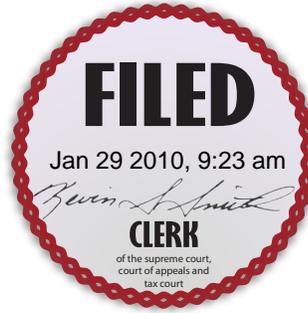


Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



ATTORNEY FOR APPELLANT:

ATTORNEYS FOR APPELLEE:

MARK SMALL
Indianapolis, Indiana

GREGORY F. ZOELLER
Attorney General of Indiana

JODI KATHRYN STEIN
Deputy Attorney General
Indianapolis, Indiana

**IN THE
COURT OF APPEALS OF INDIANA**

JOHNNY LEE,)
)
Appellant-Defendant,)
)
vs.)
)
STATE OF INDIANA,)
)
Appellee-Plaintiff.)

No. 54A01-0909-CR-459

APPEAL FROM THE MONTGOMERY CIRCUIT COURT
The Honorable Thomas K. Milligan, Judge
Cause No. 54C01-0812-FB-196

January 29, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Johnny Lee appeals his fifteen-year sentence with five years suspended imposed by the trial court following his guilty plea to class B felony sexual misconduct with a minor. The sole issue presented for our review is whether Lee's sentence is appropriate in light of the nature of the offense and his character. We affirm.

Facts and Procedural History

The factual basis for the plea agreement reveals that on November 29, 2008, forty-nine-year-old Lee was having drinks with friends in an apartment in Crawfordsville. One of the friends asked if Lee would go and check on the well-being of her teenage son and some other children who were in a nearby apartment. When Lee arrived at the other apartment, he encountered four intoxicated teenagers, two boys and two girls. Fourteen-year-old S.S., a stranger to Lee, approached him. Lee kissed S.S. and inserted his finger into her vagina. S.S. also fondled Lee's penis. S.S. had semen on her thigh afterward.

The State charged Lee with two counts of class B felony sexual misconduct with a minor, one count of class C felony sexual misconduct with a minor, and class B felony rape. Pursuant to a written plea agreement, Lee pled guilty to one count of class B felony sexual misconduct with a minor. The plea agreement capped the executed portion of Lee's sentence at ten years and provided for dismissal of the remaining charges. Following a hearing, the

trial court imposed a fifteen-year sentence, with ten years executed and five years suspended to probation.¹ This appeal ensued.

Discussion and Decision

Lee contends that his sentence is inappropriate in light of the nature of the offense and his character. We must disagree.

Sentencing decisions rest within the sound discretion of the trial court and are reviewed on appeal only for an abuse of discretion. *Smallwood v. State*, 773 N.E.2d 259, 263 (Ind. 2002). The Indiana Constitution authorizes this Court to review and revise sentences to the extent provided by the Supreme Court rules. IND. CONST. art. VII, § 6. 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. Ind. Appellate Rule 7(B); *Childress v. State*, 848 N.E.2d 1073, 1079 (Ind. 2006). In fact, this Court may revise any sentence we find inappropriate "even where the trial court has been meticulous in following the proper procedure in imposing a sentence." *Childress*, 848 N.E.2d at 1079-80. The defendant bears the burden to persuade the appellate court that his or her sentence is inappropriate. *Id.* at 1080.

Regarding the nature of the offense, Lee was placed in a position of trust when he was asked by a friend to check on the well-being of four teenagers. When he arrived, Lee became aware that the children, including S.S., were highly intoxicated. Lee took advantage of the

¹ The sentencing range for a class B felony is between six and twenty years, with the advisory sentence being ten years. Ind. Code §35-50-2-5.

situation and sexually assaulted S.S., who was only fourteen years old at the time. The record indicates that S.S. was diagnosed with suicidal depression following the assault and has suffered great emotional harm as a result of Lee's actions. We cannot say that a fifteen-year sentence with ten years executed and five years suspended is inappropriate in light of the seriousness of Lee's offense.

Regarding the character of the offender, Lee has a lengthy criminal history which includes several misdemeanor convictions as well as a conviction for class B felony dealing in cocaine. Additionally, Lee has fathered eleven children by eight different women. Nine of the children are dependent children and, at the time of sentencing, Lee was only court ordered to pay support to four of those children and admitted to having close contact with only those four children. These facts reflect very negatively upon Lee's character. Most significantly, with regard to the instant offense, Lee fails to appreciate the seriousness of his behavior. During sentencing, Lee continued to place more blame on his fourteen-year-old victim than on himself.

Under the circumstances, we cannot say that the nature of the offense or Lee's character warrants a revision of his sentence. Lee has failed to persuade us that his sentence is inappropriate.

Affirmed.

RILEY, J., and VAIDIK, J., concur.