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IN THE
COURT OF APPEALS OF INDIANA

Curtis L. Williams,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff

March 12, 2021

Court of Appeals Case No. 20A-CR-865

Appeal from the Allen Superior Court

The Honorable Frances Gull, Judge

Trial Court Cause No. No. 02D05-1811-F1-20

May, Judge.

[1] Curtis L. Williams appeals following his convictions of two counts of Level 1 felony child molestation,[1] one count of Level 4 felony child molestation,[2] and one count of Level 6 felony battery.[3] Williams asserts: (1) the trial court abused its discretion by admitting a recorded forensic interview of A.C.; (2) the State failed to present sufficient evidence to support his convictions; and (3) the sentence imposed is inappropriate. We affirm.

Facts and Procedural History

[2] On December 12, 2016, Williams moved in with his girlfriend, Michelle, who lived in the same house as her mother, Jenny. Jenny's boyfriend, Artis, also lived in the house with Jenny, and Artis' daughter, A.C., would stay with him at Jenny's house. A.C. had been born in November 2010. Williams and Michelle moved to their own apartment in March 2017, but they would return to Jenny's house for cookouts, and Michelle gave birth to their daughter on September 24, 2017.

[3] During a summer day in 2017, when A.C. was six years old, A.C. and Williams were both at Jenny's house for a cookout. When A.C. went into the house for a drink of water, Williams followed A.C. into the house and pushed her into Jenny's bedroom. Williams touched A.C.'s buttocks and her vagina over her

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[1] Ind. Code § 35-42-4-3(a).

[2] Ind. Code § 35-42-4-3(b).

[3] Ind. Code § 35-42-2-1.

clothes with his hands, and he pulled her legs apart roughly. Williams threatened to hurt A.C. if she told anyone what happened.

[4] On a second day, A.C. and Williams again were alone in Jenny's bedroom. Williams took off A.C.'s pants and panties, and he kissed her on her lips, neck, chest, arms, and buttocks. Williams touched A.C.'s bare buttocks on the skin with his hand and put his lips on her vagina. Williams pushed A.C.'s head down and made her kiss his belly button and his legs. Williams then put a lotion-like substance on his penis and put his penis in A.C.'s vagina. Williams also put his penis inside A.C.'s mouth and inside her buttocks. Williams told A.C. that he would kill her if she told anyone.

[5] On a third occasion that occurred after September 2017, A.C. was dropped off at the residence where Williams lived with Michelle to see their baby. Michelle was not home. Williams pulled A.C.'s hair, touched her feet and legs, and penetrated her vagina with his penis.

[6] In November of 2017, Artis' half-brother, Antoine, was at the birthday party for A.C. at Chuck E. Cheese because Antoine's daughter, B., was celebrating her birthday at the same time in a combined party. Antoine had known Williams most of his life from family gatherings on the side of his family that did not include Artis, and Antoine took note at the party that Williams pinned[4] "a lot

[4] A.C.'s family had a birthday party tradition of placing a clip on the shirt of person celebrating a birthday so that family members could clip cash to the person as a birthday present.

of money" on A.C., but Williams did not pin any money on his daughter. (Tr. Vol. 3 at 24.) This upset Antoine enough that he mentioned it to his wife and to Artis.

[7] Artis and Jenny stopped dating in July 2018, and Artis moved out of Jenny's house. On July 23, 2018, A.C. and her sister, K.S., were staying with a relative, Katherine. A.C. and K.S. were discussing their birthdays, and K.S. mentioned that A.C. received "a lot of dollars" on her birthday. (Tr. Vol. 2 at 164.) Katherine asked A.C. why she would receive a lot of money, and A.C. said the husband of Jenny's daughter "likes me, he likes to touch my butt." (*Id*. at 166.) A.C. also told Katherine that he also touched her vagina and that he had threatened her and told her she was not allowed to tell anyone. A.C. was very nervous and explained the man was the husband of Jenny's daughter and "they have a baby girl[.]" (*Id*. at 167.) Katherine explained to A.C. that she needed to tell her mother what was happening, so they called A.C.'s mother, Kala. During the phone call, A.C. was "very upset and she cried." (*Id*. at 168.)

