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ATTORNEY FOR APPELLANT:

MARK A. BATES
Lake County Public Defender's Office
Crown Point, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ANDREW A. KOBE
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

ELIJAH ROBERSON,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 45A03-1011-CR-564
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0912-FA-57

June 24, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Elijah Roberson ("Roberson") appeals from the trial court's sentencing order after pleading guilty to child molesting[1] as a Class A felony. Roberson presents the following issue for our review: whether Roberson's forty-year sentence is inappropriate in light of the nature of the offense and the character of the offender.

We affirm.

FACTS AND PROCEDURAL HISTORY

At the conclusion of plea negotiations, Roberson pleaded guilty to child molesting as a Class A felony. In exchange, the State dismissed two counts of sexual misconduct with a minor, one charged as a Class B felony and the other as a Class C felony, and one count of Class B felony incest. The plea agreement provided for a cap of forty years executed in the Indiana Department of Correction.

The facts supporting Roberson's guilty plea can be found in the stipulated factual basis for the guilty plea. Roberson, who was born in 1962, is the biological uncle and adoptive father of the victim, S.R., who was born in 1992. Between March 6, 2003 and June 1, 2003, while Roberson and S.R. were living in East Chicago, Roberson had vaginal sexual intercourse with S.R. one or two times per week. Roberson told S.R. not to tell anyone about the sexual intercourse because Roberson would go to jail.

The trial court accepted Roberson's guilty plea and sentenced him to a term of forty years executed. Roberson now appeals his sentence. Additional facts will be supplied where necessary.

[1] *See* Ind. Code § 35-42-4-3.

DISCUSSION AND DECISION

Trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (2007). The statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. *Id*. If the recitation includes a finding of aggravating or mitigating circumstances, then the statement must identify all significant mitigating and aggravating circumstances and explain why each circumstance has been determined to be mitigating or aggravating. *Id*.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only 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 before the court, or the reasonable, probable, and actual deductions to be drawn therefrom." *Id*.

Once the trial court has entered a sentencing statement, which may or may not include the existence of aggravating and mitigating factors, it may then "impose any sentence that is . . . authorized by statute; and . . . permissible under the Constitution of the State of Indiana." Ind. Code § 35-38-1-7.1(d). If the sentence imposed is lawful, this court will not reverse unless the sentence is inappropriate based on the character of the offender and the nature of the offense. Ind. Appellate Rule 7(B); *Boner v. State*, 796 N.E.2d 1249, 1254 (Ind. Ct. App. 2003). The burden is on the defendant to persuade this court that his sentence is inappropriate. *Patterson v. State*, 909 N.E.2d 1058, 1063 (Ind. Ct. App. 2009).

Roberson argues that his forty-year sentence is inappropriate because he was a former victim of abuse and suffers from depression and schizophrenia. He argues that, while the

trial court accorded some mitigating weight to his mental illness, the forty-year sentence was inappropriate in light of his mental illness. This argument is akin to a request for this court to find that the trial court abused its discretion by failing to properly weigh the aggravating and mitigating factors, a task we are now forbidden to do under the current sentencing regime. *Anglemyer*, 868 N.E.2d at 491. We may review the appropriateness of the sentence, however, and will do so now. The sentencing range for a Class A felony is a fixed term of between twenty and fifty years with the advisory sentence being thirty years. Ind. Code § 35-50-2-4.

In the present case, the trial court identified as mitigating factors Roberson's guilty plea, mental illness, and abuse as a child. The trial court found that the violation of Roberson's position of trust with the victim, his biological niece and adopted daughter, in addition to his criminal history, need for rehabilitative treatment, and his failure to respond to more lenient treatment through the judicial system, as aggravating factors.

In regard to the nature of the offense, our Supreme Court has observed that crimes against children are particularly contemptible. *Walker v. State*, 747 N.E.2d 536, 538 (Ind. 2001). Here, the nature of the offense is particularly heinous in that Roberson, S.R.'s biological uncle and adoptive father, violated his position of trust with S.R., by repeatedly molesting her over an extended period of time, resulting in two pregnancies. The offense to which Roberson pleaded guilty occurred between March and June of 2003. However, the pre-sentence investigation report reveals that, while Roberson first began molesting S.R. in 2003, when she was eleven years old, the molestations continued, resulting in the birth of S.R.'s first child fathered by Roberson in 2006, and the birth of S.R.'s second child fathered

by him in early 2008.

As for the character of the offender, we note that Roberson did plead guilty, and does suffer from mental illness. The State and the victim did benefit from Roberson's plea, but he benefitted significantly as several charges against him were dismissed. Roberson has a criminal history including a juvenile burglary adjudication, a 1993 felony armed robbery conviction, and a 2009 misdemeanor reckless driving conviction.

We conclude that Roberson's sentence is not inappropriate in light of the nature of the offense and the character of the offender.

Affirmed.

VAIDIK, J., and MATHIAS, J., concur.