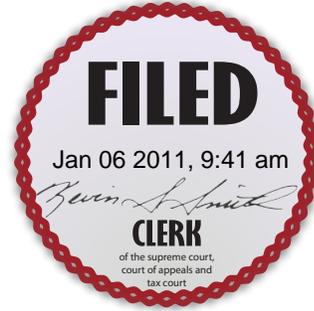


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

JOHN ANDREW GOODRIDGE
Evansville, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JEREMIAH HAYES,)
)
Appellant-Defendant,)
)
vs.) No. 82A05-1006-CR-388
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable David D. Kiely, Judge
Cause No. 82D02-0804-FA-373

January 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

MAY, Judge

Jeremiah Hayes appeals the sentences imposed after his plea of guilty to child molesting. We affirm.

FACTS AND PROCEDURAL HISTORY

Jeremiah Hayes was charged with four counts of child molesting¹ and agreed to plead guilty to two counts, both as Class C felonies. The plea agreement provided the court would “determine sentence with a cap of six (6) years”² and the parties could “argue for an appropriate sentence.” The court sentenced Hayes to six years on each count, with the sentences to be served concurrently.

DISCUSSION AND DECISION

We note initially that the State did not submit a brief. When an appellee does not submit a brief, we need not undertake the burden of developing its argument. *State v. Necessary*, 800 N.E.2d 667, 669 (Ind. Ct. App. 2003). We apply a less stringent standard of review with respect to showings of reversible error when an appellee fails to file a brief, and may reverse if an appellant establishes *prima facie* error. *Id.* *Prima facie* error is defined as “at first sight, on first appearance, or on the face of it.” *Id.*

Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence authorized by

¹ Ind. Code § 35-42-4-3.

² Hayes notes a trial court may not accept a plea agreement, then punish the defendant at sentencing for the State’s perceived leniency in striking the deal in the first place, citing *Nybo v. State*, 799 N.E.2d 1146, 1152 (Ind. Ct. App. 2003). He then asserts “[i]t appears that is what happened in this cause[.]” As the plea agreement explicitly permitted the six-year sentences, we decline to hold the agreed upon sentence was “punishment” for the State’s perceived leniency.

statute if, after due consideration of the trial court's decision, we find the sentence inappropriate in light of the nature of the offense³ and the character of the offender. A defendant must persuade us that his or her sentence is inappropriate, *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g* 875 N.E.2d 218 (Ind. 2007), and Hayes has not carried that burden.

Regarding Hayes' character, the trial court heard testimony at the sentencing hearing that Hayes, when he was twenty-two, falsely represented he was only sixteen and pursued a relationship with the thirteen-year-old victim. He engaged in sex acts with the victim multiple times. The victim subsequently became depressed and suicidal. Hayes wrote a letter to the victim asking her to lie to the court. Hayes acknowledges in his brief he has a prior conviction of harassment. We cannot say Hayes' sentence is inappropriate, and accordingly affirm the trial court.

Affirmed.

FRIEDLANDER, J., and MATHIAS, J., concur.

³ Hayes offers no argument as to the nature of his offense. He argues only that he has but one prior conviction, which was a misdemeanor. A defendant's prior convictions or lack thereof are considered reflective of his character. See *Buchanan v. State*, 913 N.E.2d 712, 722 (Ind. Ct. App. 2009), *trans. denied*.