

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

William R. Cook, Jr.,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

September 28, 2023

Court of Appeals Case No.
23A-CR-1074

Appeal from the Henry Circuit
Court

The Honorable
Bob A. Witham, Judge

Trial Court Cause No.
33C01-2204-F1-1

Memorandum Decision by Judge May
Judges Bailey and Felix concur.

May, Judge.

[1] William R. Cook, Jr., appeals his sentence following his conviction of Level 4 felony child solicitation.¹ Cook raises one issue on appeal, which is whether his ten-year sentence is inappropriate given the nature of his offense and his character. We affirm.

Facts and Procedural History

[2] Shanda Nolley, a member of the “non-profit investigative organization” Predator Catchers Inc. (“PCI”), created a fake profile on an internet chatting application and began posing as a thirteen-year-old female named “Hannah.” (App. Vol. II at 16.) Cook initially contacted “Hannah” through the application on March 26, 2022. Cook and “Hannah” communicated through the application and by text message and Cook sent many explicit messages expressing his desire to have both oral and vaginal sex with “Hannah.” “Hannah” repeatedly informed Cook that she was thirteen. Cook stated that he did not mind her age, and he told “Hannah” that he had previously had sexual relations with an underage female. Cook and “Hannah” arranged to meet at a restaurant in New Castle, Indiana, on April 9, 2022.

[3] Cook arrived at the restaurant, and Nolley and other members of PCI confronted him. Cook acknowledged that he was there to meet “Hannah” and PCI contacted the police. Two New Castle Police Department officers arrived

¹ Ind. Code § 35-42-4-6(b) (2014).

on the scene and spoke with Nolley. Nolley provided the police with screen shots and chat logs of the text conversations between Cook and “Hannah.” She also provided the police with a videotape of the confrontation between PCI and Cook.

[4] On April 29, 2022, the State charged Cook with Level 1 felony attempted child molesting,² Level 4 felony child solicitation, and Class A misdemeanor inappropriate communication with a child.³ On March 21, 2023, Cook entered into a plea agreement with the State whereby he agreed to plead guilty to Level 4 felony child solicitation, and the State agreed to dismiss the other two charges. The agreement provided that Cook’s sentence would be left to the discretion of the trial court.

[5] The trial court accepted the plea agreement and scheduled Cook’s sentencing hearing for April 13, 2023. Cook was sixty-four years old at sentencing. The Presentence Investigation Report (“PSI”) indicated Cook had past convictions of Class D felony possession of a controlled substance⁴ and three misdemeanor offenses. Cook also had a pending case alleging he committed Level 4 felony

² Ind. Code § 35-42-4-3(a) (2021) & Ind. Code § 35-41-5-1 (2014).

³ Ind. Code § 35-42-4-13(c) (2014).

⁴ Ind. Code § 35-48-4-7 (2001).

child molesting,⁵ and he was out on bond in that case when he committed the instant offense.

[6] Following the sentencing hearing, the trial court issued a written sentencing order. The trial court found as aggravating factors that Cook was out on bond for a sex offense when he committed the instant offense and that he had a criminal history. The trial court found as mitigating factors that he accepted responsibility for his crime, spent most of his adulthood leading a law-abiding life, and had “some mental and physical disabilities that may result in undue hardship.” (*Id.* at 57.) The trial court sentenced Cook to a term of ten years in the Indiana Department of Correction.

Discussion and Decision

[7] Cook contends his ten-year sentence is inappropriate based on the nature of his offense and his character. Our standard of review regarding such claims is well-settled:

Indiana Appellate Rule 7(B) gives us the authority to revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. 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

⁵ Ind. Code § 35-42-4-3(b) (2021).

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).

[8] “Our analysis of the nature of the offense requires us to look at the nature, extent, heinousness, and brutality of the offense.” *Pritcher v. State*, 208 N.E.3d 656, 668 (Ind. Ct. App. 2023). As our Indiana Supreme Court has explained, “compelling evidence portraying in a positive light the nature of the offense (such as accompanied by restraint, regard, and lack of brutality)” may lead to a downward revision of the defendant’s sentence. *Stephenson v. State*, 29 N.E.3d 111, 122 (Ind. 2015). When we evaluate whether a sentence is inappropriate given the nature of the offense, we first look to the advisory sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh’g*, 875 N.E.2d 218 (Ind. 2007). 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). Thus, Cook’s sentence is below the maximum sentence he could have received but above the advisory sentence for his crime.

