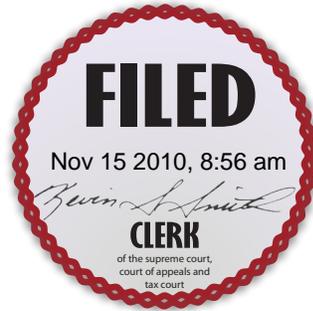


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

STEPHEN QUICK, II,)
)
Appellant-Defendant,)
)
vs.) No. 23A05-1005-CR-292
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

APPEAL FROM THE FOUNTAIN CIRCUIT COURT
The Honorable Susan Orr Henderson, Judge
Cause No. 23C01-0903-FA-128

November 15, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Over the course of several months, Stephen Quick, II, and his girlfriend, Samantha Light, molested a six-year-old boy, a one-year-old boy, and their two-month-old daughter and videotaped their depraved acts for posterity. The State charged both Quick and Light with multiple counts of child molesting and child exploitation. Light pled guilty, and the trial court sentenced her to 125 years. Quick filed a motion for change of judge, in which he alleged that the trial court's comments in Light's sentencing order gave rise to an appearance of bias against him. The court denied Quick's motion. Quick waived his right to a jury trial, and the court found Quick guilty of three counts of class A felony child molesting and sentenced him to 125 years.

On appeal, Quick challenges the trial court's denial of his motion for change of judge and the appropriateness of his sentence in light of his limited education and abusive childhood. Finding that the trial court did not clearly err in denying Quick's motion for change of judge and that Quick has failed to carry his burden of establishing that his sentence for the extraordinarily heinous molestations is inappropriate, we affirm the trial court in all respects.

Facts and Procedural History

Quick and Light lived together in Light's mother's home in Veedersburg. On September 13, 2008, Light had sexual intercourse with a six-year-old boy, C.C., whom she babysat, while Quick forced C.C. to perform oral sex on him. On December 4, 2008, Light performed oral sex on one-year-old W.H., whom she also babysat, while Quick forced

W.H.'s mouth on his penis and then inserted his penis in W.H.'s anus. On February 5, 2009, Light masturbated while she licked the vaginal area of her two-month-old daughter, A.Q. Quick, who is A.Q.'s father, also licked A.Q.'s vaginal area and inserted his finger in her anus. A.Q. was made to suck Light's vaginal area and Quick's penis. Both Light and Quick used a vibrator on A.Q. The couple videotaped all three molestations.

In March 2009, while investigating a complaint regarding a fourth alleged molestation victim, police executed a search warrant at Light and Quick's residence and discovered the videotape. The State charged Light with three counts of class A felony child molesting, one count of class C felony child molesting, and one count of class C felony child exploitation. The State charged Quick with three counts of class A felony child molesting and one count of class C felony child exploitation. In October 2009, Light agreed to plead guilty to the three class A felony child molesting counts. On December 2, 2009, the trial court sentenced Light to consecutive terms of forty years on each of the first two counts and forty-five years on the third count, for an aggregate executed sentence of 125 years.¹

On December 7, 2009, Quick filed a motion for change of judge pursuant to Indiana Criminal Rule 12(B), in which he asserted that the trial court's sentencing order in Light's case

gives rise to the appearance of bias on the judge's part which reasonably arises from the judge's description of the conduct complained of as "perverse behavior," "atrocities," "reprehensible." Having made these determinations about conduct already, [Quick] may reasonably fear the judge will be prejudiced toward him and he might not then receive a fair trial.

¹ Light challenged the appropriateness of her sentence, which another panel of this Court affirmed. *Light v. State*, 926 N.E.2d 1122 (Ind. Ct. App. 2010), *trans. denied*.

Appellant's App. at 61. At the conclusion of his motion, Quick "affirm[ed], under the penalties for perjury, that the foregoing [was] true and accurate to the best of [his] knowledge and belief." *Id.* at 62.

