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ATTORNEY FOR APPELLANT:

STEVEN C. LITZ
Monrovia, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

MONIKA PREKOPA TALBOT
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ERNEST WHITE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 55A01-0906-CR-295
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MORGAN SUPERIOR COURT
The Honorable Jane Spencer Craney, Judge
Cause No.55D03-0803-FA-79

September 17, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

Ernest White appeals his sentence for child molesting as a class B felony[1] and child molesting as a class C felony.[2] White raises one issue, which we revise and restate as whether his sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.[3]

The relevant facts follow.[4] White lived in a trailer behind a house belonging to the family of T.P., a child under the age of fourteen.[5] T.P.'s family "allowed [White] to live

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[1] Ind. Code § 35-42-4-3(a).

[2] Ind. Code § 35-42-4-3(b).

[3] A copy of White's presentence investigation report on white paper is located in the appellant's appendix. We remind White that Ind. Appellate Rule 9(J) requires that "[d]ocuments and information excluded from public access pursuant to Ind. Administrative Rule 9(G)(1) shall be filed in accordance with Trial Rule 5(G)." Ind. Administrative Rule 9(G)(1)(b)(viii) states that "[a]ll pre-sentence reports pursuant to Ind. Code § 35-38-1-13" are "excluded from public access" and "confidential." The inclusion of the presentence investigation report printed on white paper in the appellant's appendix is inconsistent with Trial Rule 5(G), which states, in pertinent part:

> Every document filed in a case shall separately identify information excluded from public access pursuant to Admin. R. 9(G)(1) as follows:
>
> (1) Whole documents that are excluded from public access pursuant to Administrative Rule 9(G)(1) shall be tendered on light green paper or have a light green coversheet attached to the document, marked "Not for Public Access" or "Confidential."
>
> (2) When only a portion of a document contains information excluded from public access pursuant to Administrative Rule 9(G)(1), said information shall be omitted [or redacted] from the filed document and set forth on a separate accompanying document on light green paper conspicuously marked "Not For Public Access" or "Confidential" and clearly designating [or identifying] the caption and number of the case and the document and location within the document to which the redacted material pertains.

[4] The record presented by White includes the transcript of the sentencing hearing but not the transcript of the bench trial. We remind White that the appellant bears the burden "to present a record that is complete with respect to the issues raised on appeal, and this burden includes a duty to ensure that the court has a transcript of the appropriate trial proceedings." Perez-Grahovac v. State, 894 N.E.2d 578, 585 (Ind. Ct. App. 2008), reh'g denied, trans. denied.

[5] In his brief, White states that T.P. was seven years old in or around 2007.

on their property when nobody else would take [him] in." Sentencing Transcript at 15. White had known T.P.'s family "practically all [his] life." Id. at 17. T.P.'s family made sure that White had what he needed. White "babysitted [sic] and things when they were gone, like on their anniversaries . . . ." Id. at 16. Between March 1, 2004 and March 11, 2008, White performed deviate sexual conduct with T.P. and performed or submitted to touching or fondling with T.P. with the intent to arouse or satisfy the sexual desires of T.P. or White. At White's request, T.P. touched White's penis. White touched or licked T.P.'s vagina.

On March 12, 2008, the State charged White with: (1) Count 1, child molesting as a class A felony; and (2) Count II, child molesting as a class C felony. After a bench trial on January 28, 2009, the trial court found White guilty of child molesting as a class B felony[6] and child molesting as a class C felony. On March 5, 2009, the trial court held a sentencing hearing. The trial court found the age of T.P. at the time of the offenses, the fact that White was in a position of trust, and White's prior misdemeanor conviction to be aggravating circumstances, and the court found the fact that White was elderly, the fact that White was not in good health, and his prior honorable military service to be mitigating circumstances. The trial court sentenced White to ten years for his class B felony conviction and to four years for his class C felony conviction, and the trial court ordered the sentences be served concurrently.

[6] With respect to White's class B felony conviction, the trial court stated that "I found [White] guilty of the lesser included B felony because the age was never proved . . . ." Sentencing Transcript at 23.

The sole issue is whether White's sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Under this rule, the burden is on the defendant to persuade the appellate court that his or her sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006). White argues that we should reduce his sentence to six years because "[t]his is one of those rare cases where due to [White's] infirmity, age, military service to his country, and lack of criminal history, the advisory sentence is unduly harsh, even considering the nature of the crimes committed." Appellant's Brief at 2.

Our review of the nature of the offense reveals that White performed deviate sexual conduct with T.P., a seven-year-old girl, and performed or submitted to touching or fondling with T.P. with the intent to arouse or satisfy the sexual desires of T.P. or White between March 1, 2004 and March 11, 2008. White touched or licked T.P.'s vagina. At White's request, T.P. touched White's penis. White testified that T.P.'s family trusted him and that he babysat for them.

Our review of the character of the offender reveals that White lived in a trailer behind a house belonging to T.P.'s family and that T.P.'s family "allowed [White] to live on their property when nobody else would take [him] in." Sentencing Transcript at 15. The record also reveals that White had known T.P.'s family "practically all [his] life."

Id. at 17. T.P.'s family made sure that White had what he needed, and White "babysitted [sic] and things when they were gone . . . ." Id. at 16. White testified that he served in the United States military for six years, was wounded three times, received five bronze stars and fifteen ribbons, and received an honorable discharge. The PSI reveals that White's general health was "fair" and the record reflects that White had health issues, including diabetes, "angina pectoral," artery sclerosis, hypertension, anxiety, prostate issues, prior strokes, back operations, and a brain operation. Appellant's Appendix at 50.

The presentence investigation report ("PSI") reveals that White was found guilty in 2002 of operating a vehicle while intoxicated as a class A misdemeanor and operating a vehicle with .10% ACE as a class C misdemeanor. White testified that he was "drinking heavily" at the time of his offenses. Transcript at 11. The PSI reveals that White had been "consuming alcohol on a daily basis since 2005." Appellant's Appendix at 51.

After due consideration of the trial court's decision, we cannot say that the advisory and concurrent sentences imposed by the trial court are inappropriate in light of the nature of the offense and the character of the offender. See, e.g., McCoy v. State, 856 N.E.2d 1259, 1264 (Ind. App. 2006) (holding that the defendant's sentence for child molesting was not inappropriate in light of the nature of the offenses and his character).

For the foregoing reasons, we affirm White's sentences for child molestation as a class B felony and child molestation as a class C felony.

Affirmed.

CRONE, J., and MAY, J., concur.