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**IN THE  
COURT OF APPEALS OF INDIANA**

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LAWRENCE ARCHULETA,

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Appellant- Defendant,

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vs.

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No. 64A03-1008-CR-430

)

STATE OF INDIANA,

)

Appellee- Plaintiff,

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APPEAL FROM THE PORTER SUPERIOR COURT  
The Honorable Roger V. Bradford, Judge  
Cause No. 64D01-0308-FC-7491

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May 31, 2011

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**ROBB, Chief Judge**

## Case Summary and Issues

Lawrence Archuleta pleaded guilty to four counts of child molesting as Class C felonies and one count of child molesting as a Class B felony, and now appeals his aggregate sentence of fifty-two years. Archuleta raises one issue for our review, which we expand and restate as two: whether the trial court abused its discretion in sentencing, and whether his sentence is inappropriate. Concluding the trial court did not abuse its discretion in sentencing him and that his sentence is not inappropriate, we affirm.

## Facts and Procedural History

In 2003, Archuleta molested five children who were all under the age of twelve. While babysitting ten-year-old K.H., Archuleta fondled her, rubbed lotion on her body, videotaped her while she bathed, exposed himself to her, had her photograph him with his penis exposed, and told her not to tell anyone.

Eight-year-old J.H. confided in Archuleta that he had been molested before by another person. Upon building a rapport with J.H., Archuleta engaged in anal sex with J.H., performed oral sex upon J.H., and forced J.H. to perform oral sex on him more than ten times over a period of at least eight months. Archuleta also showed J.H. nude videos of his sister, K.H., had J.H. perform sex acts with other children, and told him not to tell anyone. Following these incidents, J.H. has acted out sexually and aggressively while at school, and needed to be withdrawn from school for psychiatric treatment. He has been placed in at least three long-term psychiatric facilities.

While babysitting twelve-year-old S.K. and ten-year-old B.M., Archuleta touched S.K.'s breasts and vaginal area over her clothing, kissed S.K., showed S.K. pornographic websites, and told her not to tell anyone. Archuleta showed pornographic websites to

B.M., touched B.M. over her clothing in her vaginal area, exposed his penis to B.M., and told her not to tell anyone. Archuleta admitted to having twice molested B.M. Following Archuleta's molestation of S.K., S.K. began to express disinterest in school, has changed her group of friends, and began smoking cigarettes. B.M. has withdrawn from friends and family and will not speak to anyone about her molestation.

Archuleta babysat six-year-old S.H., who at that time could speak only a little because she suffered from cerebral palsy and hearing and vision problems, and had a shunt in her brain. Archuleta told her to take her pants off and photographed her while she was playing, while her buttocks were in the air, and upon his moving her underwear to one side with his hand. He also fondled her vaginal area. Since this molestation S.H. began having difficulty controlling her bladder and bowels.

Archuleta was charged with four counts of child molesting as Class C felonies, one count of disseminating matter harmful to minors as a Class D felony, and two counts of child molesting as Class A felonies. He pleaded guilty to four counts of child molesting as Class C felonies and one count of child molesting as a Class B felony.

Following Archuleta's guilty plea, a Pre-Sentence Investigation ("PSI") report was prepared, a psychosexual assessment conducted, and a sentencing hearing was held. The trial court entered findings of several aggravating circumstances, remorse as a mitigating circumstance as to each count, and ordered that Archuleta serve the maximum and consecutive sentences for each count for a total of fifty-two years in prison. We granted leave for Archuleta's belated appeal, and he now appeals his sentence.

## Discussion and Decision

### I. Abuse of Discretion in Sentencing

At the outset, we note that Archuleta's offenses, change of plea, and sentencing occurred before the Indiana sentencing scheme was amended in 2005. As a result, the former sentencing scheme applies. See Roney v. State, 872 N.E.2d 192, 198 n.1 (Ind. Ct. App. 2007), trans. denied.

Sentencing decisions are within the trial court's discretion, and will be reversed only upon a showing of manifest abuse of discretion. Berry v. State, 819 N.E.2d 443, 452 (Ind. Ct. App. 2004), trans. denied. When a court exercises its discretion to enhance a presumptive sentence, the trial court must identify all significant aggravating and mitigating circumstances, give specific reasons why each circumstance is so identified, and balance them to determine whether the former outweigh the latter. Id. The existence of even one valid aggravator is sufficient to support an enhanced sentence. Id.