On January 29, 2010, the trial court issued an order denying Quick's motion that reads in pertinent part as follows:

Criminal Rule 12(B) is quite clear on what a defendant must do to seek a change of judge in a felony or misdemeanor case. The Rule requires that the party seeking the change file an affidavit setting forth the facts and reasons for the belief the judge has a personal bias or prejudice against him, together with a certificate from the attorney of record that the attorney has a good faith belief that the historical facts recited by the affidavit are true. The pleadings tendered herein are deficient [Quick's motion was not accompanied by either an affidavit or a certificate from his attorney]. Even if the court accepted the validity of the pleading tendered, as it was submitted under penalties for perjury, the court would deny the motion for the following reasons:

1. Case law is clear that the historical facts recited in the defendant's affidavit must support a rational inference of bias or prejudice. Defense counsel refers [to] the court's sentencing order in [Light's case] in support of his motion. The defendant in that case plead guilty to three counts of child molesting as Class A felonies and in doing so admitted her guilt. Her attempt to deflect responsibility for her actions by implicating the defendant herein was reflected in the court's sentencing order. The sentencing order entered by the court at the time of that sentencing should be taken in the context of that proceeding. The defendant in this matter stands accused of a crime and has not been convicted.
2. This court, in doing an analysis under the objective person standard, that being a person knowledgeable of all of the facts and circumstances presented during the sentencing hearing held in [Light's case], finds that it would not have a rational basis for doubting the trial judge's impartiality. The defendant points to no statement or action of the trial judge directed to him that would show actual or demonstrated bias or prejudice. Defendant bears the burden of demonstrating that the

historical facts in his affidavit support an inference of bias or prejudice, which he has not done.

Id. at 73-74.

Quick waived his right to a jury trial, and a bench trial was held on March 30, 2010. During its case in chief, the State offered into evidence the testimony of the investigating officer, the search warrant for Quick and Light's residence, and the videotape of the molestations. Quick presented no evidence. The trial court found Quick guilty on the class A felony child molesting charges and granted the State's motion to dismiss the child exploitation charge. Prior to sentencing, Quick renewed his motion for change of judge, which the trial court denied.

On May 13, 2010, the trial court sentenced Quick as follows:

The court considers your prior criminal history. This factor is considered as aggravating as you were adjudicated a delinquent in the Clinton Circuit Court for the offense that would be a felony had you been an adult, specifically burglary. You also have a prior conviction for residential entry as a class D felony out of the Clinton Superior Court.

The court also considers as a[n] aggravator the victims of each offense were less than 12 years of age. This factor is considered as aggravating because the age of the victim in Count [1] was 6 years of age at the time of the offense, the age of the victim in Count 2 was 1 year of age at the time of the offense, and the victim in Count 3 was less than 2 months old at the time of the offense. The court recognizes that the age of the victims is a material element of the offense charged, however, due to the circumstances surrounding the offenses and the tender ages of each victim, the court does take their age into consideration.

The court also considers that you were in a position of trust. This factor is considered as aggravating as the victim in Count 3 was your own infant child. There is no greater position of trust than that of a parent to his own child. The court also considered that you were in [a] position [of] care, custody, and control. This factor is considered as aggravating because two of the victims had been placed by their parents in the home you shared with their daycare provider. The

youngest, most innocent victim in this case is your own daughter, and you are her father.

The court also considers as aggravating the nature of the crime. This factor is considered aggravating because these offenses were not isolated. Your co-defendant was a willing participant in the crimes, but you were the one orchestrating and directing the crimes. You demonstrated a pattern of abusive behavior over a several month period. You subjected these children to an abuse in such a way that they were unable to defend themselves. Your own infant daughter, whose body you should be protecting, you instead inserted your finger into her vaginal and anal areas with no concern to the physical injury you could be inflicting, as well as inserting your penis into her tiny little mouth. A boy the age of 6 you had perform oral sex upon you with no concern for the psychological injury you could be inflicting. You performed anal sex on a 1 year old child, again with no pause for the physical injuries you could be inflicting.

The court finds the following mitigating factors. Waiver of a jury trial, you have not acknowledged guilt for your actions, however, you did waive your right to trial by jury and did not put the victims or their families through the pain of testifying at a trial.

