

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Terry Lynn Golden,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

April 27, 2023

Court of Appeals Case No.
22A-CR-2320

Appeal from the
Bartholomew Superior Court

The Honorable
James D. Worton, Judge

Trial Court Case No.
03D01-2204-F4-1720

Memorandum Decision by Senior Judge Najam
Judges May and Robb concur.

Najam, Senior Judge.

Statement of the Case

- [1] Terry Lynn Golden appeals his sentence following his guilty plea to sexual misconduct with a minor, a Level 4 felony. He raises a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offense and his character. Because Golden has failed to persuade us that his sentence is inappropriate, we affirm.

Facts and Procedural History

- [2] Although the guilty plea transcript reveals little about the nature of Golden's offense, a more detailed version exists in the probable cause affidavit, which Golden cites in his appellate brief and which was incorporated into the pre-sentence investigation report. *See* Appellant's Br. p. 7; Appellant's App. Vol. 2, p. 15.
- [3] In February or March of 2022, sixty-seven-year-old Golden left his home in Michigan and came to live with his brother in Indiana after he and his wife had an argument. Tr. Vol. 2, pp. 30, 31. During that time, Golden also visited his sister's home where his sister's fifteen-year-old granddaughter, the victim, was staying during her spring break. Appellant's App. Vol. 2, p. 15. The victim told police that Golden had touched her leg and kissed her. *Id.* She stated that the following day, Golden put his penis in her mouth and put his fingers in her vagina. *Id.* The victim also told police that the third day, Golden put his mouth on her breasts and again put his penis in her mouth. *Id.*

[4] The State charged Golden with two counts of sexual misconduct with a minor, both as Level 4 felonies. *See* Ind. Code § 35-42-4-9 (2019). Golden pleaded guilty to one count in exchange for the State’s dismissal of the second count, and the parties left sentencing to the discretion of the court. The court sentenced Golden to ten years executed. He now appeals that sentence.

Discussion and Decision

[5] Golden contends his sentence of ten years is inappropriate in light of the nature of the offense and his character. Article 7, sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of sentences through Indiana Appellate Rule 7(B), which provides that we may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. *Thompson v. State*, 5 N.E.3d 383, 391 (Ind. Ct. App. 2014).

[6] However, given that sentencing is principally a discretionary function, “the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “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). The

defendant bears the burden of persuading the appellate court that his sentence is inappropriate. *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006).

- [7] To assess the nature of the offense, we begin with the advisory sentence. *Johnson v. State*, 986 N.E.2d 852, 856 (Ind. Ct. App. 2013). 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).
- [8] The sentencing range for a Level 4 felony is between two and twelve years, with an advisory sentence of six years. Ind. Code § 35-50-2-5.5 (2014). Golden’s sentence of ten years is more than the advisory sentence but less than the maximum sentence he could have received.
- [9] As aggravators, the trial court found that Golden’s victim is a family member and that the harm she suffered is significant and greater than the elements necessary to prove the offense. Tr. Vol. II, pp. 42-43; Appellant’s App. Vol. 2, pp. 37-38. Golden acknowledges that his offense is a serious one but argues that his sentence is too harsh because the offense did not involve violence or the threat of violence, a lengthy, repeated pattern of victimization, or the supplying of alcohol or drugs to the victim. *See* Appellant’s Br. p. 12.
- [10] A letter from the victim’s mother was read at sentencing and stated that Golden told the victim he would take her away from her family if she reported the

incidents and that the victim now suffers from nightmares and confidence issues. Tr. Vol. II, p. 40. Given this information and the fact that Golden, on three consecutive days, violated his position of trust as the great uncle of a young teenage girl who was visiting her grandmother, we see nothing inappropriate about his sentence.

- [11] Turning to the defendant's character, we consider his life and conduct as they are illustrative of his character. *Madden*, 162 N.E.3d at 564. A defendant's criminal history is one relevant factor in analyzing his character, the significance of which varies based on the "gravity, nature, and number of prior offenses in relation to the current offense." *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007).
- [12] On this factor, Golden emphasizes his guilty plea and remote criminal history. Further, though he acknowledges that Indiana courts have held that a defendant's risk assessment score should be used neither as a mitigator nor as an aggravator, he nevertheless claims that his assessment as low risk to reoffend reflects positively on his character. Appellant's Br. p. 14.
- [13] In determining Golden's sentence, the trial court considered his guilty plea and found it to be slightly mitigating. We note that, in exchange for Golden's plea, the State dismissed an additional Level 4 felony offense. The court found the following aggravating circumstances: (1) the victim is one of Golden's family members, and (2) Golden's criminal history, which consists of a conviction for burglary for which he served time in prison. Although Golden's criminal

history is not necessarily significant, even a minor criminal history reflects poorly on a defendant's character. *See Moss v. State*, 13 N.E.3d 440, 448 (Ind. Ct. App. 2014), *trans. denied*; *see also McCain v. State*, 88 N.E.3d 1066 (Ind. 2018) (finding forty-year sentence not inappropriate for mother with no criminal history who placed her mouth on penis of her one-year-old son).

[14] Golden has not met his burden of showing compelling evidence that portrays his offense and character in a positive light in order to overcome the deference we show to the trial court's sentencing decision. We cannot say that Golden's ten-year executed sentence is inappropriate in light of the nature of the offense and his character. As such, we affirm his sentence.

[15] Affirmed.

May, J., and Robb, J., concur.