[8] Kala did not know at first who A.C. meant, but she determined it was Williams because she remembered seeing a picture of him with his baby daughter at A.C.'s birthday party. Kala called A.C.'s father, Artis, and she called the police. The next morning, Kala picked up A.C. and K.S. from Katherine. On August 2, 2018, Lorrie Freiburger, a trained forensic interviewer, interviewed

A.C. at the Dr. Bill Lewis Center for Children[5] and Angela Mellon, a sexual assault nurse examiner, performed a medical forensic exam on A.C. at the Fort Wayne Sexual Assault Treatment Center. A.C. reported to Frieburger and Mellon the incidents of abuse outlined above.

[9] On November 6, 2018, the State charged Williams with five crimes: (1) Level 1 felony child molesting based on Williams having sexual intercourse with A.C., (2) Level 1 felony child molesting based on Williams engaging in other sexual conduct with A.C., (3) Level 4 felony child molesting based on Williams performing or submitting to fondling or touching with A.C., (4) Level 6 felony dissemination of matter harmful to minors,[6] and (5) Level 6 felony battery of a child under age 14. At Williams' initial hearing, the trial court entered a no contact order prohibiting Williams from having contact with A.C.

[10] The State filed notice of its intent to use statements of a protected person as defined under Indiana Code section 35-37-4-6. The court held a hearing on the State's intent to use statements of a protected person, and the court thereafter entered an order finding A.C.'s statements admissible. A jury found Williams not guilty of Level 6 felony dissemination of matter harmful to minors and guilty of the remaining four charges. After a sentencing hearing, the court sentenced Williams to 50 years for each of the Level 1 felonies, 12 years for the

[5] This facility is also called the "Child Advocacy Center" or the "CAC[.]" (Tr. Vol. 2 at 207.)

[6] Ind. Code § 35-49-3-3.

Level 4 felony, and 2.5 years for the Level 6 felony, and the court ordered all sentences served consecutively, for an aggregate sentence of 114.5 years.[7]

Discussion and Decision

1. Admission of Evidence

[11] Williams asserts the court abused its discretion by admitting into evidence an out-of-court interview of A.C. Trial courts have broad discretion to admit or exclude evidence. *Johnson v. State*, 157 N.E.3d 1199, 1203 (Ind. 2020). "Ordinarily, we review evidentiary rulings for an abuse of discretion and reverse only when admission is clearly against the logic and effect of the fact and circumstances." *Id.*

[12] Indiana has a "protected person statute" ("PPS"), Indiana Code section 35-37-4-6, that "governs the admissibility at trial of prior statements by protected persons in certain circumstances." *Reynolds v. State*, 142 N.E.3d 928, 939 (Ind. Ct. App. 2020), *trans. denied*. Those circumstances include "a criminal action[,]" Ind. Code § 35-37-4-6(a), in which "a child who is less than fourteen (14) years of age[,]" Ind. Code § 35-37-4-6(c)(1), is alleged to be the victim of a sex crime as defined in Indiana Code chapter 35-42-4. Ind. Code § 35-37-4-

[7] Williams filed a motion to correct errors that alleged error based on the trial court's failure to permit Williams to complete A.C.'s deposition, the trial court's alleged displays of bias against Williams during trial, the trial court's failure to permit the jury to inspect the size of Williams' penis, the trial court's failure to enforce the separation of witnesses, and the trial court's failure to advise Williams of the "restricted Credit Time Felon Statute." (Appellant's App. Vol. 3 at 4.) After a hearing, the trial court denied that motion, and Williams has not raised any of those allegations on appeal.

6(a)(1). Because Williams was alleged to have committed two sex crimes defined in chapter 35-42-4 against A.C. when she was less than eight years old, the PPS governs the admissibility of statements A.C. made prior to trial.

[13] Subsection (d) of the PPS provides:

> (d) A statement or videotape that:
>
> > (1) is made by a person who at the time of trial is a protected person;
> >
> > (2) concerns an act that is a material element of an offense listed in subsection (a) or (b) that was allegedly committed against the person; and
> >
> > (3) is not otherwise admissible in evidence;
>
> is admissible in evidence in a criminal action for an offense listed in subsection (a) or (b) if the requirements of subsection (e) are met.

