. (Tr. Vol. II, p. 101). A.C. sat down on a nearby small couch and covered herself with a blanket. Caudill informed her that she should "help [him] out" or he was going to tell the family that she was having sex with G.M. (Tr. Vol. II, p.102). A.C. understood Caudill to mean he wanted intercourse. She refused several times. When A.C. stood and walked across the room to get dressed, Caudill prevented her from getting dressed. He pinned her against the wall by her arms and ordered her to return to the couch, which she did. Caudill took off his pants, pushed A.C. down, held her on the couch, and penetrated her vagina with his penis. Caudill ejaculated on A.C.'s left hip/stomach. Without a word, Caudill left the bedroom and returned to work.

[7] A.C. wiped her stomach/left hip with a baby wipe. Later, A.C. briefly met up with G.M. to return his clothes. When A.C. drove to work later in the day, she "lost it," so she called her best friend, H.B. (Tr. Vol. II, p. 106). When H.B.'s mother, Jill Behling (Behling), got on the phone, A.C. disclosed to her that her

father had raped her. Behling persuaded A.C. to come to her house and called 911. When A.C. arrived, she was shaking, crying, and in shock.

[8] A sexual assault examination was performed on A.C. at the local hospital. Caudill arrived at the hospital while A.C. was being examined, and he gave a voluntary statement to the Argos Police Department officer present. Caudill explained that he interrupted the teenagers having sex, he threw G.M. out of the house, and then he hugged A.C. before returning to work. The examination detected Caudill's seminal material on A.C.'s external genital swabs and on the dried secretion swabs from A.C.'s abdomen.

[9] On September 7, 2019, the State filed an Information, charging Caudill with Level 3 felony rape and Level 5 felony incest. On September 28 and 29, 2021, a jury trial was conducted, at the close of which the jury found Caudill guilty as charged. On November 16, 2021, the trial court conducted a sentencing hearing. During the hearing, the trial court found Caudill's minimal criminal history as mitigating, although the court noted that his only prior offense was a misdemeanor battery on A.C. The trial court found four aggravators: (1) Caudill violated a position of trust with A.C.; (2) Caudill had four negative conduct reports while incarcerated in the county jail; (3) Caudill had not taken responsibility for committing the offenses despite overwhelming evidence of guilt; and (4) Caudill was on probation for battery against A.C. when he committed the instant offenses. Finding that the aggravators outweighed the mitigator, the trial court imposed a fourteen-year executed sentence for Level 3 felony rape and a concurrent four-year sentence for Level 5 felony incest.

[10] Caudill now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[11] Caudill contends that the trial court abused its discretion by erroneously relying on two specific aggravating circumstances to aggravate his sentence. Sentencing decisions “rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind.2007), *clarified on reh’g*, 875 N.E.2d 218 (2007). “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.* (quotations and citation omitted). A trial court may abuse its discretion by failing to enter a sentencing statement, entering findings of aggravating and mitigating factors unsupported by the record, omitting factors clearly supported by the record and advanced for consideration, or giving reasons that are improper as a matter of law. *Id.* at 490–91. “Under those circumstances, remand for resentencing may be the appropriate remedy if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491.

II. *Analysis*

[12] At the conclusion of the jury trial, Caudill was found guilty of Level 3 felony rape and Level 5 felony incest. The sentence for a Level 3 felony is between

three and sixteen years, with the advisory sentence being nine years; while the sentence for a Level 5 felony is between one and six years, with the advisory sentence being three years. After finding that the four aggravators outweighed the mitigator, the trial court sentenced Caudill to an aggravated sentence of fourteen years for Level 3 felony rape and a concurrent term of four years for Level 5 felony incest. Caudill now challenges two aggravating factors as erroneous.

A. *Position of Trust*

- [13] Contesting the trial court’s aggravator that he was in a position of trust with A.C., Caudill argues that this aggravator was unsupported by the record because A.C. was “an independent young woman,” who had her own car, held a part-time job, and made plans to enlist in the Navy. (Appellant’s Br. p. 8).
- [14] Courts consider that being in a position of trust with the victim is a valid non-statutory aggravating circumstance. *Watson v. State*, 784 N.E.2d 515, 523 (Ind. Ct. App. 2003) (citing *Bacher v. State*, 722 N.E.2d 799, 802 (Ind. 2000)); *Winters v. State*, 727 N.E.2d 758, 762 (Ind. Ct. App. 2000), *trans. denied*. Abusing a position of trust is, by itself, a valid aggravator which supports the maximum enhancement of a sentence for child molesting. *Singer v. State*, 674 N.E.2d 11, 14 (Ind. Ct. App. 1996). “There is no greater position of trust than that of a parent to his own young child.” *Hart v. State*, 829 N.E.2d 541, 544 (Ind. Ct. App. 2005). As we clarified in *Rodriguez v. State*, 868 N.E. 2d 551, 555 (Ind. Ct. App. 2007):

