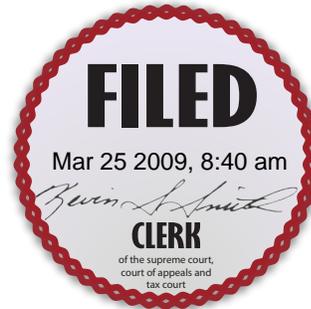


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RUFINO CABRERA-PEREDO,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 79A04-0808-CR-483

APPEAL FROM THE TIPPECANOE CIRCUIT COURT
The Honorable Donald L. Daniel, Judge
Cause No. 79C01-0801-FA-1

March 25, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Rufino Cabrera-Peredo appeals his sentence imposed following his guilty plea to class A felony child molesting, arguing that it is inappropriate in light of his character and the nature of the offense. We affirm.

On December 31, 2007, Cabrera-Peredo had sexual intercourse with his girlfriend's daughter, eight-year-old R.M. On January 4, 2008, the State charged Cabrera-Peredo with three counts of class A felony child molesting. On May 23, 2008, Cabrera-Peredo pled guilty to one count of class A felony child molesting pursuant to a plea agreement, and the State dismissed the remaining counts. The plea agreement provided that the executed portion of the sentence shall not exceed thirty years.

On July 18, 2008, the trial court sentenced Cabrera-Peredo to thirty years in the Department of Correction. In pronouncing sentence, the court found three mitigating factors: that Cabrera-Peredo had taken responsibility for his actions by entering a plea of guilty; that he had been supporting three children, one of whom is still under the age of eighteen; and that he had a low Level of Service Inventory (LSI-R) score.¹ The trial court found three aggravating factors: Cabrera-Peredo's criminal history, consisting of three misdemeanors; his position of trust with the victim; and the victim's young age (less than twelve years old).

¹ Cabrera scored a nine on the LSI-R, which indicates that there is an 11.7% chance that he will re-offend within one year if services are not provided. Appellant's App. at 18.

On appeal, Cabrera-Peredo challenges the appropriateness of his sentence.² Article 7, Section 6 of the Indiana Constitution authorizes this Court to independently review and revise a sentence imposed by the trial court. *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218. Indiana Appellate Rule 7(B) states, “The Court may revise a sentence authorized by statute 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.” “Although appellate review of sentences must give due consideration to the trial court’s sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied.” *Purvis v. State*, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005) (internal citations omitted), *trans. denied*. The defendant bears the burden of persuading us that the sentence is inappropriate. *Rutherford v. State*, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007).

Here, Cabrera-Peredo pled guilty to a class A felony. The sentencing range for a class A felony is twenty to fifty years’ imprisonment, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4. “When determining whether a sentence is inappropriate, we recognize that the advisory sentence ‘is the starting point the Legislature has selected as an appropriate sentence for the crime committed.’” *Filice v. State*, 886 N.E.2d 24, 39 (Ind. Ct.

² Cabrera-Peredo also contends that the trial court failed to consider his employment history and good character, as shown by eighteen letters submitted on his behalf, as mitigating factors. The State argues that Cabrera-Peredo waived these arguments because he failed to advance them as mitigating factors at sentencing. We agree with the State. *See Hollin v. State*, 877 N.E.2d 462, 465 (Ind. 2007) (“If the defendant does not advance a factor to be mitigating at sentencing, this Court will presume that the factor is not significant and the defendant is precluded from advancing it as a mitigating circumstance for the first time on appeal.”).

App. 2008) (quoting *Weiss v. State*, 848 N.E.2d 1070, 1072 (Ind. 2006)), *trans. denied*. Therefore, when, as here, the trial court imposes the advisory sentence, the defendant bears a heavy burden in persuading us that his or her sentence is inappropriate. *McKinney v. State*, 873 N.E.2d 630, 647 (Ind. Ct. App. 2007), *trans. denied*.

As for the nature of the crime, Cabrera-Peredo had sexual intercourse with an eight-year old child. The child was his girlfriend's daughter. He was in a position of trust, which he took advantage of and violated.

As for Cabrera-Peredo's character, we observe that at the time of sentencing he was forty-nine years old and had three misdemeanor convictions for operating while never receiving a license. Although his past crimes are minor and unrelated to the current offense, they do show that he has repeatedly failed to abide by the law. We also note that Cabrera-Peredo has worked in the same job for the last eight years and continuously sent money to Mexico to support his children, even though he was not required by law to do so. His responsibility to his children is offset by the lack of responsibility he exhibited toward R.M. by committing the current offense. While the letters sent to the court in his support show that he is a competent employee and a good friend, these are insufficient to sustain his burden to show that the advisory sentence is inappropriate, especially given the nature of the offense. Accordingly, we affirm Cabrera-Peredo's sentence.

Affirmed.

RILEY, J., and MATHIAS, J., concur.