The court also considers as a mitigating factor your lack of education and your abusive childhood. This factor is considered mitigating because your character and condition at the time of the offenses is to be considered by the court in arriving at an appropriate sentence. You have no education beyond the seventh grade. You were exposed to a dangerous lifestyle during your childhood with no strong parental control.

Now, the court will balance between those aggravators and mitigators and the court gives weight to the fact that you lack an education and had an abusive childhood. The court gives less weight to your prior criminal history in light of the ages of those convictions and the nature of the crimes. They were crimes against property and not crimes against persons and those convictions are over fifteen years of age. The court gives ... substantial weight to ... the remaining aggravators, less weight to the criminal history but substantial weight to the remaining aggravators.

In sentencing you hereby, Mr. Quick, ... you shall be imprisoned for a term of 40 years on Count [1]. You shall be imprisoned for a time of 40 years on Count 2. You shall be imprisoned [for] a term of 45 years on Count 3, with those sentences to run consecutive to one another for a total sentence of 125 years to be served at the Indiana Department of Correction[.]. The maximum sentence the

court could have imposed in this is 150 years, but our appellate courts have guided and directed the courts to reserve the maximum sentences for the worst offenders. And it's this court's considered opinion that you qualify for such consideration and that you should receive no less sentence than what your co-defendant received. The reason the sentences are running consecutive is because the offenses were committed ... on three different victims over a period of time. There were weeks between the offenses which allowed you time to consider the crimes you were committing and the impact those offenses would have on the victims.

Tr. at 51-55.² Quick now appeals.

Discussion and Decision

I. Denial of Motion for Change of Judge

Quick contends that the trial court erred in denying his motion for change of judge filed pursuant to Criminal Rule 12(B), which provides,

In felony and misdemeanor cases, the state or defendant may request a change of judge for bias or prejudice. The party shall timely file an affidavit that the judge has a personal bias or prejudice against the state or defendant. The affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be accompanied by a certificate from the attorney of record that the attorney in good faith believes that the historical facts recited in the affidavit are true. The request shall be granted if the historical facts recited in the affidavit support a rational inference of bias or prejudice.

“[T]he appropriate standard of review of a trial judge's decision to grant or deny a motion for change of judge under Indiana Criminal Rule 12 is whether the judge's decision was clearly erroneous. Reversal will require a showing which leaves us with a definite and firm conviction that a mistake has been made.” *Sturgeon v. State*, 719 N.E.2d 1173, 1182 (Ind. 1999).

² We have altered the transcript's capitalization and paragraph formatting for ease of legibility.

We first address the technical sufficiency of Quick's motion. Quick failed to file an affidavit in support of his motion as required by Criminal Rule 12(B), but we have held that an affirmation nearly identical to Quick's is sufficient to satisfy the rule's affidavit requirement. *See State v. Hahn*, 660 N.E.2d 606, 608 (Ind. Ct. App. 1996) (holding that prosecutor's affirmation "sufficiently complied" with the rule's affidavit requirement, given that "the chief test of the sufficiency of an affidavit is its ability to serve as a predicate for a perjury prosecution," and that "[d]espite not having been notarized, the affirmation will subject the deputy prosecutor to a perjury prosecution in the event any of her statements are false."), *trans. denied*. As such, we decline to affirm the trial court's ruling on this ground.

The State asserts that Quick's "pleadings were deficient because he failed to assert that counsel had a good faith belief that the historical facts were true." Appellee's Br. at 6. Quick points out that the State did not raise this issue before the trial court and contends that the State has therefore waived its argument. Although it is true that the State did not object to Quick's motion on this basis, we note that the trial court specifically mentioned this deficiency in its order denying Quick's motion. Quick contends that "[o]ne purpose of the good faith requirement is to prevent motions for change of judge from being filed on flimsy or frivolous grounds" and suggests that his counsel must have found merit in his position because he both filed and argued "a motion for change of judge on a case with unpleasant factual allegations that was covered by local and Indianapolis media." Appellant's Br. at 11. Quick insists that his "[c]ounsel's failure to file a certificate of good faith appeared to be an oversight rather than an attempt to skirt the requirements of Criminal Rule 12(B)." *Id.* We

need not address the merits of Quick’s argument, however, because we conclude that the trial court properly denied Quick’s motion for change of judge on substantive grounds.³