The position of trust aggravator is frequently cited by sentencing courts where an adult has committed an offense against a minor and there is at least an inference of the adult's authority over the minor. Moreover, this aggravator applies in cases where the defendant has a more than casual relationship with the victim and has abused the trust resulting from that relationship. This is usually the case where the defendant is the victim's mother, father or stepparent. [] Generally, cohabitation arrangements of nearly any character between adults do in fact, and should, establish a position of trust between the adults and minors living or staying together.

[15] While we acknowledge that A.C. was not the young, minor child typically envisioned when applying this aggravator, the record still supports that Caudill had authority over A.C. and she, in turn, was dependent on him. Caudill does not contest that he is the biological father of seventeen-year-old A.C., who lived with him at his residence in June 2019. Caudill imposed certain rules, which he expected A.C. to follow, one of which was not to have any guests over when A.C. was home alone, and he expected her to complete household chores. Despite having a part-time job and having a car, A.C. was still a full-time student and relied on Caudill for shelter, food, and life essentials. Accordingly, as the record supports that at the time Caudill raped A.C. and committed incest, A.C. was under his authority and care, the trial court properly found that Caudill was in a position of trust with A.C.

B. *Failure to Take Responsibility*

[16] As a second challenge to the trial court's finding of aggravators, Caudill contends that the aggravator of failing to take responsibility for his commission

of the offenses is erroneous because he has consistently in good faith maintained his innocence, as is his constitutional right to do.

[17] Here, the trial court, when identifying the aggravator, explained that, “I don’t feel that you’ve taken responsibility for the crimes that were committed, despite the overwhelming evidence, including scientific evidence of your guilt.” (Tr. Vol. II, pp. 208-09). While a trial court may not consider a defendant’s choice to maintain his innocence as an aggravating factor, it may properly identify a defendant’s lack of remorse or failure to take responsibility as an aggravating factor. *Salone v. State*, 652 N.E.2d 552,562 (Ind. Ct. App. 2002), *trans. denied*. Specifically, our supreme court has held that, with one exception, lack of remorse is a valid aggravating circumstance. *Id.* The lone exception to the rule, when the defendant maintains innocence and the only evidence is the victim’s uncorroborated testimony, is inapplicable in the instant case. *Id.* (citing *Dockery v. State*, 504 N.E.2d 291, 297 (Ind. Ct. App. 1987)). A.C.’s testimony detailing her rape and incest by Caudill is corroborated by the sexual assault examination performed on A.C. at the local hospital. The examination detected Caudill’s seminal material on A.C.’s external genital swabs and on the dried secretion swabs from A.C.’s abdomen. The DNA evidence revealed that this seminal material was one trillion times more likely to derive from Caudill than from an unknown, unrelated individual.

[18] Even if we were to be persuaded by Caudill’s argument—which we are not—that “a sentencing court should not be authorized to base the ‘lack of remorse’ or ‘failure to take responsibility’ aggravator on the amount of evidence put forth

by the State during trial,” we note that, even without this aggravator, we would still reach the same result. (Appellant’s Reply Br. p. 5). When a trial court improperly applies an aggravator but other valid aggravating circumstances exist, a sentence enhancement may still be upheld. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. The question we must decide is whether we are confident the trial court would have imposed the same sentence even if it had not found the improper aggravator. We are confident that it would have. The three remaining aggravators—(1) Caudill violated a position of trust with A.C.; (2) Caudill had four negative conduct reports while incarcerated in the county jail; and (3) Caudill was on probation for battery against A.C. when he committed the instant offense, are sufficiently significant to support Caudill’s aggravated sentence.

[19] Based on the evidence before us, we conclude that the aggravators are supported by the evidence and the trial court did not abuse its discretion in imposing an aggravated sentence.

CONCLUSION

[20] Based on the foregoing, we hold that the trial court did not abuse its discretion in sentencing Caudill to an aggregate sentence.

[21] Affirmed.

[22] May, J. and Tavitas, J. concur