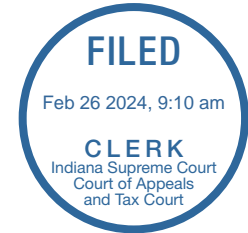


MEMORANDUM DECISION

Pursuant to [Ind. Appellate Rule 65\(D\)](#), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.



IN THE
Court of Appeals of Indiana

Destin Fluellen,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

February 26, 2024

Court of Appeals Case No.
23A-CR-1810

Appeal from the Marion Superior Court
The Honorable Cynthia L. Oetjen, Judge

Trial Court Cause No.
49D30-2008-F1-24098

Memorandum Decision by Judge Mathias
Judges Tavitas and Weissmann concur.

Mathias, Judge.

[1] Destin Fluellen was convicted in Marion Superior Court of three counts of Level 1 felony child molesting and two counts of Level 4 felony child molesting. The trial court imposed an aggregate eighty-two-year sentence. Fluellen appeals, arguing that his sentence is inappropriate in light of the nature of his offenses and his character.

[2] We affirm.

Facts and Procedural History

[3] Fluellen and Domanick Redmond were involved in a romantic relationship for approximately ten years. Redmond has two daughters, and D.R. was three years old when Fluellen and Redmond began dating. Fluellen and Redmond also have four sons. In January 2020, the family moved into a two-bedroom apartment with Fluellen's aunt and his mother. Fluellen, Redmond, and the children all shared one bedroom. Fluellen often watched the children while Redmond worked.

[4] D.R. turned eleven years old in February 2020, and she started to exhibit signs of puberty. On D.R.'s eleventh birthday, Fluellen began molesting her. On that date he lifted D.R.'s nightgown and touched her buttocks. On another occasion, Fluellen grabbed D.R.'s foot and placed it on his penis. On another date, Fluellen got into bed with D.R., lifted her shirt and bra and touched her breasts. He then put D.R.'s breasts in his mouth and caused D.R. pain. Fluellen also

forced D.R. to perform oral sex on him by grabbing her by the hair and forcing her mouth onto his penis.

[5] At some point, the apartment the family was living in burned down, and the family moved to a different apartment in the same complex. After they moved, Fluellen made D.R. join him in his mother's bedroom. Fluellen ordered D.R. to pull down her pants and underwear, and he took his penis out of his pants. Fluellen rubbed his penis against D.R.'s buttocks until he ejaculated on her back. He then gave D.R. a tissue and told her to clean herself up.

[6] In June 2020, the family was living in a hotel. While Redmond was at work, Fluellen forced D.R. to have anal sex, which caused significant pain to D.R. In a separate incident, Fluellen forced D.R. to perform oral sex on him in the hotel bathroom.

[7] In July 2020, Redmond's best friend overheard D.R. make a statement that concerned her. She disclosed the statement with Redmond, who asked D.R. if Fluellen had touched her. D.R. started crying and shaking and disclosed that Fluellen had molested her.

[8] On August 3, 2020, the State charged Fluellen with three counts of Level 1 felony child molesting, two counts of Level 4 felony child molesting, and Level 6 felony neglect of a dependent. Fluellen's first jury trial ended in a mistrial. His second jury trial commenced on June 12, 2023. The jury found him guilty of the five child molesting counts but not guilty of neglect of a dependent.

[9] During the sentencing hearing, the trial court found the following aggravating circumstances: that “the harm, injury, loss or damage suffered by the victim was significant and greater than the elements necessary to prove the offense[,]” Fluellen’s prior criminal history, that the victim was under the age of twelve at the time of the offenses and the molestations were committed within the hearing of children under the age of eighteen, that Fluellen was in a position of care, custody, and control of the victim, and that Fluellen violated a no contact order before sentencing. Tr. Vol. 5, pp. 50-51. The court found no mitigating circumstances.

[10] The trial court ordered Fluellen to serve thirty-five years for each Level 1 felony child molesting conviction and ordered Count II to be served concurrent with Count I, but the court ordered the sentence for Count III to be served consecutive to Count I. The trial court ordered Fluellen to serve six years for both Level 4 felony convictions consecutive to each other and to the sentences imposed on Counts I and III. In the aggregate, Fluellen was ordered to serve eighty-two years executed in the Department of Correction.

