



Following a jury trial, Aaron Giroud was convicted of child molesting<sup>1</sup> as a Class C felony, and the trial court sentenced him to four years, with two years of incarceration and two years suspended to probation. Giroud appeals, raising the following restated issues:

- I. Whether the evidence was sufficient to show Giroud's intent to arouse or satisfy his sexual desires; and
- II. Whether his sentence was inappropriate in light of the nature of the offense and his character.

We affirm.

### **FACTS AND PROCEDURAL HISTORY**

Giroud was employed at a Marion County elementary school as a custodian. Giroud's primary responsibility was to clean the school's cafeteria over the lunch hour. He was also involved with a lunchtime program that allowed volunteer students to assist him in cleaning the cafeteria tables. As a reward, Giroud would give the students a piece of candy from the custodian's storage closet located down a hallway, in the back corner of the cafeteria.

On January 20, 2006, G.P., a seven-year-old first grade student, volunteered and assisted Giroud in cleaning the cafeteria tables. Upon completing the task, Giroud instructed G.P. to enter the custodian's closet to receive the candy. Giroud followed G.P. into the closet. As G.P. was reaching for the candy, Giroud positioned himself on his knees and proceeded to unzip G.P.'s jeans. Giroud situated his finger on the inside of

---

<sup>1</sup> See IC 35-42-4-3(b).

G.P.'s jeans, over his underwear, and then used his finger to touch the child on and around his genital area.

As this was occurring, P.M., a fourth grade student, entered into the doorway of the custodian's closet and observed Giroud kneeling in front of G.P.'s midsection, while G.P.'s hands were at his side. Giroud noticed P.M. in the doorway, and he instructed her to "hold on a second." *Tr.* at 123. Shortly thereafter, Giroud and G.P. exited the custodian's closet. G.P. returned to class without immediately reporting the incident.

After school, on the same day of the incident, G.P. disclosed what had occurred with Giroud to his grandmother, who informed G.P.'s mother. The following day, G.P.'s mother notified the school's principal about the incident. After the principal interviewed Giroud, the police were contacted, and subsequently conducted a formal investigation. On February 1, 2006, the State charged Giroud with child molesting.

On March 20, 2007, a jury convicted Giroud of child molesting. The trial court sentenced him to four years, with two years executed in the Department of Corrections and two years suspended to probation. At sentencing, the trial court found Giroud's lack of criminal history, his medical issues consisting of diabetes and an eye disorder, and his low risk of committing another crime as mitigating factors. The trial court also found the nature of the situation, particularly, Giroud's abuse of trust between he and the children, as aggravating factors. In balancing these factors, the trial court concluded the aggravating factors outweighed the mitigating factors in determining Giroud's sentence. Giroud now appeals.

## DISCUSSION AND DECISION

### I. Sufficiency of the Evidence

Giroud argues that the evidence was insufficient to prove that he had the intent to arouse or satisfy his sexual desires. In reviewing sufficiency of the evidence, we will affirm a conviction if, considering only the probative evidence and reasonable inferences supporting the verdict, and without weighing evidence or assessing witness credibility, a reasonable trier of fact could conclude the defendant was guilty beyond a reasonable doubt. *Weaver v. State*, 845 N.E.2d 1066, 1069 (Ind. Ct. App. 2006), *trans. denied*; *Kirk v. State*, 797 N.E.2d 837, 841 (Ind. Ct. App. 2003), *trans. denied*.

To convict Giroud of molesting seven-year-old G.P., the State was required to prove that he performed or submitted to any fondling or touching, of either G.P. or himself, with the intent to arouse or to satisfy his or G.P.'s sexual desires. *See* IC 35-42-4-3(b). G.P. testified that Giroud used his finger to touch on and around G.P.'s genital area, on the outside of G.P.'s underwear. *Tr.* at 70-72. Additionally, P.M. testified to seeing Giroud kneeling in front of G.P.'s midsection in the custodian's closet. *Tr.* at 123. However, Giroud argues that the State failed to present sufficient evidence of his intent to arouse or satisfy his sexual desires because G.P.'s testimony and other circumstantial evidence indicated a "more neutral touching" rather than sexual intent. *Appellant's Br.* at 9.

Mere touching alone is not sufficient to constitute the crime of child molesting. *See Bowles v. State*, 737 N.E.2d 1150, 1152 (Ind. 2000) (citing *Clark v. State*, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998), *trans. denied*; *Nuerge v. State*, 677 N.E.2d 1043, 1048

(Ind. Ct. App. 1997), *trans. denied*). The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. *Clark*, 695 N.E.2d at 1002. “The intent to arouse or satisfy the sexual desires of the child or the older person may be established by circumstantial evidence and may be inferred [by the fact finder] ‘from the actor’s conduct and the natural and usual sequence to which such conduct usually points.’” *Kanady v. State*, 810 N.E.2d 1068, 1069-70 (Ind. Ct. App. 2004) (quoting *Nuerge*, 677 N.E.2d at 1048).

Here, G.P. testified that Giroud unzipped his jeans, and subsequently used his finger to touch G.P.’s genital area. *Tr.* at 70-72. The jury was permitted to infer Giroud’s intent to satisfy his sexual desires from the evidence of Giroud touching G.P.’s genital area. *See Sanchez v. State*, 675 N.E.2d 306, 311 (Ind. 1996) (“Intentional touching of the genital area can be circumstantial evidence of intent to arouse or satisfy sexual desires.”). Consequently, we find that Giroud’s Class C felony child molesting conviction was supported by sufficient evidence.

## **II. Inappropriate Sentence**

Giroud also argues that his four-year aggregate sentence with two years executed and two years suspended to probation was inappropriate in light of the nature of the offense and his character. Appellate courts have the constitutional authority to revise a sentence if, after consideration of the trial court’s decision, the court concludes the sentence is inappropriate in light of the nature of the offense and character of the offender. Ind. Appellate 7(B); *Marshall v. State*, 832 N.E.2d 615, 624 (Ind. Ct. App. 2005), *trans. denied*.

At sentencing, the trial court gave a thorough explanation of its consideration for the aggravating and mitigating circumstances surrounding Giroud's sentencing. As to the nature of the offense, the trial court gave great weight to Giroud's position and subsequent abuse of trust with the students. *Tr.* at 309-10. We agree. Unassuming children viewed Giroud as an authority figure that could be trusted. G.P. and other students in his school were eager to assist Giroud during the lunch hour to obtain the reward candy. Consequently, they were willing to follow Giroud's instructions upon command. Sadly, Giroud violated this trust when he lured G.P. into the custodian's closet and molested him.

As to Giroud's character, we acknowledge the trial court's mitigating circumstance findings. Giroud had no prior criminal history, and he has important medical concerns that were addressed by the trial court. However, the way in which Giroud manipulated his position of power to molest G.P. more than warrants his sentence, which is two years over the statutory minimum only because the sentence requires a two-year sentence to supervised probation. Accordingly, we conclude that Giroud's sentence is appropriate in light of the nature of the offense and his character.

Affirmed.

RILEY, J., and MAY, J., concur.