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IN THE
COURT OF APPEALS OF INDIANA

WILLIAM WAGGLE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 34A02-0909-CR-894
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE HOWARD SUPERIOR COURT
The Honorable George A. Hopkins, Judge
Cause No. 34D04-0901-FB-00007

DECEMBER 23, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BARTEAU, Senior Judge

STATEMENT OF THE CASE

Defendant-Appellant William Waggle appeals the sentence he received for his plea of guilty to sexual misconduct with a minor, a Class B felony. Ind. Code § 35-42-4-9(a)(1).

We affirm.

ISSUE

Waggle presents one issue for our review: whether his sentence is inappropriate.

FACTS AND PROCEDURAL HISTORY

In August 2007, Waggle engaged in sexual intercourse with B.S., who was 15 years old. Waggle engaged B.S. in this conduct on at least one other occasion, and B.S. became pregnant. Paternity testing revealed that Waggle is the father of the child. Waggle was charged with committing sexual misconduct with a minor, a Class B felony. He pleaded guilty to the offense, and the trial court sentenced him to twelve (12) years. It is from this sentence that he now appeals.

DISCUSSION AND DECISION

The sole issue Waggle presents on appeal is the inappropriateness of his sentence. On appeal, we have the authority to revise a sentence if, after due consideration of the trial court's decision, we determine that the sentence is inappropriate in light of the nature of the offense and the character of the offender. Ind. Appellate Rule 7(B). A defendant bears the burden of persuading the appellate court that his or her sentence has met the inappropriateness standard of review. *Anglemyer v. State*, 868 N.E.2d 482, 494 (Ind.

2007), *clarified on reh'g*, 875 N.E.2d 218 (Ind. 2007). As long as a defendant's sentence is within the statutory range, it is subject to review only for an abuse of discretion. *Id*. at 490. An abuse of discretion occurs if the sentencing 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*.

With regard to the nature of the offense, the advisory sentence is the starting point in our consideration of an appropriate sentence for the crime committed. *Childress v. State*, 848 N.E.2d 1073, 1081 (Ind. 2006). Here, Waggle was convicted of a Class B felony. The advisory sentence for a Class B felony is ten (10) years, with a maximum of twenty (20) years and a minimum of six (6) years. *See* Ind. Code §§ 35-50-2-5. Waggle's plea agreement capped his sentence at a maximum of twelve (12) years, and the trial court sentenced him to twelve (12) years.

This offense goes beyond mere sexual misconduct with a minor. As a result of Waggle's misconduct, a child was born to a fifteen-year-old mother. In addition, the misconduct occurred more than once.

With regard to Waggle's character, we note that he has an extensive criminal history. According to the presentence investigation report, Waggle had entered the juvenile system at least by the age of thirteen. During his youth, he was continuously involved in the juvenile system and was committed to numerous facilities, including the Logansport State Hospital, the Family Guidance Center, the Indiana Boys' School, the Methodist Children's Home, and the Bethel Home. Since becoming an adult, Waggle has

accumulated fifteen (15) misdemeanor convictions and four (4) felony convictions. At sentencing, the trial court used Waggle's criminal history as an aggravating factor.

As a mitigating circumstance, the court identified Waggle's guilty plea. However, the significance of a guilty plea as a mitigating factor varies from case to case. *Anglemyer v. State*, 875 N.E.2d 218, 221 (Ind. 2007). For example, a guilty plea may not be significantly mitigating where the evidence against the defendant is such that the decision to plead guilty is merely a pragmatic one. *Powell v. State*, 895 N.E.2d 1259, 1262-63 (Ind. Ct. App. 2008), *trans. denied*, 915 N.E.2d 978 (2009). At the time of Waggle's guilty plea, paternity test results had identified him as the father of the baby with a 99.98% probability. *See* Appellant's Appendix at 108. In addition, Waggle had previously admitted to the police that he had committed this offense and that he had known B.S.'s age at the time. In light of this, the sentencing court could have reasonably concluded that Waggle's guilty plea, although mitigating, was not significantly mitigating because his decision to plead guilty was a pragmatic one.

In his brief, Waggle asserts that his mental state should tend to reduce his culpability. However, Waggle did not argue this mitigator to the trial court and has therefore waived the issue for appeal. *Thomas-Collins v. State*, 868 N.E.2d 557, 561 (Ind. Ct. App. 2007), *trans. denied*, 878 N.E.2d 213. Waiver notwithstanding, Waggle's argument on this issue fails.

At sentencing, Waggle's mental history was mentioned only when the court asked him, as part of receiving his guilty plea, whether he had ever been treated for any mental

illness. Waggle answered in the affirmative and stated that he had been treated "off and on" all his life. Tr. at 39. He also explained that he was currently taking the drug Paxil but that he discontinued its use order to ensure his understanding of his court proceedings. Waggle has failed to establish a nexus between his offense and any mental illness from which he suffers. *See Corralez v. State*, 815 N.E.2d 1023, 1026 (Ind. Ct. App. 2004) (stating that there must be nexus between defendant's mental health and crime in question in order for mental history to be considered mitigating factor).

Therefore, in light of Waggle's pragmatic decision to plead guilty, his extensive criminal history, and the lack of nexus between his mental history and the commission of this offense, we cannot say the sentence was inappropriate for the nature of the crime and the character of the offender. Based upon the foregoing discussion and authorities, we conclude that the trial court properly sentenced Waggle.

Affirmed.

RILEY, J., and CRONE, J., concur.