“All defendants in a criminal prosecution have a due process right to trial before an impartial tribunal.” *Blanche v. State*, 690 N.E.2d 709, 714 (Ind. 1998). “The law presumes that a judge is unbiased and unprejudiced.” *Buggs v. State*, 844 N.E.2d 195, 205 (Ind. Ct. App. 2006), *trans. denied*. “But when a judge’s impartiality might be reasonably questioned because of personal bias against a defendant or counsel, a judge shall disqualify himself or herself from a proceeding.” *James v. State*, 716 N.E.2d 935, 940 (Ind. 1999) (footnote omitted) (citing former Ind. Judicial Conduct Canon 3(E)(1), now Canon 2.11(A)).⁴ “The test for determining whether a judge should recuse himself or herself ... is whether an objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the judge’s impartiality.” *Id.*

In *Buggs*, the defendant requested a change of judge based on the following remarks that the trial court made during his co-defendant’s sentencing hearing:

There is no excuse whatsoever for your complete lack of respect for another life. This was a crime of – completely of greed. For no other reason. No

³ We likewise decline to address the State’s assertion that Quick has waived any argument regarding the denial of his motion for change of judge because he “sat through an entire bench trial before Judge Henderson without objecting to her presiding over the case.” Appellee’s Br. at 4. The State cites no pertinent authority for the proposition that a defendant must renew a motion for change of judge prior to trial to preserve the issue for appeal.

⁴ Indiana Judicial Canon 2.11(A) reads in pertinent part,

A judge shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned, including but not limited to the following circumstances:

- (1) The judge has a personal bias or prejudice concerning a party or a party’s lawyer, or personal knowledge of facts that are in dispute in the proceeding.

passion. No provocation. Completely greed. So that you and your hit man companion could collect money for your drug business.

844 N.E.2d at 206. In affirming the trial court's denial of Buggs's motion, we stated,

The historical facts presented by Buggs do not support a rational inference of the trial judge's bias or prejudice. The trial judge's comments at [his co-defendant's] sentencing hearing did not specifically reference Buggs and merely constituted a characterization of the evidence presented at her trial. The comments also did not indicate that the trial judge had reached a conclusion about the merits of Buggs' case. Further, the fact that the trial judge presided over [his co-defendant's] trial and heard evidence involving Buggs does not, in itself, raise an inference of bias or prejudice.

Id. (citing *Sturgeon*, 719 N.E.2d at 1182).

Likewise here, the trial court's comments regarding Light do not support a rational inference of bias or prejudice. The comments did not specifically reference Quick, and they merely characterized the factual basis established at Light's guilty plea hearing. They do not indicate that the court had reached a conclusion about the merits of Quick's case, and the fact that the court presided over Light's guilty plea proceedings and heard evidence regarding Quick does not, in itself, raise an inference of bias or prejudice. Quick attempts to distinguish *Buggs* on the grounds that "[t]he videotape depicting [Quick's] crimes meant sentencing and not trial was the significant contested proceeding" in this case. Appellant's Br. at 13. We find this to be a meaningless distinction and conclude that no objective person, knowledgeable of all the circumstances, would have a reasonable basis for doubting the trial court's impartiality. As such, the trial court's denial of Quick's motion for change of judge was not clearly erroneous.

II. Sentencing

Quick also challenges his 125-year aggregate sentence for three counts of class A felony child molesting. Our supreme court has explained that “sentencing is principally a discretionary function in which the trial court’s judgment should receive considerable deference.” *Cardwell v. State*, 895 N.E.2d 1219, 1222 (Ind. 2008). “The trial court must enter a statement including reasonably detailed reasons or circumstances for imposing a particular sentence.” *Id.* at 1223. “The reasons given, and the omission of reasons arguably supported by the record, are reviewable on appeal for abuse of discretion.” *Id.* “Appellate review of the merits of a sentence may be sought on the grounds outlined in Appellate Rule 7(B),” *id.*, which states, “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.”

