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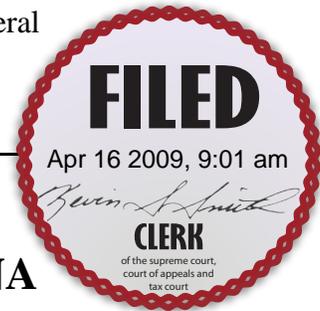
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**IN THE
COURT OF APPEALS OF INDIANA**

BRIAN WILLIAMSON,
Appellant-Defendant,

vs.

STATE OF INDIANA,
Appellee-Plaintiff.

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No. 82A05-0810-CR-622

APPEAL FROM THE VANDERBURGH CIRCUIT COURT
The Honorable Carl A. Heldt, Judge
The Honorable David D. Kiely, Magistrate
Cause No. 82C01-0802-FC-213

April 16, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Brian Williamson appeals his conviction and sentence for class C felony child molesting. We affirm.

Issues

Williamson raises the following issues for review:

- I. Did the trial court abuse its discretion in admitting certain testimony?
- II. Is Williamson's sentence inappropriate in light of the nature of the offense and his character?

Facts and Procedural History

In August 2007, Williamson was living with his sister Kerri in her home. At that time, his sister was keeping their three-year-old niece Ka.O. and their seven-year-old niece Ke.O. One day while Williamson was alone with the girls, Ke.O. observed Williamson touching Ka.O. in her "private spots" where "a little girl would go to the bathroom." Tr. at 20-21. Williamson was aware of Ke.O.'s presence at the time he touched Ka.O.

Several months later, Williamson admitted to Evansville Police Department Detective Brian Turpin that he touched Ka.O.'s vagina. *Id.* at 42. He further admitted that when he was finished, he asked Ka.O. if "she liked it" and then masturbated. *Id.* at 43, 45.

On February 26, 2008, the State charged Williamson with class C felony child molesting. On July 31, 2008, a jury found him guilty as charged. On August 26, 2008, the trial court sentenced him to eight years executed in the Department of Correction. This appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

I. Admission of Testimony

Williamson contends that the trial court abused its discretion by admitting certain testimony by Detective Turpin. A decision to admit or exclude evidence is within the trial court's sound discretion. *Trujillo v. State*, 806 N.E.2d 317, 323 (Ind. Ct. App. 2004). As such, it is subject to review for an abuse of discretion. *Id.* An abuse of discretion occurs where the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or where the trial court misinterprets the law. *Id.*

At the outset, we note that Williamson contemporaneously objected on the basis that Detective Turpin's testimony amounted to improper bolstering of *his own* credibility. Tr. at 26-27. He now argues that the testimony improperly bolstered *Ke.O.'s* credibility. Appellant's Br. at 5. To the extent that he raises different grounds for objection on appeal, his argument is waived. *Lewis v. State*, 755 N.E.2d 1116, 1122-23 (Ind. Ct. App. 2001).

Waiver notwithstanding, we address Williamson's claim on its merits. Williamson challenges the admissibility of Detective Turpin's testimony that he participated in "Finding Words," a training program designed to teach law enforcement personnel how to interview children in a non-leading way. According to Williamson,

[t]he only conceivable reason to mention the Finding Words school and officer's training in questioning child molest victims was to bolster the testimony of the child witness and to convey to the jury that her testimony carries more weight than it otherwise might, because of the officer's questioning and investigation techniques.

Appellant's Br. at 6.

“Witness bolstering, or offering evidence solely for the purpose of enhancing a witness’s credibility before that credibility is attacked is impermissible, at least in the first instance.” *United States v. Bonner*, 302 F.3d 776, 780 (7th Cir. 2002). No witness is competent to testify that another witness is or is not telling the truth. *Rose v. State*, 846 N.E.2d 363, 366 (Ind. Ct. App. 2006). In *Rose*, we held that defense counsel was ineffective for failing to object when the doctor who examined the alleged child molesting victim repeatedly testified that he was convinced by the child’s statements. 846 N.E.2d at 367. In that case, the doctor’s “vouching statements were neither inadvertent nor incidental but were *the centerpiece of his testimony.*” *Id.* at 369 (emphasis added).

In contrast, here, Detective Turpin never testified as to whether Ke.O. was telling the truth. When the prosecutor asked Detective Turpin whether Ke.O.’s eyewitness statements had changed over time, Williamson objected, and the trial court sustained the objection. Tr. at 78. Moreover, defense counsel made the following comment during opening statements: “[Ke.O.] is a small child and she had diagrams placed in front of her and by the time she hits this courtroom, by the time she sits on the witness stand she’s had this reviewed many, many times so that she knows what to say.” *Id.* at 10. The State countered by presenting Detective Turpin’s qualifications and experience in interviewing child witnesses. Thus, the State’s decision to elicit testimony from Detective Turpin regarding his training in the use of non-leading interview questions was a permissible response to the defense’s claim of witness-coaching. *See Bonner*, 302 F.3d at 780 (stating attacks on witness credibility made during opening statement justified presentation of contrary evidence). In sum, what Williamson

asserts to be Detective Turpin's "indirect bolstering" of Ke.O.'s version of events was merely the State's justified response to Williamson's indirect attack upon its handling of child witnesses. Appellant's Br. at 6. Accordingly, the trial court acted within its discretion in admitting Detective Turpin's testimony.

II. Sentencing

Williamson challenges the appropriateness of his eight-year sentence. On appeal, we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [this] 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). A defendant bears the burden of persuading the reviewing court that his sentence meets the inappropriateness standard. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218.

Williamson was convicted of class C felony child molesting. A person convicted of a class C felony is subject to a fixed term of two to eight years, with the advisory sentence being four years. Ind. Code § 35-50-2-6(a). In sentencing Williamson to the maximum eight-year term, the trial court made an express finding of "no mitigating circumstances" and cited as aggravators his prior juvenile adjudication for public indecency and the unlikelihood of rehabilitation. Tr. at 152-53.

In addressing the nature of the crime, "the advisory sentence is the *starting point* the Legislature has selected as an appropriate sentence." *Anglemyer*, 868 N.E.2d at 494 (emphasis added). Here, Williamson molested his three-year-old niece and then asked her if

she enjoyed the experience. Even worse, he committed this depraved act knowing that his other niece, the victim's seven-year-old sister, was watching. Tr. at 21.

Moreover, Williamson's poor character is reflected in his criminal history, his failed attempts at rehabilitation, and his relationship to his victim. He has three prior sex offense charges and a prior adjudication for indecency involving public masturbation in the presence of other persons. Despite undergoing counseling, he committed another sex crime. This time, he gratified his sexual desires by molesting his three-year-old niece in the presence of his seven-year-old niece. Clearly, prior attempts at rehabilitation have failed. In sum, Williamson has failed to carry his burden of showing that his sentence is inappropriate in light of the nature of his offense and his character. Accordingly, we affirm Williamson's sentence.

Affirmed.

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