

Appellant-defendant Justin E. Robinette appeals the twenty-year aggregate sentence that was imposed following his guilty plea to three counts of Sexual Misconduct with a Minor,¹ a class B felony, and one count of Sexual Misconduct with a Minor,² a class C felony. Specifically, Robinette maintains that the sentence must be set aside because the trial court overlooked certain mitigating factors that were supported by the record and that his sentence is inappropriate in light of the nature of the offenses and his character. Concluding that Robinette was properly sentenced, we affirm the judgment of the trial court.

FACTS

In 2008, twenty-one-year-old Robinette was working for the Anderson Transit Company as a school bus aide for the Anderson Community School System. At some point during the school year, he met fourteen-year-old M.N., who was a student on the bus. When M.N. was two years old, she was found to be 100% deaf. Thereafter, M.N. endured several surgeries that resulted in a partial hearing ability.

M.N. did not learn how to read and write until the fifth grade and she has not been able to attend regular classes. M.N. also suffers from Attention Deficit Hyper-activity Disorder and an auditory processing deficit. M.N. was riding the bus because she attended a school that was out of her district with classrooms and teachers that could accommodate her special needs.

¹ Ind. Code § 35-42-4-9(a)(1).

² I.C. § 35-42-4-9(b)(1).

At some point, Robinette and M.N. began “texting” and calling each other. M.N. also found Robinette’s page on “MySpace.” Tr. p. 16. Thereafter, Robinette engaged in several sexual encounters with M.N. over a five-month period. The incidents took place at M.N.’s house after school.

M.N.’s mother discovered some of the text messages that M.N. and Robinette had exchanged. Following a police investigation, the State charged Robinette with the above offenses. Thereafter, Robinette entered into a plea agreement with the State, agreeing to plead guilty as charged. The agreement provided for “open” sentencing with all sentences to run concurrent with each other. Id. at 59.

At the guilty plea hearing on March 15, 2010, the factual basis for Robinette’s guilty plea was as follows:

On February 5th of ’09, [T.N.] observed her . . . 14 year old daughter, [M.N.], sending text messages prior to her leaving for the bus stop en route to . . . school. [M.N.] left her cell phone at home. As soon as she had departed, [T.N.] read the text messages which were sexually explicit. [T.N.] had a fear that the person who had texted was a bus driver, did some research on her own, found a cell number from the text, it came back to an area near Anderson Community Schools and then reported the matter to the Anderson Police Department. Upon the report, Officer Jeff Neal contacted the cell phone caller, who had sent the text messages and was able to identify this defendant, Justin Robinette and that he worked at the Anderson Transit bus corporation. The daughter was then interviewed and indicated that she had had a sexual relationship with the defendant that had [begun] as a result of her looking him up on my space. She indicated that he knew her age and that she knew that he was . . . 21 years of age. And that he had come to her home approximately . . . 6 . . . times since October of 2008. And during those visits that they would have sexual intercourse and they had intercourse in January of 2009. That the visits also included engaging in fondling, touching and kissing. And that he had performed oral sex on her, as well, placing his hands down her pants and into her genital area.

She related this had occurred approximately . . . 3 . . . or 4 . . . times and denied oral sex upon him. This defendant was then contacted for an interview was advised of his Miranda rights and admitted that he was that person who was texting [M.N.]. Admitted to sending graphic text messages. Finally admitted to having sexual intercourse with her on two different occasions and also admitted to performing oral sex on her as well as on other occasions. Admitted that he knew that [she] attended East Side Middle School and that they met when she contacted him on my space. At the time that he was having sexual intercourse and involved with the sexual acts with her, he was . . . [at least] . . . 21. . . and she was . . . [14]

Tr. p. 15-17.

At the sentencing hearing, Robinette claimed that he was remorseful about what had occurred and for “tearing up [M.N.’s] family.” Id. at 21, 32. The evidence showed that Robinette stopped attending school in the seventh grade, and he was diagnosed as being mildly mentally handicapped in 2001. Robinette has been employed throughout his adult life, eventually married, and had worked at a McDonald’s Restaurant for over five years. Robinette was confident that he would be able to find work quickly and easily.

The trial court identified Robinette’s abuse of his position of trust and M.N.’s handicaps and learning disabilities as aggravating factors. The trial court also found aggravating the fact that Robinette blamed M.N. for instigating the offenses and claiming that the instances were “consensual.” Id. at 59.

As for mitigating factors, the trial court noted that Robinette deserved “minimal credit” for pleading guilty because the evidence of guilt was “overwhelming.” Id. The trial court further observed that Robinette received the benefit of having the sentences run

concurrently rather than consecutively had he proceeded to trial and been found guilty. The trial court also noted that Robinette had apparently been able to overcome his emotional problems and was able to marry and maintain employment, thus indicating his ability to lead a normal life. Finally, the trial court noted that Robinette's statements of remorse were not sincere, observing that Robinette could not say why he was remorseful.

The trial court found that the aggravating factors far outweighed the mitigating circumstances and sentenced Robinette to an aggregate executed sentence of twenty years.³ Robinette now appeals.

DISCUSSION AND DECISION

I. Abuse of Discretion

Robinette claims that the trial court abused its discretion in sentencing him because it overlooked several mitigating factors that were supported by the record. Specifically, Robinette maintains that the trial court should have considered his youth, mental health, and the fact that he acted under "strong provocation," as mitigating circumstances. Appellant's Br. p. 15. Robinette also argues that the trial court should have attributed more weight to the decision to plead guilty.

