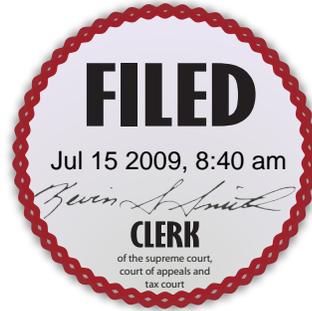


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

ROGER JAMESON,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 09A02-0904-CR-333

APPEAL FROM THE CASS SUPERIOR COURT
The Honorable Richard A. Maughmer, Judge
Cause No. 09D02-0802-FA-002

July 15, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Roger Jameson appeals his sentence following a plea of guilty to class C felony child molesting.¹

We affirm.

ISSUE

Whether the trial court erred in sentencing Jameson.

FACTS

On or about October 30, 2007, the Cass County Division of Child Services received a report that Jameson had molested his granddaughter. On January 11, 2008, Jameson admitted to an Indiana State Police Officer that, on June 20, 2007, he made his then-ten-year-old granddaughter touch his penis while he was babysitting her.

On February 13, 2008, the State charged Jameson with Counts 1 and 2, child molesting as a class A felony; Count 3, child molesting as a class B felony; and Count 4, child molesting as a class C felony. The State alleged that on several occasions between January 1, 2002, and February 12, 2008, Jameson had molested his granddaughter while she was in his care.

According to the probable cause affidavit, Jameson's granddaughter had reported that he had inserted his penis into her vagina; placed his penis in her anus on at least one occasion; and touched her vagina with his fingers on other occasions. She also reported that he had forced her to touch his penis. Many of these incidents took place while he was babysitting her.

¹ Ind. Code § 35-42-4-3.

On December 16, 2008, Jameson and the State entered into a plea agreement, whereby Jameson agreed to plead guilty to Count 4, and the State agreed to dismiss the pending, remaining charges. The plea agreement provided that the parties were free to argue Jameson's sentence.

The trial court ordered a pre-sentence investigation report ("PSI") and held a sentencing hearing on January 20, 2009.² According to the PSI, Jameson reported that he had been arrested for domestic abuse in the 1980s, but the charges had been dropped. In 2006, the State charged him with check deception and conversion; the State dismissed these charges after Jameson completed a pre-trial diversion program. The probation officer submitting the PSI recommended that Jameson be sentenced to eight years, with four years suspended to probation, including one year on home detention.

After hearing evidence of mitigating and aggravating circumstances, the trial court found as follows:

Court finds your plea of guilty is a mitigating circumstance. Your lack of criminal history is a mitigating circumstance. I'm going to find that you violated your granddaughter [sic] is an aggravating circumstance. I'm finding the aggravating circumstances outweigh the mitigating circumstances which causes me to give you more than a presumptive sentence if we use that term in sentencing language anymore.

(Tr. 10). The trial court sentenced Jameson to eight years in the Department of Correction. The trial court then clarified its sentencing statement:

² We remind Jameson's counsel that presentence investigation reports shall be "tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential." Ind. Trial Rule 5(G)(1).

The fact that it was his granddaughter is the only thing that is causing a lot of problems. And I mean its [sic] not any worse than molesting or violating any young person except that this is the granddaughter and one should look to their grandparents to support and defend them as opposed to violate them.

(Tr. 11-12).

DECISION

Jameson asserts that the trial court erred in sentencing him. Specifically, he argues that the trial court failed to enter an adequate sentencing statement and failed to give sufficient mitigating weight to his guilty plea and lack of criminal history. He also asserts that his sentence is inappropriate.

1. Sentencing Statement

Jameson argues that the trial court's sentencing statement is inadequate. Specifically, he argues that the trial court "failed to explain in detail how the sentencing aggravator impacted [him] in this cause and required the maximum sentence." Jameson's Br. at 7.

Sentences are within the trial court's discretion. *Anglemyer v. State*, 868 N.E.2d 482, 490 (Ind. 2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). Thus, we review a sentence for abuse of that discretion. *Id.* "One way in which a trial court may abuse its discretion is failing to enter a sentencing statement" *Id.* In *Anglemyer*, Indiana's Supreme Court explained that

Indiana trial courts are required to enter sentencing statements whenever imposing sentence for a felony offense. In order to facilitate its underlying goals, the statement must include a reasonably detailed recitation of the trial court's reasons for imposing a particular sentence. 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.

(Internal citations omitted).

We acknowledge that the trial court’s sentencing statement could have been more detailed. However, the trial court did identify aggravating and mitigating circumstances. It also explained why it found the molestation to be particularly egregious; namely, that Jameson molested his own granddaughter—a child he should have been protecting. We therefore find that the sentencing statement is adequate.

2. Mitigating Circumstances

Jameson also asserts that the trial court abused its discretion in failing to “afford any reduction of the sentence as a result” of his guilty plea and lack of criminal history. A trial court may abuse its discretion if the sentencing statement “omits reasons for imposing a sentence that are clearly supported by the record and advanced for consideration” *Id.* at 490-91. A trial court, however, “no longer has any obligation to ‘weigh’ aggravating and mitigating factors against each other when imposing a sentence,” and therefore, “can not now be said to have abused its discretion in failing to ‘properly weigh’ such factors.” *Id.* at 491.

It is clear from the sentencing statement that the trial court considered Jameson’s guilty plea and lack of criminal history to be mitigating circumstances. As to the weight assigned to those mitigating circumstances, it is not subject to review for abuse of discretion. *See id.* at 490. Thus, we find no abuse of discretion.

2. Inappropriate Sentence

Jameson also contends that his sentence is inappropriate where “there is nothing in the record below to suggest how [his] admitted conduct was so reprehensible as to mandate the imposition of the maximum sentence.” Jameson’s Br. at 9. We may revise a sentence if it is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). It is the defendant’s burden to “persuade the appellate court that his or her sentence has met th[e] inappropriateness standard of review.” *Anglemyer*, 868 N.E.2d at 494 (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006)).

In determining whether a sentence is inappropriate, the advisory sentence “is the starting point the Legislature has selected as an appropriate sentence for the crime committed.” *Childress*, 848 N.E.2d at 1081. The advisory sentence for a class C felony is four years with a maximum sentence of eight years. I.C. § 35-50-2-6. Here, the trial court sentenced Jameson to the maximum sentence.

Jameson molested his own granddaughter on at least one occasion and did so while she was entrusted to his care. He clearly violated his position of trust with her as well as her parents. While we recognize that Jameson accepted some responsibility for his crimes by pleading guilty, we also recognize that he received a significant benefit for doing so, where the State dismissed several pending felony charges. We cannot say that his sentence is inappropriate.

Affirmed.

BAILEY, J., and ROBB, J., concur.