

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.

ATTORNEYS FOR APPELLANT:

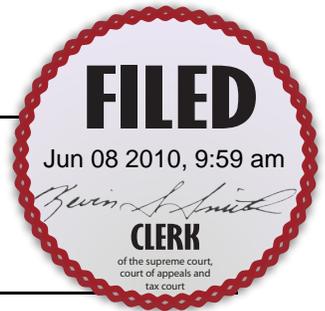
WILLIAM S. FRANKEL, IV
CHRISTOPHER K. AIMONE
Wilkinson, Goeller, Modesitt,
Wilkinson, & Drummy, LLP
Terre Haute, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ARTURO RODRIGUEZ II
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA



EUGENE L. ECHOLS,
Appellant/Defendant,

vs.

STATE OF INDIANA,
Appellee/Plaintiff.

)
)
)
)
)
)
)
)
)
)
)
)

No. 84A01-1001-CR-8

APPEAL FROM THE VIGO SUPERIOR COURT
The Honorable Michael J. Lewis, Judge
Cause No. 84D06-0704-FA-1411

June 8, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant/Defendant Eugene Echols appeals from the sentence imposed following his conviction for Class A felony Child Molesting.¹ Echols contends that the trial court failed to adequately consider several allegedly mitigating circumstances and that his forty-five-year sentence is inappropriately harsh. We affirm.

FACTS AND PROCEDURAL HISTORY

As of April 21, 2007, Echols no longer lived with L.W., his wife, and J.E., their five-year-old daughter, but was visiting on that day, ostensibly to help L.W. clean the house. At some point that evening, L.W. walked into J.E.'s room and saw Echols under the covers of J.E.'s bed with his head between her legs. J.E.'s underwear was around her ankles, and Echols had been licking her vagina.

Early in the morning of April 22, 2007, Echols was interviewed by police. Echols admitted that he had performed oral sex on J.E., claiming that she “would always want me to lick her out, in that area around her vagina. And I did on several occasions, three times throughout the day.” Tr. p. 254. Echols admitted that J.E. had touched his penis, claiming that she would pull his pants down and that “she would always get curious about putting her hand on my stuff[.]” Tr. p. 254. J.E.'s touching of Echols's penis would cause him to have an erection “from time to time[.]” Tr. p. 254. Echols told police that his sexual activity with J.E. had been going on for five months and over the course of three visits to her house. Echols admitted that he had tried to have sexual intercourse with J.E. the prior evening but that he was unsure if any penetration had

¹ Ind. Code § 35-42-4-3(a)(1) (2006).

occurred. Finally, Echols told police that J.E. had attempted to fellate him on one occasion, “as if she was kissing it.” Tr. p. 266.

On April 26, 2007, the State charged Echols with Class A felony child molesting and Class B felony criminal deviate conduct. On August 12, 2009, a jury found Echols guilty of child molesting. On September 9, 2009, the trial court sentenced Echols to forty-five years of incarceration. The trial court found Echols’s lack of prior criminal history to be a mitigating circumstance and, as aggravating circumstances, the significant harm to J.E., his position of trust with the victim, and the heinousness of the crime.

DISCUSSION AND DECISION

A. Abuse of Discretion

Echols’s offenses were committed after the April 25, 2005, revisions to Indiana’s sentencing scheme. Under this new sentencing scheme, “the trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *modified on other grounds on reh’g*, 875 N.E.2d 218 (Ind. 2008). We review the sentence for an abuse of discretion. *Id.* An abuse of discretion occurs if “the decision is clearly against the logic and effect of the facts and circumstances.” *Id.*

A trial court abuses its discretion if it (1) fails “to enter a sentencing statement at all[,]” (2) enters “a sentencing statement that explains reasons for imposing a sentence—including a finding of aggravating and mitigating factors if any—but the record does not support the reasons,” (3) enters a sentencing statement that “omits reasons that are clearly supported by the record and advanced for consideration,” or (4) considers reasons that

“are improper as a matter of law.” *Id.* at 490-91. If the trial court has abused its discretion, we will remand for resentencing “if we cannot say with confidence that the trial court would have imposed the same sentence had it properly considered reasons that enjoy support in the record.” *Id.* at 491. However, under the new statutory scheme, the relative weight or value assignable to reasons properly found, or to those which should have been found, is not subject to review for abuse of discretion. *Id.* We may review both oral and written statements in order to identify the findings of the trial court. *See McElroy v. State*, 865 N.E.2d 584, 589 (Ind. 2007).

