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IN THE
COURT OF APPEALS OF INDIANA

J.S.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 03A05-0904-CR-176
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE BARTHOLOMEW SUPERIOR COURT
The Honorable Chris D. Monroe, Judge
Cause No. 03D01-0809-FC-1582

September 18, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

J.S. appeals his sentence following his convictions for two counts of Incest, as Class C felonies, pursuant to a plea agreement. J.S. presents a single issue for our review, namely, whether his sentence is inappropriate in light of the nature of the offenses and his character.

We affirm.

FACTS AND PROCEDURAL HISTORY

J.S. is the biological father of K.S., who was born in approximately 1991.[1] J.S. had sexual intercourse with K.S. on a regular basis beginning in 2007, and K.S. subsequently gave birth to two children fathered by J.S. The State charged J.S. with two counts of incest, as Class C felonies, and J.S. entered a guilty plea on those charges. The plea agreement capped J.S.'s sentence at fifteen years but otherwise left sentencing to the trial court's discretion. The trial court sentenced J.S. to seven years on each count to run consecutively, for a total executed sentence of fourteen years. This appeal ensued.

DISCUSSION AND DECISION

J.S. contends that his sentence is inappropriate in light of the nature of the offenses and his character. Although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution "authorize[] independent appellate review and revision of a sentence imposed by the trial court." Roush v. State, 875 N.E.2d 801, 812 (Ind. Ct. App. 2007) (alteration original). This appellate authority is implemented through Indiana Appellate Rule 7(B). Id.

[1] The parties do not provide a birth date for K.S., but state only that she was sixteen years old in 2007.

Revision of a sentence under Appellate Rule 7(B) requires the appellant to demonstrate that his sentence is inappropriate in light of the nature of his offenses and his character. See Ind. Appellate Rule 7(B); Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). We assess the trial court's recognition or non-recognition of aggravators and mitigators as an initial guide to determining whether the sentence imposed was inappropriate. Gibson v. State, 856 N.E.2d 142, 147 (Ind. Ct. App. 2006). However, "a defendant must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review." Roush, 875 N.E.2d at 812 (alteration in original).

Here, the trial court identified the following aggravators at sentencing: J.S.'s criminal history and the high likelihood that he would commit another crime. The trial court did not identify any mitigators. J.S.'s criminal history consists of six juvenile adjudications; four misdemeanor convictions as an adult; and four felony convictions. In addition, J.S. has violated probation on several occasions. The trial court imposed an aggregate executed sentence of fourteen years.

J.S. contends that his sentence is inappropriate in light of the nature of the offenses. He avers that the circumstances of the crimes warrant a lesser sentence. In particular, J.S. claims that he did not force his daughter to engage in sexual intercourse with him, that they were both under the influence of methamphetamine at the time of the offenses, and that they were "happy" together. Brief of Appellant at 7. But J.S. also admitted to the trial court that he ruined his daughter's life in committing the offenses. J.S. has not demonstrated that his sentence is inappropriate in light of the nature of the offenses.

Further, in essence, J.S. contends that his character is good and that he is merely a victim of circumstance. He maintains that a lesser sentence should be imposed in light of his troubled childhood, history of substance abuse, and low IQ. And J.S. claims that "he believes that he could be successful on probation." Brief of Appellant at 8. However, J.S.'s extensive criminal history, including a history of probation violations, reflects his bad character. J.S. has not shown that his sentence is inappropriate in light of his character.

In sum, J.S. has not demonstrated that his fourteen-year sentence is inappropriate in light of the nature of the offenses or his character.

Affirmed.

KIRSCH, J., and BARNES, J., concur.