Archuleta argues the trial court abused its discretion in failing to assign proper weight to his acceptance of responsibility by pleading guilty, and in failing to consider as mitigating factors his history of psychological issues and victimization as a child.<sup>1</sup>

In particular, Archuleta contends, "[i]t is well settled that a defendant's cooperation with authorities and timely announcing a decision to plead guilty should be given significant mitigating weight." Brief of Appellant at 9 (emphasis added). For support, he refers us to McElroy v. State, 865 N.E.2d 584, 591 (Ind. 2007), which states: "although we have long held that a defendant who pleads guilty deserves 'some'

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<sup>1</sup> Archuleta also argues he is not "the worst of the worst offenders, given his age and history of psychological issues, nor were the crimes the worst of the worst offenses." Brief of Appellant at 7. We address this argument in the inappropriateness discussion below.

mitigating weight be given to the plea in return, a guilty plea may not be significantly mitigating when the defendant receives a substantial benefit in return, or when the defendant does not show acceptance of responsibility.” Id. at 591 (citations omitted). In short, a guilty plea “deserves to have some mitigating weight” in sentencing, but the degree of mitigation depends largely upon the facts surrounding the guilty plea. Cotto v. State, 829 N.E.2d 520, 525 (Ind. 2005).

Here, after noting the probation officer suggested remorse as a mitigating circumstance and finding the same as to each count, the trial court stated it considered Archuleta’s remorse to be “more sorry he got caught” than remorse for his actions or to avoid the need for the children’s trial testimonies. Sentencing Hearing Transcript at 19. In a prior case we affirmed a similar challenge to a trial court’s assessment of a guilty plea when considering it to have been made more for some other reason “than acceptance of responsibility and remorse.” Davies v. State, 758 N.E.2d 981, 987 (Ind. Ct. App. 2001), trans. denied. Here, as recommended by the probation officer, the trial court found remorse as a mitigating circumstance as to each count, but facts surrounding the guilty plea moderated the effect of the mitigation, as permitted by McElroy. See McElroy, 865 N.E.2d at 591.

As to Archuleta’s psychological issues, trial courts are indeed obligated to “carefully consider on the record what mitigating weight, if any, to allocate to any evidence of mental illness, even though the court is not obligated to give the evidence the same weight as does the defendant.” Prowell v. State, 787 N.E.2d 997, 1002 (Ind. Ct. App. 2003), trans. denied; see Weeks v. State, 697 N.E.2d 28, 30 (Ind. 1998) (“emphasiz[ing]” that a guilty but mentally ill defendant “is not automatically entitled to

any particular credit or deduction from his otherwise aggravated sentence simply by virtue of being mentally ill” (quotation and citation omitted)). The trial court acknowledged the psychosexual assessment, Sentencing Hearing Tr. at 18, which described the nature and extent of Archuleta’s psychological issues, included graphic details of his periodic sexual exploitation of children and his own reflective view of his psyche, explained circumstances helpful in assessing his particular risk, and provided a sentencing recommendation given his “extremely high risk to re-offend [against victims] within the age group of six to thirteen . . . .” Appellant’s Appendix at 182.

The trial court announced on the record its decision not to consider any information included therein as an aggravating circumstance, in hopes of encouraging defendants to continue to be open and honest in psychosexual assessments. Viewing the trial court’s statement that it would not consider information in Archuleta’s psychosexual assessment as an aggravating circumstance in the context of the dramatic and bleak picture that his assessment presents, we conclude the trial court considered and decided to give Archuleta’s psychological issues little, if any, mitigating weight in determining his sentence. Archuleta’s psychological issues are indeed troubling, but the trial court considered what mitigating weight, if any, his psychological issues warrant, and we do not deem its conclusion to be an abuse of discretion.

Archuleta also argues the trial court abused its discretion in failing to consider as a mitigating factor his own victimization from when he was six years old until he was ten years old. The particular facts and effects of Archuleta’s victimization as a child are included in and thereby constitute part of his psychosexual assessment. The trial court did not abuse its discretion in not specifically finding Archuleta’s victimization to be a

mitigating circumstance. See Roney, 872 N.E.2d at 204 (“We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance.”).

Contrary to Archuleta’s several arguments, the trial court did not abuse its discretion in sentencing Archuleta to fifty-two years in prison.

## II. Inappropriate Sentence

This court has authority to revise a sentence “if, after due consideration of the trial court’s decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Ind. Appellate Rule 7(B). In making this determination, we may look to any factors appearing in the record. Roney, 872 N.E.2d at 206. Nevertheless, the defendant bears the burden to persuade this court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). “[W]hether we regard a sentence as appropriate at the end of the day 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).