Sentencing decisions are within the sound discretion of the trial court. Anglemyer v. State, 868 N.E.2d 482, 490 (Ind.2007), clarified on reh'g, 875 N.E.2d 218. However, a trial court may be found to have abused its sentencing discretion in a number of ways,

³ The sentencing range for a class B felony is from six to twenty years, with an advisory sentence of ten years. Ind. Code § 35-50-2-5. The sentencing range for a class C felony is from two to eight years with an advisory sentence of four years. I.C. § 35-50-2-6.

including: (1) failing to enter a sentencing statement at all; (2) entering a sentencing statement that explains reasons for imposing a sentence where the record does not support the reasons; (3) entering a sentencing statement that omits reasons that are clearly supported by the record and advanced for consideration; and (4) entering a sentencing statement in which the reasons given are improper as a matter of law. Id. at 490-91. Moreover, an abuse of discretion occurs where the trial court's 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.

We note that a trial court is not obligated to find a circumstance to be mitigating merely because it is advanced by the defendant. Felder v. State, 870 N.E.2d 554, 558 (Ind. Ct. App. 2007). Moreover, we will conclude that the trial court overlooked a mitigator only when the record contains substantial evidence of a significant mitigating circumstance. Creager v. State, 737 N.E.2d 771, 782 (Ind. Ct. App. 2000).

Notwithstanding Robinette's contentions, we note that youth is not automatically a significant mitigating circumstance. Smith v. State, 872 N.E.2d 169, 178 (Ind. Ct. App. 2007). At the sentencing hearing, the trial court was aware of the fact that Robinette was twenty-one years old when he committed the offenses, had been employed for notable periods of time, and had been married. Tr. p. 27-29, 37-38. In other words, when Robinette committed the offenses, he was an adult who had responsibilities. In light of these circumstances, we reject Robinette's contention that the trial court abused its discretion in not identifying Robinette's age as a mitigating factor. See Bostick v. State,

804 N.E.2d 218, 225 (Ind. Ct. App. 2004) (holding that the trial court acted within its discretion in refusing to consider the defendant's age of twenty-four years at the time of offense as a significant mitigating factor; the defendant was the head of the household and primary caretaker to three young children and was an adult that was able to take responsibility for her actions).

Although Robinette claims that the trial court erred when it rejected his alleged depression and mental health concerns as significant mitigating factors, Robinette has failed to establish a nexus between those issues and the offenses he committed. More particularly, even though Robinette presented evidence establishing that he had been diagnosed as mildly mentally handicapped, the trial court found that despite that illness, Robinette had been able to marry and maintain steady employment. Tr. p. 60. In light of these circumstances, we cannot say that the trial court abused its discretion in refusing to identify Robinette's mental illness as a significant mitigating circumstance. See Anglemyer, 868 N.E.2d at 493 (holding that it is within the trial court's discretion to determine the weight of a proffered mitigator of mental illness).

Robinette also contends that the trial court should have found that the M.N.'s alleged "inducement of the crime" and the fact that he allegedly acted "under strong provocation" were mitigating circumstances. Appellant's Br. p. 15. In support of this contention, Robinette directs us to Indiana Code section 35-42-49, which provides in part that

(e) It is a defense to a prosecution under this section if all the following apply:

- (1) The person is not more than four (4) years older than the victim.
- (2) The relationship between the person and the victim was a dating relationship or an ongoing personal relationship. The term “ongoing personal relationship” does not include a family relationship.
- (3) The crime:
 - (A) was not committed by a person who is at least twenty-one (21) years of age;
 - (B) was not committed by using or threatening the use of deadly force;
 - (C) was not committed while armed with a deadly weapon;
 - (D) did not result in serious bodily injury;
 - ...
 - (F) was not committed by a person having a position of authority or substantial influence over the victim.
- (4) The person has not committed another sex offense (as defined in IC 11-8-8-5.2) (including a delinquent act that would be a sex offense if committed by an adult) against any other person.

In this case, twenty-one-year-old Robinette was nearly seven years older than M.N. when he committed the offenses. Moreover, Robinette stood in a position of trust toward M.N., in that he was an individual charged with seeing her safely to school. Instead, Robinette preyed upon M.N. His reliance upon this statute fails.

Finally, Robinette maintains that the trial court should have attributed more weight to the decision to plead guilty. However, our Supreme Court recognized in Anglemyer that a defendant is no longer permitted to challenge the weight that the trial court assigns

to aggravating and mitigating factors. 868 N.E.2d at 491. Therefore, Robinette's argument is unavailing.

In sum, we conclude that the trial court did not abuse its discretion in sentencing Robinette.

II. Inappropriate Sentence

Robinette also contends that his sentence is inappropriate pursuant to Indiana Appellate Rule 7(B). In reviewing a Rule 7(B) appropriateness challenge, we defer to the trial court. Stewart v. State, 866 N.E.2d 858, 866 (Ind. Ct. App. 2007). The burden is on the defendant to persuade us that his sentence is inappropriate. Childress v. State, 848 N.E.2d 1073, 1080 (Ind. 2006).

As for the nature of the offense, the record shows that Robinette was employed as a bus aide who was entrusted by the school system to safely chaperone M.N., a fourteen-year-old handicapped child, to school. Instead, Robinette preyed upon M.N. and had sex with her.

As for Robinette's character, the evidence established that he violated his position of trust in an attempt to fulfill his own sexual desires, thereby showing his selfish inability to place M.N.'s well being above his own. Particularly troublesome is the fact that Robinette "blamed" M.N. for instigating the offenses and claiming that the sexual encounters were "consensual." Tr. p. 58-59. In short, Robinette has failed to persuade us that his sentence is inappropriate.

The judgment of the trial court is affirmed.

VAIDIK, J., and BARNES, J., concur.