

Case Summary

Anahel A. Amaya challenges the aggregate 120-year sentence imposed upon his convictions for ten counts of Child Molesting, as Class A felonies,¹ presenting the sole issue of whether the sentence is inappropriate. We revise his sentence to sixty years.

Facts and Procedural History

Amaya had two daughters, L.Y.A., born in 1993, and L.A., born in 1995. On March 19, 2007, L.Y.A. and L.A. reported to their mother, L.C., that Amaya “was making them masturbate.” (Tr. 437.) L.C. sought counseling for her daughters, prompting a report of the allegations to the Elkhart Department of Child Services.

On June 11, 2007, the State charged that Amaya had committed deviate sexual conduct (by digital penetration) with each of his daughters on multiple occasions beginning in 2003 and continuing through 2007.² On July 14, 2010, a jury found Amaya guilty of ten counts of Child Molesting, as Class A felonies. Amaya was sentenced to forty years imprisonment for each count. Although the majority of the sentences were to be served concurrently, three were to be served consecutively, providing for an aggregate sentence of 120 years. This appeal ensued.

Discussion and Decision

Amaya contends that his sentence is inappropriate. He argues that his lack of criminal

¹ Ind. Code § 35-42-4-3.

² Five counts involved conduct against L.Y.A. (in 2003, 2004, 2005, 2006, and 2007). Five counts involved conduct against L.A. (in 2003, 2004, 2005, 2006, and 2007).

history, his role as a provider, his acceptance of responsibility for his crimes, the absence of physical force or physical harm to the victims, and his “emotional instability” should result in a lesser sentence. Appellant’s Brief at 11.

Upon each Class A felony conviction, Amaya faced a sentencing range from twenty to fifty years, with an advisory (formerly presumptive) sentence of thirty years.³ See Ind. Code § 35-50-2-4. He received a sentence of ten years above the advisory or presumptive sentence for each offense, with three terms to be served consecutively.

Under Indiana Appellate Rule 7(B), this “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.” In performing our review, we assess “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). A defendant “must persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” Anglemyer v. State, 868 N.E.2d 482, 494 (Ind. 2007) (quoting Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006)).

We first consider the nature of the offenses. L.Y.A. testified that, beginning in 2003, when she was nine years old, her father would use his index finger to rub her vaginal area “in

³ The offenses committed prior to April 25, 2005 were subject to the presumptive sentencing scheme. However, Amaya’s sole challenge to his sentence is inappropriateness. He seeks revision pursuant to Indiana Appellate Rule 7(B) and does not allege an abuse of sentencing discretion under either the current or former sentencing schemes.

front” until she had an orgasm. (Tr. 492.) Encounters of the same type continued until 2007, when L.Y.A. reported the molestation to her mother. Amaya instructed L.Y.A. that she could “do that [herself]” or “just tell [Amaya] to do it” and consequently L.Y.A. would not “have to go out and look for a boyfriend.” (Tr. 494.) Amaya attempted to silence L.Y.A. by telling her that he would be “taken away” and L.C. would “be mad” if L.Y.A. told anyone about the molestations. (Tr. 534.)

L.A. testified that Amaya molested her in the same manner, beginning in 2003 when she was seven years old. Amaya also touched L.A.’s breasts on at least one occasion. Again, the acts ceased in 2007 when L.C. was informed of the molestations.

As for the character of the offender, Amaya has no known criminal record.⁴ He claims that he has demonstrated remorse for his conduct. However, Amaya did not accept responsibility for his conduct when his wife first caught him underneath the covers in L.Y.A.’s bedroom. Instead, Amaya denied that there was anything inappropriate, and accused his wife of being “crazy” or jealous of his relationship with their daughter. (Tr. 433.) On the other hand, Amaya later accepted some responsibility for his actions when he agreed with his wife that she would take their daughters to a psychologist and he would pay for those services.

Amaya also contends that he is emotionally unstable and suggests that he should therefore be less culpable for his actions. After his convictions, Amaya experienced an episode in which he stood naked in his cell and appeared to be attempting to pull out his own

⁴ He entered the United States in 2000.

tongue. When confronted, he became combative, spat at correctional officers, and injured one officer. The prison psychiatrist found Amaya to be in “a delusional state,” made a diagnosis of “psychosis not otherwise specified,” and prescribed anti-psychotic medication for Amaya. (Tr. 663.) Nonetheless, there is no evidence suggesting a nexus between Amaya’s post-conviction episodic breakdown and the molestations of his daughters.

In sum, the nature of the offenses and the character of the offender suggest that a sentence beyond a singular advisory or presumptive sentence is warranted. The offenses took place over a long period of time and were committed against multiple victims. Consecutive sentences are appropriate because there are two victims. See Serino v. State, 798 N.E.2d 852, 857 (Ind. 2003) (observing that “consecutive sentences seem necessary to vindicate the fact that there were separate harms and separate acts against more than one person”). However, there is no evidence of specific physical trauma to either victim.

Accordingly, we find the 120-year aggregate sentence to be inappropriate. We revise the sentence to provide for two consecutive terms of thirty years each, resulting in an aggregate sentence of sixty years.

Revised.

FRIEDLANDER, J., and BROWN, J., concur.