Ind. Code § 35-37-4-6(d). Subsection (e) provides:

> (e) A statement or videotape described in subsection (d) is admissible in evidence in a criminal action listed in subsection (a) or (b) if, after notice to the defendant of a hearing and of the defendant's right to be present, all of the following conditions are met:
>
> > (1) The court finds, in a hearing:
> >
> > > (A) conducted outside the presence of the jury; and
> > >
> > > (B) attended by the protected person in person or by using closed circuit television testimony as described in section 8(f) and 8(g) of this chapter;

that the time, content, and circumstances of the statement or videotape provide sufficient indications of reliability.

(2) The protected person:

(A) testifies at the trial; or

(B) is found by the court to be unavailable as a witness for one (1) of the following reasons:

(i) From the testimony of a psychiatrist, physician, or psychologist, and other evidence, if any, the court finds that the protected person's testifying in the physical presence of the defendant will cause the protected person to suffer serious emotional distress such that the protected person cannot reasonably communicate.

(ii) The protected person cannot participate in the trial for medical reasons.

(iii) The court has determined that the protected person is incapable of understanding the nature and obligation of an oath.

Ind. Code § 35-37-4-6(d).

[14] Herein, the State filed notice of its intent to introduce out-of-court statements made by A.C., and the court held the statutorily required hearing. After the hearing, the trial court entered an order that provided:

> The Court, having had this matter under advisement following a hearing conducted on 2-22-19, now finds the evidence material and relevant, that it concerns material elements of the crime charged, that the protected person was available for cross

> examination, and that the statements are reliable. The Court finds the probative value of the evidence is not substantially outweighed by its prejudicial impact and is admissible.

(Appellant's App. Vol. 2 at 62.)

[15] A.C. appeared at trial and answered preliminary questions about the difference between the truth and a lie and about the fact that she had been honest when she talked to Katherine, Freiburger, and Mellon about what happened. However, when the prosecutor asked A.C. what she told Freiburger, A.C. refused to talk about what happened because she had already talked to Freiburger and Mellon. The prosecutor stopped asking questions of A.C. and instead, during Freiburger's testimony, offered into evidence the videotape of Freiburger's interview with A.C. Williams objected to the introduction of the videotape as A.C. had appeared but not testified to the facts, which made the introduction of the video "not . . . fair and just." (Tr. Vol. II at 219-220.) The trial court overruled Williams' objection and admitted the video.

[16] On appeal, Williams asserts the admission of the video was an abuse of the trial court's discretion because the admission violated the Indiana Supreme Court's pronouncement in *Tyler v. State*, 903 N.E.2d 463 (Ind. 2009). There, five children testified at trial about a series of sexual acts involving Tyler, and then videotaped interviews of three of those children also were admitted into evidence. Tyler appealed his convictions and challenged the introduction of the PPS videotaped interviews when the children also testified live. The Supreme Court explained the PPS "should be used only when necessary to further its

basic purpose of avoiding further injury to the protected person." 903 N.E.2d at 466. If a protected person is able "to testify in open court without serious emotional distress," *id*. at 467, then admitting the earlier statement pursuant to the PPS "does not serve the statutory purpose of protecting the child from the burden of testifying." *Id*. Furthermore, the court noted, admission of videotaped statements that are consistent with a witness's live testimony "can be unfairly prejudicial" due to repetition of the testimony. *Id*. The Supreme Court then held:

> [I]f the statements are consistent and both are otherwise admissible, testimony of a protected person may be presented in open court or by prerecorded statement through the PPS, but not both except as authorized under the Rules of Evidence. If the person is able to testify live without serious emotional distress . . . that is clearly preferable.

Id.

[17] Here, the State attempted to have A.C. testify live, but she refused to talk about what Williams had done to her because she had already told Freiburger and Mellon. Thus A.C. did not testify live to the facts underlying the charges against Williams, which eliminates the concern expressed in *Tyler* about repetition of testimony from a live witness and a videotaped statement. In addition, the State attempted to take the "clearly preferable" path of having A.C. testify live, but she refused to talk about the molestations while on the stand. *Tyler* does not dictate what should happen in this circumstance. Given that the purpose of the PPS is to protect the witness from further injury by

excusing the witness from testifying live, the purpose of the statute is served by allowing the State to forego further questioning of A.C. in the courtroom. In such a circumstance, we find no abuse of discretion in the trial court's admission of A.C.'s videotaped statement, which the court had already deemed admissible under the statutory requirements. *See*, *e.g.*, *A.R.M. v. State*, 968 N.E.2d 820, 826-27 (Ind. Ct. App. 2012) (trial court did not abuse its discretion in admitting videotaped statement; victim's "inability to recall the incident does not change the fact that he testified").

