



## **Case Summary**

Ronald Hollin appeals his convictions for Class A felony child molesting, Class A felony attempted child molesting, Class B felony incest, two counts of Class B felony sexual misconduct with a minor, Class C felony child molesting, and Class D felony child solicitation. We affirm.

## **Issues**

Hollin raises four issues, which we restate as:

- I. whether the trial court properly denied his motion for a mistrial;
- II. whether the trial court properly admitted certain testimony into evidence;
- III. whether there is sufficient evidence to support his convictions; and
- IV. whether his sentence is inappropriate.

## **Facts**

Hollin was married to Shamra Terry from 1992 until they divorced in 1995. After their divorce, Hollin had regular visitation with their daughter, S.H., who was born in 1993, and he regularly babysat Terry's daughter from a previous relationship, L.T., who was born in 1989. After the divorce, Hollin had another daughter, B.H., who was born in 1997.

Allegations of sexual abuse arose in 2008, regarding all three girls. The State eventually charged Hollin with Class A felony child molesting, Class A felony attempted child molesting, Class B felony incest, Class B felony attempted incest, two counts of

Class B felony sexual misconduct with a minor, and two counts of Class B felony attempted sexual misconduct with a minor for allegations associated with S.H. The State charged Hollin with Class C felony child molesting for allegations associated with B.H. and with Class D felony child solicitation for allegations associated with L.T.

As for the charges relating to S.H., a jury found Hollin guilty of Class A felony child molesting, Class A felony attempted child molesting, Class B felony incest, and both counts of Class B felony sexual misconduct with a minor. The jury also found him guilty of Class C felony child molesting for the charge relating to B.H. and of Class D felony child solicitation for the charge relating to L.T.

The trial court sentenced Hollin to twenty-five years on each of the Class A felonies and ordered the sentences to be served concurrently. The trial court sentenced him to nine years on each of the three Class B felonies and ordered those sentences to be served consecutively. The trial court sentenced him to four years on the Class C felony and two years on the Class D felony and ordered each of those sentences to be served consecutive to the other sentences, for a total sentence of fifty-eight years. Hollin now appeals.

## **Analysis**

### ***I. Mistrial***

Hollin argues that the trial court improperly denied his request for a mistrial, which is an extreme remedy that is only justified when other remedial measures are insufficient to rectify the situation. See *McManus v. State*, 814 N.E.2d 253, 260 (Ind. 2004), cert. denied. “On appeal, the trial judge’s discretion in determining whether to

grant a mistrial is afforded great deference because the judge is in the best position to gauge the surrounding circumstances of an event and its impact on the jury.” Id. “Accordingly, we review the trial court’s decision for abuse of discretion.” Id.

After the jury was selected and opening statements were completed, Hollin moved for a mistrial, arguing that, during questioning, one of the jurors, who was excused for cause, indicated that she knew B.H. and knew she had a brother and that the prospective juror “essentially endorsed the witness’s testimony or credibility if she were to hear that statement.” Tr. p. 28. The trial court, however, flatly rejected Hollin’s claim. In determining whether the prospective juror’s statements<sup>1</sup> might have affected other prospective jurors, the trial court observed that the prospective juror was difficult to hear and that none of the individuals who were sitting near her were actually seated on the jury. The trial court concluded that it did not think there was prejudice and, even if there was, it was not significant.

Hollin argues that the prospective juror’s statement was “likely to create a presupposition” as to the allegations at trial. Appellant’s Br. p. 10. This argument, however, is not supported by the trial court’s conclusion that none of the other prospective jurors sitting near her could have heard the statement. Thus, regardless of the content of the statement, Hollin has not established that the trial court abused its discretion in denying his request for a mistrial.

## ***II. Admission of Evidence***

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<sup>1</sup> Because voir dire was not transcribed, we do not know the precise statements made by the prospective juror in question. Nevertheless, based on the parties’ arguments and the trial court’s ruling, we are able to address this issue on the merits.

Hollin next argues that the trial court improperly permitted the State to consult with S.H. in the hallway, apparently during a break in her testimony. He relies only on Indiana Rule of Evidence 612, pertaining to refreshing a witness's memory, and contends that the trial court's action was "inappropriate on its face." *Id.* at 11. Hollin, however, did not object to the State's request to talk to S.H. in the hallway, did not object to S.H.'s subsequent testimony on that basis, and does not argue fundamental error on appeal. "A failure to object when the evidence is introduced at trial waives the issue for appeal." *Delarosa v. State*, 938 N.E.2d 690, 694 (Ind. 2010). Because Hollin did not make a timely objection, this issue is waived.

