

# MEMORANDUM DECISION

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## ATTORNEY FOR APPELLANT

Marielena Duerring  
South Bend, Indiana

## ATTORNEYS FOR APPELLEE

Theodore E. Rokita  
Indiana Attorney General  
Indianapolis, Indiana  
  
Sierra A. Murray  
Deputy Attorney General  
Indianapolis, Indiana

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# IN THE COURT OF APPEALS OF INDIANA

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Alejandro Benitez Resendez,  
*Appellant-Defendant,*

v.

State of Indiana,  
*Appellee-Plaintiff*

January 10, 2024

Court of Appeals Case No.  
23A-CR-1148

Appeal from the Elkhart Superior  
Court

The Honorable Teresa L. Cataldo,  
Judge

Trial Court Cause No.20D03-1812-  
F4-86

**Memorandum Decision by Judge May**  
Judges Bailey and Felix concur.

**May, Judge.**

[1] Alejandro Benitez Resendez (“Resendez”) appeals the thirty-six-year sentence he received for three counts of Level 4 felony child molesting.<sup>1</sup> Resendez argues his sentence is inappropriate for his offenses and his character. We disagree and affirm.

## Facts and Procedural History

[2] Y.Z.P. was born in 2005 and lived with her mother and younger sister. Resendez began living with their family when Y.Z.P. was eleven years old, and she thought of Resendez as a “stepfather.” (Tr. Vol. 3 at 67.) Soon after he moved in with the family, Resendez began touching Y.Z.P. in ways that made her uncomfortable and his touching happened “[m]ultiple” times.<sup>2</sup> (*Id.* at 77.) Resendez also offered Y.Z.P. money to have sex with him.

[3] On one occasion, in the living room when Y.Z.P.’s sister was also present, Resendez touched Y.Z.P.’s breast over her clothing with his hand and tried to move his hand down to her genital area, but Y.Z.P. pushed him away. Resendez then grabbed Y.Z.P.’s hand and forced her to touch his penis, which she felt “growing.” (*Id.* at 76.) Resendez was clothed at the time.

[4] On another occasion, around Y.Z.P.’s twelfth birthday, she was in the kitchen washing the dishes in the sink, when Resendez walked up behind her. Both

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<sup>1</sup> Ind. Code § 35-42-4-3(b).

<sup>2</sup> During her testimony at trial, Y.Z.P. indicated Resendez touched her more than the three times about which she provided detailed testimony.

Resendez and Y.Z.P. were fully clothed. Resendez pressed his penis against her buttocks, reached his hand around to just above her vaginal area, and said “this is mine.” (*Id.* at 78.) Y.Z.P. again felt Resendez’s penis growing hard. Y.Z.P. pushed Resendez away.

[5] On a third occasion, Resendez entered Y.Z.P.’s bedroom without knocking and walked up behind Y.Z.P., who was standing up. Both of them were fully clothed. Resendez grabbed Y.Z.P.’s bottom and pressed his penis against her buttocks. He grabbed her hand and forced her to touch his penis through his pants. Y.Z.P. pushed Resendez away, and he got mad at her. Y.Z.P. told Resendez that she was going to report what he was doing.

[6] Y.Z.P. then spent a month deciding “if I’m gonna take my own life or tell the truth.” (*Id.* at 81.) Y.Z.P. started cutting herself on her arms or legs with a blade. When Y.Z.P. was thirteen years old, she told a friend at school that Resendez had touched her inappropriately. That friend convinced Y.Z.P. to report the touching to adults, and police began an investigation.

[7] On December 17, 2018, the State charged Resendez with three counts of Level 4 felony child molesting. All three charges alleged Resendez “did knowingly perform or submit to any fondling or touching of either the child or the older person, with intent to arouse or to satisfy the sexual desires of either the child or the older person” with a child under age fourteen. (Appellant’s App. Vol. 2 at 4.) The court held a jury trial on January 10, 2023, and the jury found Resendez guilty of all three charges.

