

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

Lisa Diane Manning
Plainfield, Indiana

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General

Myriam Serrano
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

Lamar Rufenbarger,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

March 14, 2022
Court of Appeals Case No.
21A-CR-2319

Appeal from the
Hendricks Superior Court

The Honorable
Rhett M. Stuard, Judge

Trial Court Cause No.
32D02-2006-F4-19

Vaidik, Judge.

Case Summary

[1] Lamar Rufenbarger appeals his ten-year sentence for Level 4 felony child molesting and Level 6 felony sexual battery, arguing it is inappropriate in light of the nature of the offenses and his character. We affirm.

Facts and Procedural History

- [2] Rufenbarger is the step-grandfather of C.S., born in 2014. In June 2020, C.S. told her parents that Rufenbarger, who provided childcare for C.S. before and after school, had been touching her inappropriately. When confronted by family members, Rufenbarger admitted to touching C.S.'s vagina under her clothes with his hand and stated this had been going on for about a year.
- [3] The State charged Rufenbarger with Level 4 felony child molesting and Level 6 felony sexual battery. In October 2021, Rufenbarger pled open to both charges. At the sentencing hearing, C.S.'s parents testified that C.S. suffers from "severe anxiety," self-harms, wets the bed, and is afraid to go to school because Rufenbarger used to transport her to and from school. Tr. Vol. II p. 23.
- [4] The trial court found four aggravators: (1) the harm inflicted was more than required for the offense charged, (2) the young age of the victim, (3) Rufenbarger's "minor" criminal history, which consisted of a conviction for Class D felony battery that was later reduced to a Class A misdemeanor, and (4) that Rufenbarger was in a "position of trust" over the victim, which the court found to be a "significant" aggravator. *Id.* at 38. For mitigators, the court found: (1) Rufenbarger suffers from mental illness, (2) he participated in sex-

offender counseling, (3) he served in the military, and (4) he accepted responsibility and pled guilty. Finding the aggravators outweighed the mitigators, the court sentenced Rufenbarger to ten years for Level 4 felony child molesting and one-and-a-half years for Level 6 felony sexual battery, to be served concurrently, for an aggregate sentence of ten years.

[5] Rufenbarger now appeals.

Discussion and Decision

[6] Rufenbarger argues his sentence of ten years is inappropriate and asks us to revise it. Under Indiana Appellate Rule 7(B), an appellate court “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” The appellate court’s role under Rule 7(B) is to “leaven the outliers,” and “we reserve our 7(B) authority for exceptional cases.” *Faith v. State*, 131 N.E.3d 158, 159-60 (Ind. 2019) (quotation omitted). “Ultimately, our constitutional authority to review and revise sentences boils down to our collective sense of what is appropriate.” *Id.* at 160 (quotation omitted).

[7] A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two and twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5. A person who commits a Level 6 felony shall be imprisoned for a fixed term of between six months and two-and-a-half years,

with an advisory sentence of one year. I.C. § 35-50-2-7. The trial court sentenced Rufenbarger to ten years for the Level 4 felony and one-and-a-half years for the Level 6 felony, to be served concurrently, for a total sentence of ten years.

[8] Rufenbarger argues his sentence should be revised and points to positive aspects of his character, including that he has generally led a “law-abiding life,” “served his country,” and pled guilty as charged. Appellant’s Br. p. 12. While this may be true, the nature of the offense here warrants the above-advisory sentence. Rufenbarger repeatedly molested his five-year-old step-granddaughter for a year. In addition to his position of trust as her step-grandfather, Rufenbarger was also a source of childcare for her family, including taking C.S. to and from school. And C.S.’s parents presented evidence she continues to suffer severe emotional and mental harm due to Rufenbarger’s actions. *See McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020) (holding above-advisory sentence was not inappropriate in light of the nature of defendant’s offense where he was in a position of trust as a babysitter and where victims’ mother testified about the ways the molestations continued to affect the victims).

[9] Rufenbarger has not established that his ten-year sentence is inappropriate.

[10] Affirmed.

Najam, J., and Weissmann, J., concur.