### ***III. Sufficiency of the Evidence***

Hollin also challenges the sufficiency of the evidence. In his brief, Hollin sets out the standard of review of sufficiency of the evidence claims and goes on to argue:

Here, it is Hollin's contention that based upon the evidence presented, it is reasonable to assert that the crime was not proven beyond a reasonable doubt. The testimony of the juvenile witnesses [sic]

Therefore, Hollin respectfully asks that the Trial Court's conviction be overturned due to insufficiency of the evidence presented against him.

Appellant's Br. p. 13. In response to the State's assertion that his argument was not cogent, Hollin contends:

Mr. Hollin appeals his conviction as is his right under the law and asserts that the evidence presented at trial is insufficient to support his conviction. The Appellee appears to question the ability of the Appellant to make said argument. However, sufficiency of the evidence has been continually established as a sound basis for appeal, and thus, based upon the facts of the trial Mr. Hollins [sic] asserts that

right. It is his belief that based upon the evidence presented at trial that the State of Indiana failed to prove his guilt beyond a reasonable doubt and the trial court erred in its subsequent conviction.

Appellant's Reply Br. p. 7.

Indiana Appellate Rule 46(8)(a) requires the argument section of a brief to “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal . . . .” This requirement is especially important here, where Hollin was convicted of seven counts, involving three different victims and six different crimes. Because, other than the standard of review, Hollin’s argument does not contain cogent reasoning supported by appropriate citations, this issue is waived. See Cooper v. State, 854 N.E.2d 831, 835 n.1 (Ind. 2006) (“In any event, because Cooper’s contention is supported neither by cogent argument nor citation to authority, it is waived.”).

#### *IV. Sentence*

Hollin argues that his fifty-eight-year sentence is inappropriate.<sup>2</sup> Indiana Appellate Rule 7(B) permits us to 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 offenses and the character of the offender. When considering whether a sentence is inappropriate, we need not be “extremely” deferential to a trial

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<sup>2</sup> In his brief, Hollin references the presumptive sentencing scheme, the manifestly unreasonable review of a sentence, and a previous version of the Indiana Appellate Rules. These concepts are not applicable under the current approach toward reviewing sentences.

court's sentencing decision. Rutherford v. State, 866 N.E.2d 867, 873 (Ind. Ct. App. 2007). Still, we must give due consideration to that decision. Id. We also understand and recognize the unique perspective a trial court brings to its sentencing decisions. Id. 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).

The principal role of Rule 7(B) 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 v. State, 895 N.E.2d 1219, 1225 (Ind. 2008). 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.

As an initial matter, the State argues that, because Hollin did not include the presentence investigation report (“PSI”) in his appendix, the issue is waived.<sup>3</sup> As we have previously noted, the failure to include PSI in the record on appeal hampers our ability to review the trial court's sentencing decision. Eiler v. State, 938 N.E.2d 1235, 1237 n.2 (Ind. Ct. App. 2010). Because the State provided us with a copy of the PSI, however, we opt to address this claim on the merits.

In considering the nature of the offenses, we cannot overstate the fact that Hollin sexually abused his daughters and former step-daughter over a period of time. We also

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<sup>3</sup> We addressed this same argument in Mendez v. State, No. 36A04-0804-CR-232 slip op. at 9-10 n.6 (Ind. Ct. App. Apr. 8, 2009). The appellate counsel who represented Mendez now represents Hollin on appeal. Because a PSI can be crucial to our review of a sentence, we urge counsel to ensure they are included in the record on appeal in any future sentence challenges.

cannot overlook the fact one of the victims was “developmentally disabled” and another “had a label of mild mental disability.” Tr. pp. 34, 91. The nature of the offenses certainly does not warrant a reduction of the sentence.

As for his character, Hollin’s criminal history includes only a misdemeanor battery conviction. Nevertheless, we are not convinced that his lack of criminal history warrants the imposition of concurrent advisory sentences as he requests. Likewise, we are not convinced that the nature of the offenses and the character of the offender require us to increase Hollin’s sentence to eighty-six years as requested by the State. We conclude that Hollin’s fifty-eight-year sentence is not inappropriate.

### **Conclusion**

The trial court did not abuse its discretion in denying Hollin’s request for a mistrial. His arguments regarding the admission of S.H.’s testimony and the sufficiency of the evidence are waived. Finally, Hollin’s fifty-eight-year sentence is not inappropriate. We affirm.

Affirmed.

RILEY, J., and DARDEN, J., concur.