

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:

ATTORNEYS FOR APPELLEE:

LEANNA WEISSMANN
Lawrenceburg, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

GEORGE P. SHERMAN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

STEVEN GRAY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

)
)
)
)
)
)
)
)
)
)
)

No. 15A05-1010-CR-690

APPEAL FROM THE DEARBORN SUPERIOR COURT
The Honorable Sally A. Blankenship, Judge
Cause No. 15D02-0902-FA-1

May 6, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Steven Gray appeals from his convictions of and sentences for Class A felony Child Molesting,¹ Class B felony Rape,² and Class B felony Incest.³ Gray contends that his convictions are not supported by sufficient evidence, his convictions for three crimes violate constitutional prohibitions against double jeopardy, and his fifty-year sentence is inappropriately harsh. We affirm in part and reverse in part.

FACTS

K.G. was born on January 14, 1995. At some point in early November of 2008, K.G. was at the home she shared with Gray, her father, when he arrived. Gray complained about how he thought that his current wife or girlfriend was cheating on him, appeared to be intoxicated, and “reeked of alcohol.” Tr. p. 113. When K.G. went to the restroom, Gray followed her and changed clothes while she was using the restroom. When K.G. stood to pull her pants up, Gray pulled her into his bedroom while she said, “dad, please stop, please stop[.]” Tr. p. 115. Gray pushed K.G. onto the bed, pulled her pants and underwear down, pinned her arms “back by [her] head[.]” and inserted his penis into her vagina. Tr. p. 115. During the intercourse, which lasted approximately ten minutes, K.G. cried and repeatedly asked Gray to stop. After Gray was finished, he told K.G. that he would kill her if she told anybody what had happened.

On February 10, 2009, South Dearborn Middle School Principal Todd Bowers had K.G. and another female student come to his office so that could mediate a dispute that

¹ Ind. Code § 35-42-4-3 (2008).

² Ind. Code § 35-46-1-3 (2008).

³ Ind. Code § 35-42-4-1 (2008).

had arisen between the two. At some point, the two began arguing about whose home life was worse, and when the other female student mentioned that she experienced financial troubles at her home, K.G. said, “well at least your dad didn’t rape you[.]” Tr. p. 86. Principal Bowers contacted the police.

On February 26, 2009, the State charged Gray with Class B felony rape, Class A felony child molesting, Class B felony incest, and Class A misdemeanor invasion of privacy. On August 19, 2010, a jury found Gray guilty of rape, child molesting, and incest. On September 24, 2010, the trial court entered judgment of conviction on all three counts and sentenced Gray to twenty years of incarceration for rape, fifty years for child molesting, and twenty years for incest, all sentences to be served concurrently.

DISCUSSION AND DECISION

I. Whether the State Produced Sufficient Evidence to Sustain Gray’s Convictions

Our standard of review for challenges to the sufficiency of the evidence supporting a criminal conviction is well-settled:

In reviewing a sufficiency of the evidence claim, the Court neither reweighs the evidence nor assesses the credibility of the witnesses. We look to the evidence most favorable to the [finding of guilt] and reasonable inferences drawn therefrom. We will affirm the conviction if there is probative evidence from which a reasonable [finder of fact] could have found Defendant guilty beyond a reasonable doubt.

Vitek v. State, 750 N.E.2d 346, 352 (Ind. 2001) (citations omitted).

Gray contends only that the State failed to produce sufficient evidence to support his convictions because they are supported by K.G.’s uncorroborated testimony. It is well-settled that even the uncorroborated testimony of a single witness is sufficient to

support a criminal conviction. *See, e.g., Thompson v. State*, 612 N.E.2d 1094, 1098 (Ind. Ct. App. 1993). Gray points to evidence that K.G. later claimed to have fabricated her version of the events in question and also notes that the State failed to collect any physical evidence tending to prove his crimes. These arguments, however, are nothing more than invitations to reweigh the evidence, which we will not do.

II. Whether Gray’s Convictions Violate Constitutional Prohibitions Against Double Jeopardy

Gray contends, and the State concedes, that his three convictions for one act of nonconsensual intercourse with K.G. violate Indiana’s prohibitions against double jeopardy. *See, e.g., Roberts v. State*, 712 N.E.2d 23, 30-31 (Ind. Ct. App. 1999) (holding that convictions for rape and child molesting based on one single act violate prohibitions against double jeopardy). Moreover, we agree with Gray that the proper remedy is to vacate his convictions for rape and incest, so we remand with instructions to do just that.

III. Whether Gray’s Sentence is Inappropriate

We “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.” Ind. Appellate Rule 7(B). “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.” *Shouse v. State*, 849 N.E.2d 650, 660 (Ind. Ct. App. 2006), *trans. denied* (citations and quotation marks omitted).

Gray's offense was particularly heinous. The record indicates, and the jury found, that Gray's molestation consisted of a forcible rape of his own daughter; it is difficult to imagine that anything a parent could do to his child could be much worse. Gray's act of violence violated the sacred trust between parent and child and has had a crushing impact on K.G.'s life, to say the least. K.G. indicated at Gray's sentencing that he had stolen her innocence and had "hurt [her] more than life itself, made [her] grow up faster than [she] should of, ... stole [her] happiness to satisfy his needs[, and] mainly ruined [her] life and made [her] feel crazy[.]" Tr. p. 304. K.G.'s mother indicated that K.G. was not the child she had been before Gray's offense, had been exhibiting a great deal of anger, had been in trouble at school, and had already been through "a lot of counseling." Tr. p. 306. The egregious nature of Gray's offense justifies an enhanced sentence.

As for Gray's character, it is that of an unrepentant criminal who refuses to appreciate the effect his actions have had on K.G. At sentencing, instead of apologizing to K.G., he referred to her as "very, very evil, very, very troubled." Tr. p. 316. Gray has prior felony convictions for burglary, nonsupport of a dependent child, criminal confinement, and operating a motor vehicle while intoxicated with a prior conviction. Gray has prior misdemeanor convictions for conversion, disorderly conduct, battery, drug abuse, operating while intoxicated, and public intoxication. Gray has had probation revoked on three occasions, and has been arrested for several other offenses, including invasion of privacy, theft, obstruction of justice, resisting law enforcement, battery, and battery on a child. Finally, as of sentencing, Gray had another battery charge pending and had been involved in fights while incarcerated in the Dearborn County Law

Enforcement Center, resulting in the loss of forty-five days of credit time. Gray's record of criminal activity and numerous contacts with the criminal justice system indicate that he has little inclination to conform his behavior to the norms of society. Gray's character fully justifies the imposition of a lengthy sentence. In light of the egregious nature of his offense and his character, Gray has failed to establish that his fifty-year sentence is inappropriately harsh.

We affirm the judgment of the trial court in part, reverse in part, and remand with instructions.

BAKER, J., and MAY, J., concur.