[11] Fluellen now appeals his sentence.

Discussion and Decision

[12] Fluellen argues that his eighty-two-year aggregate sentence is inappropriate in light of the nature of his offenses and his character. Under [Indiana Appellate Rule 7\(B\)](#), we may modify a sentence that we find is “inappropriate in light of the nature of the offense and the character of the offender.” Making this

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). Sentence modification under Rule 7(B), however, is reserved for “a rare and exceptional case.” *Livingston v. State*, 113 N.E.3d 611, 612 (Ind. 2018) (per curiam). Fluellen bears the burden to show that his sentence is inappropriate. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh’g* 875 N.E.2d 218.

[13] When conducting this review, we generally defer to the sentence imposed by the trial court. *Conley v. State*, 972 N.E.2d 864, 876 (Ind. 2012). Our role is to “leaven the outliers,” not to achieve what may be perceived as the “correct” result. *Id.* Thus, deference to the trial court’s sentence will prevail unless the defendant persuades us the sentence is inappropriate by producing compelling evidence portraying in a positive light the nature of the offense—such as showing restraint or a lack of brutality—and the defendant’s character—such as showing substantial virtuous traits or persistent examples of positive attributes. *Robinson v. State*, 91 N.E.3d 574, 577 (Ind. 2018); *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015).

[14] Fluellen was convicted of three counts of Level 1 felony child molesting. A person convicted of this offense may be sentenced to a term between twenty and fifty years, with the advisory sentence being thirty years. *Ind. Code § 35-50-2-4(c)*. The trial court imposed thirty-five-year terms for each Level 1 felony child molesting offense. Fluellen was also ordered to serve the advisory six-year

sentence for his two Level 4 child molesting convictions. *See Ind. Code § 35-50-2-5.5*. Fluellen requests that we revise his sentence and order the trial court to reduce his sentences for his Level 1 felony convictions to thirty years, the advisory sentence for a Level 1 felony child molesting conviction.

[15] Fluellen argues that the nature of his offenses does not support a sentence above the advisory for his Level 1 child molesting convictions because D.R. was not harmed beyond what the statute contemplates. Appellant's Br. at 13-14. In addition, he argues that although D.R.'s siblings were present in the apartments or hotel rooms where the incidents occurred, there was no evidence that her siblings had actual awareness that Fluellen was molesting their sister.

[16] Fluellen, who was D.R.'s father figure and caregiver, violated his position of trust with D.R. and her family when he molested her repeatedly over several months. Fluellen forced D.R. to have anal sex, which she testified hurt badly. Tr. Vol. III, pp. 207. D.R. told Fluellen he was hurting her and tried to get away, but he pulled her closer to him and continued to force her to have anal sex. *Id.* at 207-08. He also forced her to perform oral sex on him multiple times and was convicted of two of those incidents. He fondled D.R. multiple times and he also rubbed his penis against her buttocks until he ejaculated on her back. Both D.R.'s testimony at trial and Redmond's testimony at the sentencing hearing demonstrated that D.R. has and continues to suffer significant trauma because of the molestations. Fluellen did not stop molesting D.R. of his own accord but only because D.R. had informed Redmond that he was molesting

her. Fluellen has not convinced us that his sentence is inappropriate after considering the nature of his offenses.

[17] Fluellen also claims that his character does not support the sentence imposed. But Fluellen has not provided us with any examples of virtuous character traits or positive attributes. Instead, he argues that his criminal history is minor and observes that he was abused as a child and suffers from anxiety and depression.

[18] These offenses are certainly Fluellen's most serious and significant offenses. His prior criminal history consists of misdemeanor drug and alcohol related offenses, resisting arrest, and criminal mischief. But he also violated probation while serving a sentence for operating a vehicle while intoxicated. And, while Fluellen was incarcerated pending trial for this case, he assaulted another inmate. He also violated a no-contact order while this case was pending. None of these facts reflect well on Fluellen's character. Fluellen has not shown any positive character traits to support his inappropriate sentence claim.

Conclusion

[19] Fluellen has not met his burden of persuading us that his eighty-two-year aggregate sentence is inappropriate in light of the nature of his offenses and his character.

[20] Affirmed.

Tavitas, J., and Weissmann, J., concur.

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