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IN THE
COURT OF APPEALS OF INDIANA

ROSS WATERMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A01-0812-CR-596
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Gregory A. Horn, Judge
Cause No. 89D02-0708-FC-30

July 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Ross Waterman appeals following his conviction for two counts of Class C Felony Sexual Misconduct with a Minor,[1] for which he received two concurrent sentences of four years, with one year suspended to probation on each count. Upon appeal, Waterman contends that his sentence is inappropriate in light of the nature of his offenses and his character. We affirm.

FACTS AND PROCEDURAL HISTORY

In August of 2004, Waterman, a nineteen-year-old, engaged in sexual intercourse with his stepsister, L.M., whom he knew to be fourteen years old. In December of 2005, Waterman, who by that time was twenty years old, again engaged in sexual intercourse with L.M., whom he knew to be fifteen years old. The State eventually charged Waterman with two counts of Class C felony sexual misconduct with a minor. On August 27, 2008, Waterman pled guilty as charged, and the trial court sentenced him to two concurrent terms of four years with one year suspended to probation on each. This appeal follows.

DISCUSSION AND DECISION

Waterman challenges the trial court's sentence on the grounds that it is inappropriate in light of the nature of his offenses and his character. Indiana Appellate Rule 7(B) provides that "the Court 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."

[1] Ind. Code § 35-42-4-9(a) (2004, 2005).

> 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. The defendant has the burden of persuading us that his or her sentence is inappropriate.

Fonner v. State, 876 N.E.2d 340, 343 (Ind. Ct. App. 2007) (citations and quotation marks omitted).

Under this standard, Waterman must convince this court that his sentence is inappropriate in light of both the nature of his offenses and his character. Waterman committed two Class C felonies, for which Indiana Code section 35-50-2-6 (2005) permits a fixed term of between two and eight years, with the advisory sentence being four years.[2] With respect to the nature of the offenses, Waterman does not specify why he believes that his sentence was inappropriate. This argument may have been difficult to make given the facts of this case. Here, Waterman, an adult who was in a position of trust as the young victim's stepbrother, committed sexual acts with her which he knew were wrong.

In addition, Waterman acknowledges the devastating impact his offenses have had on his stepsister and their family, but he urges this court to consider that he was nineteen years old when he first committed the offense. Regardless of how new Waterman was to adulthood at the time of the crimes, as the trial court found, he was a full five years older than his victim, and his age and conduct fall squarely within the

[2] Waterman's conviction for Count I is governed by the "presumptive" sentencing scheme in effect before the April 2005 amendments establishing an "advisory" sentencing scheme. Under this pre-2005 sentencing scheme, the presumptive sentence for a Class C felony is also four years. *See* Ind. Code § 35-50-2-6 (2004).

General Assembly's definition of sexual misconduct with a minor. In light of the facts, we agree with the trial court that Waterman's crimes were indeed serious.

Waterman also claims that his sentence is inappropriate in light of his character. He asserts that he did not have a criminal record prior to this conviction and argues based on *Hollin v. State*, 877 N.E.2d 462 (Ind. 2007), that his sentence is therefore excessive. In *Hollin*, the Indiana Supreme Court reduced the defendant's maximum sentence based upon its view that the defendant's character was not of such depravity that it justified a maximum sentence. *Id.* at 465-466.

Unlike the defendant in *Hollin*, Waterman did not receive the maximum sentence, but a four-year sentence. Here, Waterman disrupted the unity of his father's family, admitted to engaging in sexual intercourse up to fifteen separate times with his minor stepsister, and continued this affair through several emails to his stepsister. Until Waterman was confronted, he made no attempts to come forward with the truth of his offenses, suggesting that Waterman may have continued such behavior in the absence of being caught. Therefore, we are not inclined to say that the absence of a criminal history makes Waterman eligible to receive a revision of the trial court's imposed sentence. After all, Waterman admitted to committing more offenses than the State charged. While his lack of criminal history, remorse, and acceptance of responsibility reflect favorably upon his character, we cannot say that Waterman's sentence of two concurrent four-year terms for his two Class C felonies is inappropriate.

The judgment of the trial court is affirmed.

CRONE, J., and BROWN, J., concur.