Quick first contends that the trial court “abused its discretion in finding as an aggravating circumstance that [he] was in a position of care, custody and control of C.C. and W.H.” Appellant’s Br. at 15. Quick states that “[a]lthough Light may have been acting as their babysitter, there was ... no evidence [he] sought opportunities to supervise them.” *Id.* The State points out that at the sentencing hearing, C.C.’s mother stated, “I’ve always truly believed that it takes a village to raise a child, and I trusted in Steve to be part of that village.” Tr. at 48-49. Quick was present while Light was babysitting C.C. and W.H., and he took advantage of their helpless situation. Moreover, any error in the trial court’s finding

with respect to C.C. and W.H. must be considered de minimis in light of Quick’s molestation of his two-month-old daughter, who unquestionably was in his care, custody, and control.

Next, Quick challenges the appropriateness of his sentence pursuant to Appellate Rule 7(B). According to our supreme court, “[t]he principal role of appellate review should be to attempt to leaven the outliers, and identify some guiding principles for trial courts and those charged with improvement of the sentencing statutes, but not to achieve a perceived ‘correct’ result in each case.” *Cardwell*, 896 N.E.2d at 1225. We “should focus on the forest – the aggregate sentence – rather than the trees – consecutive or concurrent, number of counts, or length of the sentence on any individual count.” *Id.* The defendant bears the burden of persuading us that his sentence is inappropriate. *Allen v. State*, 925 N.E.2d 469, 481 (Ind. Ct. App. 2010), *trans. denied*.

Concerning the nature of the offense, the advisory sentence is the starting point the legislature has selected as an appropriate sentence for the crime committed. *Whatley v. State*, 928 N.E.2d 202, 208 (Ind. 2010). The sentencing range for a class A felony is twenty to fifty years, with an advisory sentence of thirty years. Ind. Code § 35-50-2-4.⁵ Quick properly concedes that “[t]he nature of the offenses is bad even in the context of a child molesting offense.” Appellant’s Br. at 16. Quick molested three defenseless young children, including

⁵ Quick effectively concedes that a ninety-year sentence would be appropriate. *See* Appellant’s Br. at 18 (“Quick’s 125 year sentence is effectively a life sentence.... It is not appropriate to enhance the advisory sentences for the Class A felonies.”). Quick wisely does not challenge the trial court’s imposition of consecutive sentences. *See Pittman v. State*, 885 N.E.2d 1246, 1259 (Ind. 2008) (“Consecutive sentences reflect the significance of multiple victims.”).

his infant daughter, in a variety of sickening ways and compounded the barbarity of his actions by recording them on videotape.

Regarding his character, Quick has a relatively minor criminal history, consisting of a juvenile adjudication for burglary and a conviction for residential entry. Quick states that by waiving his right to a jury trial, he spared C.C. and the victims' families the trauma of testifying at trial. The State points out that thanks to the "date-stamped video" of Quick's crimes, "[n]one of the victims would have had to testify at trial." Appellee's Br. at 9. Quick places the most emphasis on his "limited education and deprived background," which included physical and sexual abuse and neglect, yet even he acknowledges that "[n]ot every person who has limited intelligence and a miserable childhood goes on to commit significant crimes." Appellant's Br. at 17, 18. *Cf. Coleman v. State*, 741 N.E.2d 697, 700 (Ind. 2000) ("[T]his court has consistently held that evidence of a difficult childhood warrants little, if any, mitigating weight."). Furthermore, Quick fails to explain how his limited intelligence prevented him from recognizing the wrongfulness of his reprehensible conduct, and he does not contest the trial court's finding that he "orchestrat[ed] and direct[ed] the crimes." Tr. at 53. In sum, Quick has fallen far short of persuading us that his 125-year sentence is inappropriate in light of the horrific nature of the crimes and his amoral character. Accordingly, we affirm the trial court in all respects.

Affirmed.

FRIEDLANDER, J., and BARNES, J., concur.