[9] Cook asserts the nature of his offense merits a lesser sentence because “Cook’s offense, while disturbing, did not involve an actual victim and, consequently, caused no real harm.” (Appellant’s Br. at 6.) In *King v. State*, our Indiana Supreme Court held “that the offense of Attempted Dissemination of Matter Harmful to Minors can be committed when a defendant attempts to transmit proscribed matter by the Internet to an adult police detective posing as a

minor.” 921 N.E.2d 1288, 1289 (Ind. 2010). The Court explained that the perpetrator acts with the same level of culpability whether he is communicating with a young child or with an adult posing as a child. *Id.* at 1291. Likewise, the fact that Cook was communicating with an adult posing as a child does not make his crime any less egregious because Cook believed he was communicating with a thirteen-year-old girl. Moreover, Cook’s offense is particularly egregious given the sheer number of sexually explicit messages he sent to “Hannah.” Even though “Hannah” repeatedly informed Cook that she was thirteen, Cook continued to send her messages describing sexual acts he wanted to perform on her. Cook stated that he did not mind her age and stated that he previously had sex with an underage girl. Thus, Cook’s sentence is not inappropriate in light of the nature of his offense. *See, e.g., Vega v. State*, 119 N.E.3d 193, 204 (Ind. Ct. App. 2019) (holding defendant’s aggregate fifteen-year sentence for child solicitation and child molestation was not inappropriate when defendant solicited ten-year-old multiple times for oral sex).

[10] We next turn to Cook’s character. “When considering the character of the offender, one relevant fact is the defendant’s criminal history.” *Johnson v. State*, 986 N.E.2d 852, 857 (Ind. Ct. App. 2013). An offender’s continued criminal behavior after judicial intervention reveals a disregard for the law that reflects poorly on his character. *Kayser v. State*, 131 N.E.3d 717, 724 (Ind. Ct. App. 2019). Cook has a previous felony conviction for possession of a controlled substance and three misdemeanor convictions. In addition, Cook was out on bond facing a sex offense charge when he committed the instant offense. Thus,

Cook's previous encounters with the criminal justice system did not deter him from continued criminal behavior, and this history reflects poorly on his character. *See, e.g., Croy v. State*, 953 N.E.2d 660, 665 (Ind. Ct. App. 2011) (holding defendant's sentence was not inappropriate in light of the defendant's character when the defendant committed a new offense while out on bond), *reh'g denied*.

[11] Cook notes that he pled guilty, and he asserts that he “did not really receive a benefit from his guilty plea because he likely would not have been found guilty of attempted child molesting since no child was involved in the incident.” (Appellant's Br. at 7.) Yet, the evidence against Cook was substantial because Nolley retained the messages Cook exchanged with “Hannah,” and PCI met Cook at the designated place where he was supposed to meet “Hannah.” Thus, we view Cook's guilty plea more as a pragmatic choice rather than a reflection of his good character. *See Wells v. State*, 836 N.E.2d 475, 479 (Ind. Ct. App. 2005) (“a guilty plea does not rise to the level of significant mitigation where the defendant has received a substantial benefit from the plea or where the evidence against him is such that the decision to plead guilty is merely a pragmatic one”), *trans. denied*. Cook also points to his age and physical disabilities to argue that prison will be an undue hardship on him. However, despite Cook's age and infirmities, we cannot ignore the overwhelmingly negative aspects of his character. Therefore, we cannot say Cook's sentence is inappropriate given his character. *See Garner v. State*, 7 N.E.3d 1012, 1016 (Ind. Ct. App. 2014) (holding defendant's sentence was not inappropriate and stating that “[w]hile

we recognize that [the defendant's] age and infirmities are relevant, they are not so persuasive that we can overlook [the] negative aspects of his character”).

Conclusion

[12] Cook's ten-year sentence is not inappropriate given the egregious nature of his offense and his deplorable character. We accordingly affirm the trial court.

[13] Affirmed.

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