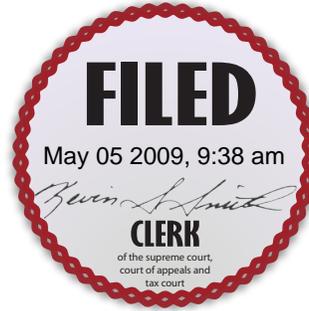


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

RANDAL BARNES,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 02A05-0809-CR-534

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable John F. Surbeck, Judge
Cause No. 02D04-0706-FB-102

MAY 5, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

GARRARD, Senior Judge

A jury convicted Randal Barnes of child molesting, a Class B felony. He was sentenced to ten years, eight years executed and two years on probation. His appeal challenges the sufficiency of the evidence to sustain his conviction and the appropriateness of his sentence. We affirm.

On December 12, 2006, D.V.'s mother was driving him home from school and mentioned that his grandmother was going to take him to dinner. Six-year-old D.V. asked who was going to go to dinner with them. When D.V.'s mother told him who was going, D.V. seemed relieved and then said that somebody at his dad's house made him suck his "pee pee." Tr. at 41. D.V.'s mother immediately called D.V.'s father in North Carolina and placed her cell phone on speaker phone. D.V. told his parents it was a babysitter who had made him do it. His father asked if it could have been his brother, Andrew, or their cousin, Randy. D.V. responded that it was not Andrew.

D.V.'s mother called the police and they told her to contact child protective services. She did so and set up an appointment. A few days later D.V. was in his bedroom with his step-father and a co-worker to set up a racetrack. As they were doing so, D.V. found a family photograph in a box and told his step-father, "[t]here's the guy that made me. . . ." Tr. at 112. The step-father stopped him and told him to take the photograph to his mother. D.V. ran downstairs, pointed to Barnes in the picture and said, "that's the guy." Tr. at 47.

D.V. was interviewed on December 19, 2006, and repeated his assertion that Barnes was the person who had forced him to perform fellatio. The interview was recorded and was admitted as evidence following a protected person's hearing. At trial D.V. testified and yet again identified Barnes as having forced him to perform fellatio. A jury convicted Barnes of child molesting as a class B felony. Barnes appeals his conviction and sentence.

In reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor assess the credibility of the witnesses. *Vitek v. State*, 750 N.E.2d 346, 352 (Ind. 2001). Instead we look to the evidence most favorable to the verdict and all reasonable inferences that may be drawn therefrom. *Id.* We will affirm the conviction if there is probative evidence from which a reasonable jury could have found the defendant guilty beyond a reasonable doubt. *Id.*

Here, the evidence was clearly sufficient to sustain Barnes' conviction. Barnes urges only some minor conflicts in the testimony as to when or where some things or conversations occurred. He merely seeks to have us reweigh the evidence. This we may not do. *See Vitek*, 750 N.E.2d at 352.

Barnes also challenges his sentence. Pursuant to Appellate Rule 7(B) we are authorized to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Here, Barnes was given the ten-year advisory sentence for a class B felony. *See Ind. Code* § 35-50-2-5. The court not only imposed the advisory

sentence for the offense, but it also dictated that two of those years be spent on probation so that Barnes might benefit from the probation rules for sexual perpetrators. We have reviewed the merits of the sentence in terms of the nature of the offense and character of the offender. We find no error in the sentence imposed.

Barnes also contends the court should have found mitigation in his age, work record, minor criminal record and support of some of his family members. Our review of the evidence reveals the court entered a detailed sentencing statement as required by *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007), wherein it considered the factors urged by Barnes. However, the court found the factors insufficient to require mitigation of Barnes' sentence. Barnes basically urges that the court failed to properly weigh the aggravating and mitigating circumstances. The relative weight of such circumstances, however, is no longer available for appellate review. *See Anglemyer*, 868 N.E.2d at 491.

Affirmed.

BARNES, J., and CRONE, J., concur.