[8] The court held a sentencing hearing on May 16, 2023. The court’s sentencing order explained:

As an aggravator, the Court finds that the harm, injury, and loss suffered by the defendant’s victim in this case was significant and greater than the elements necessary to prove the offenses. The Court also notes the defendant has a history of alcohol abuse beginning at the age of thirteen. The Court further finds the defendant had the care, custody and control over the victim as he was the mother’s boyfriend. The Court further indicates that the events happened over a span of years and the defendant knew that the victim had a history of a prior offense. As mitigators, the Court has taken counsel’s comments into consideration. The Court now finds that the mitigating circumstances taken as a whole do not outweigh even one of the aggravating circumstances; therefore, the Court finds that an aggravated sentence in this case is appropriate.

(Appellant’s App. Vol. 2 at 242.) The court imposed three twelve-year sentences and ordered them served consecutively, resulting in an aggregate thirty-six-year term in the Indiana Department of Correction.

## Discussion and Decision

[9] Resendez challenges his sentence as inappropriate. Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence “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.” Our determination “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.” *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

Our review is deferential to the trial court’s decision, and our goal is to determine whether the appellant’s sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

*George v. State*, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*.

[10] “When considering the nature of the offense, we first look to the advisory sentence for the crime.” *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, “we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence.” *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). When convicted of a Level 4 felony, a person “shall be imprisoned for a fixed term of between two (2) and twelve (12) years, with the advisory sentence being six (6) years.” Ind. Code § 35-50-2-5.5. Herein, the trial court imposed three twelve-year sentences and ordered them served consecutively.

[11] Resendez argues his thirty-six-year sentence is inappropriate for his crimes because “the charges that Resendez was convicted of involve inappropriate

touching of the victim and himself above the clothing.” (Appellant’s Br. at 9.) They are not the “worst of the worst of sex crimes to be committed against a child[,]” he asserts, because there was no “sexual intercourse, oral sex, or digital penetration[.]” (*Id.*) However, in so arguing, Resendez is comparing himself to a different, much more serious class of crimes – Level 1 felony child molesting, which has a sentencing range of twenty to fifty years – rather than to other occurrences of Level 4 felony child molesting. *Compare* Ind. Code § 35-42-4-3(a) (defining Level 1 felony child molesting as a person over age 21 performing sexual intercourse or other sexual conduct with a child under age 14) *with* Indiana Code § 35-42-4-3(b) (defining Level 4 felony child molesting as “any fondling or touching”); *and see* Ind. Code § 35-50-2-4 (setting sentence for Level 1 felony). We are not inclined to see Resendez’s sentence as inappropriate for his crimes on this basis, and we turn to reviewing the nature of the offenses he did commit.

[12] Resendez repeatedly molested the daughter of the woman he was dating, while living in the house with that woman and her two children. He began molesting Y.Z.P. when she was only eleven years old, and he sometimes would touch her inappropriately in front of her younger sister. Resendez molested Y.Z.P. in the living room, the kitchen, and her bedroom. He touched her breasts and grabbed her vagina while telling her that her vagina was his. He repeatedly pressed his penis against her buttocks and pushed himself against her while his penis got hard. He also grabbed her hand and forced her to touch his penis. When she resisted, Resendez got mad and yelled at her. After years of abuse,

Y.Z.P. became suicidal and began to harm herself. She feared that if she did not submit to Resendez’s unwanted touches, she, her mother, and her sister would become homeless. We cannot say Resendez’s repeated molestations of Y.Z.P. deserve a more lenient sentence.

[13] Turning to Resendez’s character, we note, as he did, that he has no criminal history. Nevertheless, we do not find ourselves “overcome by compelling evidence portraying in a positive light . . . the defendant’s character (such as substantial virtuous traits or persistent examples of good character).” *Oberhansley v. State*, 208 N.E.3d 1261, 1271 (Ind. 2023) (quoting *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015)). Resendez took advantage of his position as a father-figure in the household to repeatedly molest Y.Z.P. from the time she was eleven years old, and he took advantage of Y.Z.P. while knowing that she had been sexually abused by someone else. The quality of Resendez’s character is also impugned by the fact that he tried to convince Y.Z.P. to have sex with him by offering her money. Nothing about Resendez’s character prompts us to reduce his sentence.

## Conclusion

[14] Because a thirty-six-year sentence is not inappropriate for Resendez’s offenses or his character, we affirm.

[15] Affirmed.

Bailey, J, and Felix, J., concur.