Archuleta first argues his sentence is inappropriate because he is not “the worst of the worst offenders, given his age and history of psychological issues, nor were the crimes the worst of the worst offenses.” Br. of Appellant at 7. Although the maximum sentence is generally reserved for the worst offenders and offenses, this oft-cited principle is “not, however, a guideline to determine whether a worse offender could be imagined. Despite the nature of any particular offense and offender, it will always be possible to identify or hypothesize a significantly more despicable scenario.” Harris v.

State, 897 N.E.2d 927, 929-30 (Ind. 2008). Therefore, although Archuleta received the maximum sentence for his convictions, we need not engage in the pointless exercise of imagining a more despicable scenario, and instead focus our review on what the record reveals about the nature of his offenses and his character.

Archuleta's conduct was deplorable and far beyond what was required for his convictions. For instance, "extreme youth" can support an enhanced sentence even where the age of the victim is an element of the offense. Brown v. State, 760 N.E.2d 243, 246 (Ind. Ct. App. 2002), trans. denied. At least two of the children Archuleta molested were significantly younger than required by statute: in all, they were ten, twelve, eight, ten, and six years old, and his convictions required only that his victims be below fourteen years old. His victims' extreme youth makes his enhanced sentence appropriate. Further, in Stewart v. State, 531 N.E.2d 1146 (Ind. 1988), our supreme court affirmed a trial court's use of an age proxy as an aggravating circumstance, specifically, "that the victim was not only a minor, but one of tender age, he was handicapped, and [defendant]'s acts caused the [victim] serious emotional harm." Id. at 1150. Similarly here, S.H. was not only less than fourteen years old – as the offense requires – but merely six years old; she had cerebral palsy, hearing and vision problems, and a shunt in her brain; and she suffered serious emotional harm. As in Stewart, the particularized circumstances of this case resulting from S.H.'s physical handicaps and tender age add to the egregiousness of Archuleta's molestation.

Archuleta also violated a position of trust with each of these children, which adds to the egregiousness of his offenses. See Rodriguez v. State, 868 N.E.2d 551, 555 (Ind. Ct. App. 2007). He was babysitting at least four of his victims at the time of his

molestations, and J.H. confided in Archuleta and told him about being previously molested by another.

In addition to the molestations of this case, Archuleta was convicted at age eighteen in Wyoming of two counts of indecent liberties with a minor. He engaged in vaginal and oral sex ten to fifteen times with a thirteen-year-old female, and also vaginal and oral sex ten times with another thirteen-year-old female. Further, Archuleta volunteered that he has performed oral sex upon other children as well, for which he was not arrested or charged. Archuleta indicated his own belief that he is a pedophile, and that he seeks and views child pornography regularly. These aspects of Archuleta's character do not make the length of his fifty-two year sentence inappropriate.

Next, we consider whether Archuleta's entire sentence in the Department of Correction is inappropriate because although a variety of sex offender treatment options are likely available to him, a community-based program that may help transition his return to the community and ensure that his sex offender treatment continues upon his release from prison has not been ordered. In this sense, we are drawn to the probation officer's recommendation of a sentence split between a lengthy period of incarceration and an extended period of probation in which Archuleta might be ordered to participate in community-based treatment with the consequence of additional incarceration in the event he violates a condition of his probation. Because the trial court ordered Archuleta to serve the maximum time in prison, Indiana law prohibits an additional period of probation.

That said, we are reluctant to conclude that the placement of a defendant's sentence is inappropriate. See Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007).

As a practical matter, trial courts know the feasibility of alternative placements in particular counties or communities. For example, a trial court is aware of the availability, costs, and entrance requirements of community corrections placements in a specific locale. Additionally, the question under Appellate Rule 7(B) is not whether another sentence is more appropriate; rather, the question is whether the sentence imposed is inappropriate.

Id. at 343-44.

For this reason, regardless of whether another sentence might be more appropriate, we defer to the trial court's decision not to impose a split sentence because, as discussed above, Archuleta's fifty-two year sentence is not inappropriate in light of the nature of his offenses and his character.

#### Conclusion

The trial court did not abuse its discretion in identifying or weighing the aggravating and mitigating circumstances, and the sentence is not inappropriate in light of the nature of Archuleta's offenses and his character.

Affirmed.

NAJAM, J., and CRONE, J., concur.