Echols contends that the trial court failed to consider several allegedly mitigating circumstances advanced by him at sentencing, namely, the alleged lack of evidence that he is a pedophile, his respectful treatment of the trial court and his jailers, and his military service. Although the trial court has an obligation to consider all mitigating circumstances identified by a defendant, it is within the trial court’s sound discretion whether to find mitigating circumstances. *Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003), *trans. denied*. We will not remand for reconsideration of alleged mitigating factors that have debatable nature, weight, and significance. *Id.* However, if the record clearly supports a significant mitigating circumstance not found by the trial court, we are left with the reasonable belief that the trial court improperly overlooked the circumstance. *Mover v. State*, 796 N.E.2d 309, 313 (Ind. Ct. App. 2003).

Echols notes that neither one of the two experts who examined him specifically found him to be a sexual predator or pedophile. Presumably, Echols is seeking to establish that the lack of such a finding supports a conclusion that he is unlikely to

reoffend. Given that the purpose of the examinations was *not* to give Echols a comprehensive mental examination but, rather, merely to determine if Echols was competent to stand trial, it is not altogether surprising that neither expert specifically opined on possible pedophilia. In any event, the reports, if anything, support a conclusion that Echols is at risk to reoffend.

Echols told Dr. David Hilton that he believed that what he had done to J.E. was not harmful, that he did not consider his actions to have been abusive because he did not physically harm her, that he considered his sexual activity with her to have been “horse play,” and that he believed that society treated those labeled as “sex offenders” unfairly. P.S.I. p. 39. Dr. Howard Wooden expressed concern that Echols did not seem to “think that his sexual activities with [J.E.] were wrong or abnormal[,]” although Echols did admit to hiding the activities from others. P.S.I. p. 43. In our view, the reports paint a picture of an offender who understands that “society” views his actions as wrong but does not fully appreciate their wrongfulness himself. Under the circumstances, the trial court did not abuse its discretion in failing to find that Echols was not at risk to reoffend.

Echols also contends that the trial court failed to consider his respectful behavior as a possible mitigating circumstance. The record indicates, however, that the trial court specifically considered and rejected that mitigating circumstance. Moreover, Echols does not explain how respectful treatment of State officials would be particularly mitigating when such behavior would clearly be in his best interest in any event. Finally, Echols contends that the trial court abused its discretion in failing to find his military service to be mitigating. Although the record does indicate ten years of service, it also indicates

that Echols was discharged from the Navy for disobeying a lawful order. The trial court did not abuse its discretion in sentencing Echols.

B. Whether Echols's Sentence is Appropriate

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).

In our view, the nature of Echols’s offense is somewhat more egregious than most such offenses. A five-year-old girl should be able to trust her parents without doubt, and Echols betrayed that trust as her father. Moreover, Echols admitted to police that his molestation of J.E. was not an isolated incident. Echols admitted that he had performed oral sex on J.E. three times on the day his molestation was discovered and that he had attempted to have sexual intercourse with her on that day as well. Echols admitted that J.E. had fondled his penis and had “kissed” it once. Echols’s molestation of J.E. spanned five months and three separate episodes. The nature of Echols’s offense justifies an enhanced sentence.

Even if Echols’s offense were not particularly heinous, we have little hesitation in concluding that his character alone would fully justify his enhanced forty-five-year

sentence. After violating his five-year-old daughter in this perverted fashion, Echols has yet to acknowledge that he did anything wrong. As if that were not bad enough, Echols has, from the very beginning, attempted to pin the blame on his victim. Echols told police that J.E. “always want[ed] [him] to lick her out, in that area around her vagina[;]” that she would pull his pants down and fondle his penis without prompting; that she “was always want[ing] to put her vagina in [his] face[;]” that she “was always on [him] to lick her[;]” that she “[a]lways want[ed] to play with [his] penis [and] sit on top of [his] face[;]” and that he only did what he did to satisfy her curiosity. Tr. pp. 253-54, 256, 260, 268. Even at sentencing, Echols stated that “this was something that my daughter wanted me to do” and that “whatever post-traumatic stresses my daughter has suffered, they have not come from myself. These were things that I believe were conjured up over maybe another incident of someone else, but not myself, and that’s a fact.” Tr. pp. 19, 21. In light of the nature of Echols’s offense and his character, his forty-five-year sentence is appropriate.

The judgment of the trial court is affirmed.

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