2. Sufficiency of Evidence

[18] Williams alleges the State's evidence was insufficient to prove he committed the crimes of which he was convicted. We review allegations of insufficient evidence under a well-settled standard:

> Sufficiency-of-the-evidence claims . . . warrant a deferential standard, in which we neither reweigh the evidence nor judge witness credibility. Rather we consider only the evidence supporting the judgment and any reasonable inferences drawn from that evidence. We will affirm a conviction if there is substantial evidence of probative value that would lead a reasonable trier of fact to conclude that the defendant was guilty beyond a reasonable doubt.

Powell v. State, 151 N.E.3d 256, 262-63 (Ind. 2020) (internal citations omitted).

[19] More specifically, Williams argues all of his convictions should be overturned because A.C.'s statements in the recorded interview with Freiburger were incredibly dubious. "Under the incredible dubiosity rule, a court will impinge

upon the jury's responsibility to judge the credibility of witnesses only when confronted with inherently improbable testimony or coerced, equivocal, wholly uncorroborated testimony of incredible dubiosity." *Tillman v. State*, 642 N.E.2d 221, 223 (Ind. 1994). "Application of this rule is limited to cases . . . where a sole witness presents inherently contradictory testimony [that] is equivocal or the result of coercion and there is a complete lack of circumstantial evidence of the appellant's guilt." *Id*.

[20] Williams is unable to meet this high standard for dubiosity. There is no evidence suggesting A.C.'s statements were coerced. She cannot be described as equivocal about what happened. Nor were her statements inherently improbable. There may have been confusion in A.C.'s statements with regard to when, within the charged time period, the crimes occurred, but there was no confusion about what happened or the fact of its happening. As the State is not required to pinpoint the exact date of commission when the crime alleged is child molesting, *Hamilton v. State*, 159 N.E.3d 998, 1000 n.4 (Ind. Ct. App. 2020), we decline to hold A.C.'s testimony was incredibly dubious based on her confusion about when precisely these crimes occurred while she was six years old or seven years old. *See*, *e.g.*, *Reynolds v. State*, 142 N.E.3d 928, 943 (Ind. Ct. App. 2020) (holding statements by child were not incredibly dubious), *trans. denied*.

[21] Angela Mellon, the sexual assault nurse examiner who examined A.C. at the Fort Wayne Sexual Assault Treatment Center, explained that to examine for possible damage to A.C.'s anal folds, Mellon had A.C. get on "all fours" on the

examination table. (Tr. Vol. 3 at 71.) Mellon then testified, without objection, that A.C. "started trembling and said that that was the position that she was in when the anal penetration occurred." (*Id*.) Mellon also testified that one indicator that a child could have been penetrated is if the child describes "a history of bleeding" from the area or a burning sensation when urinating. (*Id*. at 63.) Mellon's report from her examination contains the following notes taken by Mellon in the patient history section:

> He put his pee-pee in my private. Something was on it like lotion. He said "Shut up or I'll hurt you." When asked how it made her private feel, child stated "it hurt." It burned to pee. When asked if she saw anything on the toilet paper, child made a small circle with her hand and said "This much blood." He put his pee-pee in my mouth too and something in my butt. It tickles, it was red in a bottle. It was the same with my private, the lotion. He put his pee-pee in my butt. It hurt. The last time Michelle dropped me off to see the baby, she left. He forced me in the bedroom. He did all the same things that he did the third time. . . . Last year he kicked me in my private by the bathroom at Chuck [E]. Cheese because he thought I was gonna tell. I was scared.

(Ex. Vol. at 29.) That report from Mellon supports all four of Williams' convictions, as it demonstrates battery and all three forms of charged sexual contact. Contrary to Williams' assertion, the evidence was sufficient. *See*, *e.g.*, *Reynolds*, 142 N.E.3d at 944 (holding child's testimony to elements sufficient to support convictions).

3. Inappropriateness of Sentence

[22] Williams argues his sentence of 114.5 years is inappropriate. We may revise a sentence if it "is inappropriate in light of the nature of the offense and the character of the offender." *Williams v. State*, 891 N.E.2d 621, 633 (Ind. Ct. App. 2008) (citing Ind. Appellate Rule 7(B)). We consider the aggravators and mitigators found by the trial court and also any other factors appearing in the record. *Baumholser v. State*, 62 N.E.3d 411, 417 (Ind. Ct. App. 2016), *trans. denied*. Our determination of appropriateness "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). The appellant must demonstrate his sentence is inappropriate. *Baumholser*, 62 N.E.3d at 418.

[23] When considering the nature of the offense, the advisory sentence is the starting point to determine the appropriateness of a sentence. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007). Williams received fifty-year sentences for each of his Level 1 felony convictions, which is the maximum sentence available for a Level 1 felony. *See* Ind. Code § 35-50-2-4(c) ("A person who commits a Level 1 felony child molesting offense . . . shall be imprisoned for a fixed term of between twenty (20) and fifty (50) years, with the advisory sentence being thirty (30) years."). Williams received a twelve-year sentence for his Level 4 felony child molesting conviction, which is the maximum. *See* Ind. Code § 35-50-2-5.5 ("A person who commits a Level 4 felony shall be imprisoned for a fixed term of between two (2) and twelve (12)

years, with the advisory sentence being six (6) years."). Finally, Williams received a 2.5-year sentence for his Level 6 felony conviction, which is the maximum sentence that could be imposed for a Level 6 felony. *See* Ind. Code § 35-50-2-7 ("A person who commits a Level 6 felony . . . shall be imprisoned for a fixed term of between six (6) months and two and one-half (2 ½) years, with the advisory sentence being (1) one year."). The trial court ordered Williams to serve all of his sentences consecutively, for a sentence of 114.5 years, which Williams notes is much longer than the 67-year sentence that would have been produced by ordering him to serve consecutive advisory sentences for all four crimes.

[24] As the State notes, Williams has not attempted to assert his sentence is inappropriate for his crimes. (State's Br. at 35 (citing Appellant's Br. at 27-31).) Nor would such argument have been successful with us, as Williams repeatedly molested A.C. when she was six and seven years old and while he was in a position of trust because he had lived in the same household or because A.C. had been placed in his care. During the molestations, Williams also threatened to harm A.C. if she told anyone what was happening. Then, when Williams feared A.C. was going to tell others what he had done, he kicked her in the groin at her birthday party.

[25] When considering the character of the offender, one relevant fact is the defendant's criminal history. *Rutherford v. State*, 866 N.E.2d 867, 874 (Ind. Ct. App. 2007). The significance of a criminal history in assessing a defendant's character varies based on the gravity, nature, and number of prior offenses in

relation to the current offense. *Id*. Williams' criminal history includes adjudications as a juvenile delinquent for acts that if committed by an adult would be disorderly conduct, false informing, and battery. As an adult, Williams had been convicted of misdemeanor possession of marijuana, hash oil, hashish, salvia, or synthetic cannabinoid; Class B felony criminal confinement while armed with a deadly weapon and causing serious bodily injury to another on an aircraft; and Level 4 felony unlawful possession of a firearm by a serious violent felon. Williams was on probation for the criminal confinement felony when he committed the present offenses, and his possession of a firearm crime occurred on the day Williams was arrested for the present offenses.

[26] To assert his sentence is inappropriate for his character, Williams notes multiple witnesses testified on his behalf at the sentencing hearing to attest to his innocence and to his being "hardworking, honest, respectful, fair and loyal." (Appellant's Br. at 29.) However, as the State notes, Williams may be hard working, but he nevertheless is in arrears on child support to the only of his three children for whom a court-ordered child support obligation exists. In addition, Williams' alleged honesty is undermined by his true finding for false informing, and his allegedly being respectful and fair are undermined by his convictions of criminal confinement, battery, and disorderly conduct. Contrary to Williams' assertions, his sentence is not inappropriate based on his character and offenses. *See*, *e.g.*, *Ludack v. State*, 967 N.E.2d 41, 49 (Ind. Ct. App. 2012)

(holding 130-year sentence not inappropriate for defendant's character and offenses against a single child).

Conclusion

[27] The trial court did not abuse its discretion when it admitted A.C.'s pretrial statements into evidence under the Protected Persons Statute. Further, the evidence was sufficient to support Williams' convictions. Finally, Williams' sentence is not inappropriate in light of the nature of his offense and his character. Accordingly, we affirm.

[28] Affirmed.

Kirsch, J., and Bradford, C.J., concur.